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WHEN: Tuesday, April 10, 2012
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WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0959; Directorate Identifier 2011–NE–25–AD; Amendment 39–16970; AD 2012–04–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to RB211–Trent 800 series turbofan engines. The last comment response in the preamble and the first sentence of regulatory text paragraph (g)(1) are incorrect. The repetitive inspection interval should be 2,000 flight cycles, not 1,000 flight cycles. This document corrects those errors. In all other respects, the original document remains the same.

DATES: This final rule is effective April 11, 2012.

ADDRESSES: 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: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *alan.strom@faa.gov;* phone: 781–238–7143; fax: 781–238–7199.

SUPPLEMENTARY INFORMATION: AD 2012–04–14, Amendment 39–16970 (77 FR 13485, March 7, 2012), currently requires inspecting the front combustion liner head section for cracking, and if found cracked, removing the front combustion liner head section from service at the next shop visit.

As published, the last comment response in the preamble, and the first sentence of regulatory text paragraph (g)(1), are incorrect. No other part of the preamble or regulatory text has been changed; therefore, only the changed portions of the final rule is being published in the **Federal Register**.

The effective date of this AD remains April 11, 2012.

Correction of Non-Regulatory Text

In the **Federal Register** of March 7, 2012, AD 2012–04–14; Amendment 39–16970, is corrected to read as follows:

On page 13486, in the 3rd column, under the heading Need to Show All Acceptable Means of Completing the On-Wing Inspection, the 2nd sentence in the 1st paragraph is corrected to read ''We changed the 2nd sentence of paragraphs (f)(1) and (g)(1) of the proposed AD from:''

On page 13486, in the 3rd column, under the heading Need to Show All Acceptable Means of Completing the On-Wing Inspection, the 1st sentence in the 2nd and 3rd paragraphs, is deleted.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of March 7, 2012, AD 2012–04–14; Amendment 39–16970, on page 13487, in the first column, in paragraph (g)(1), the first sentence is corrected to read as follows:

* * * * *

(g)(1) At intervals not to exceed 2,000 FCs, inspect the front combustion liner head section for cracking.

* * * * *

Issued in Burlington, Massachusetts, on March 30, 2012.

Colleen D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–8289 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2012–N–0002]

Oral Dosage Form New Animal Drugs; Change of Sponsor; Lincomycin Hydrochloride Soluble Powder; Penicillin G Potassium in Drinking Water; Tetracycline Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three abbreviated new animal drug applications (ANADAs) for lincomycin hydrochloride; penicillin G potassium, USP; and tetracycline hydrochloride soluble powders administered in drinking water from Teva Animal Health, Inc., to Quo Vademus, LLC.

DATES: This rule is effective April 9, 2012.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8300, email: *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Teva Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–136 for Tetracycline Hydrochloride Soluble Powder 324; ANADA 200–303 for Lincomycin Hydrochloride Soluble Powder; and ANADA 200–347 for Penicillin G Potassium, USP, all soluble powders administered in drinking water to Quo Vademus, LLC, 277 Faison West McGowan Rd., Kenansville, NC 28349. Accordingly, the Agency is amending the regulations in part 520 (21 CFR part 520) to reflect the transfer of ownership and a current format.

In addition FDA has noticed two errors in § 520.1696 *Penicillin oral dosage forms.* At this time, § 520.1696a is being removed because no sponsor is listed, and an obsolete drug labeler code is being removed from § 520.1696d.

These actions are being taken to improve the accuracy of the regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.1263, revise the section heading to read as follows:

§ 520.1263 Lincomycin.

* * * * *

■ 3. In § 520.1263c, revise the section heading and paragraph (b) to read as follows:

§ 520.1263c Lincomycin powder.

* * * * *

(b) *Sponsors.* See Nos. 000009, 046573, 054925, 061623, and 076475 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

* * * * *

■ 4. In § 520.1696, revise the section heading to read as follows:

§ 520.1696 Penicillin.

* * * * *

§ 520.1696a [Removed and Reserved]

■ 5. Remove and reserve § 520.1696a.

■ 6. In § 520.1696b, revise the section heading, paragraphs (a) and (b), and the heading for paragraph (c) to read as follows:

§ 520.1696b Penicillin G powder.

(a) *Specifications.* Each gram of powder contains penicillin G potassium equivalent to 1.54 million units of penicillin G.

(b) *Sponsors.* See Nos. 010515, 046573, 053501, 059320, 061623 and 076475 in § 510.600(c) of this chapter.

(c) *Conditions of use in turkeys*—

* * * * *

■ 7. In § 520.1696c, revise the section heading and remove and reserve paragraph (c) to read as follows:

§ 520.1696c Penicillin V powder.

* * * * *

■ 8. In § 520.1696d, revise the section heading and paragraph (b) and remove and reserve paragraph (c) to read as follows:

§ 520.1696d Penicillin V tablets.

* * * * *

(b) *Sponsors.* See Nos. 050604 and 053501 in § 510.600(c) of this chapter.

* * * * *

■ 9. In § 520.2345, revise the section heading to read as follows:

§ 520.2345 Tetracycline.

* * * * *

■ 10. In § 520.2345d, revise paragraph (b)(4) to read as follows:

§ 520.2345d Tetracycline powder.

* * * * *

(b) * * *

(4) Nos. 054925, 057561, 061623, and 076475: 324 grams per pound as in paragraph (d) of this section.

* * * * *

Dated: March 27, 2012.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2012–8322 Filed 4–6–12; 8:45 am]

BILLING CODE 4160–01–P

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37 CFR Parts 201 and 202

[Docket No. 2011–8]

Discontinuance of Form CO in Registration Practices

Correction

In rule document 2012–7429 appearing on pages 18705–18707 in the issue of March 28, 2012, make the following corrections:

1. On page 18706, in the third column, in the 17th line from the bottom, ''□.'' should read ''℗.''.

§ 202.2 [Corrected]

■ 2. On page 18707, in § 202.2, in the first column, in amendatory instruction 4, in the third line, ''□'' should read ''℗''.

[FR Doc. C1–2012–7429 Filed 4–6–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8225]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59.

Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

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

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

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

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region II				
New York:				
Barton, Town of, Tioga County	360832	September 2, 1975, Emerg; June 15, 1982, Reg; April 17, 2012, Susp.	April 17, 2012	April 17, 2012
Berkshire, Town of, Tioga County	361215	August 8, 1977, Emerg; May 15, 1985, Reg; April 17, 2012, Susp.	do	Do.
Candor, Town of, Tioga County	360833	July 30, 1976, Emerg; August 19, 1986, Reg; April 17, 2012, Susp.	do	Do.
Candor, Village of, Tioga County	360834	July 21, 1975, Emerg; October 1, 1991, Reg; April 17, 2012, Susp.	do	Do.
Newark Valley, Town of, Tioga County	360835	June 25, 1973, Emerg; February 3, 1982, Reg; April 17, 2012, Susp.	do	Do.
Newark Valley, Village of, Tioga County	360836	September 2, 1976, Emerg; February 3, 1982, Reg; April 17, 2012, Susp.	do	Do.
Nichols, Town of, Tioga County	360837	August 6, 1975, Emerg; February 17, 1982, Reg; April 17, 2012, Susp.	do	Do.
Nichols, Village of, Tioga County	360838	September 2, 1976, Emerg; September 29, 1986, Reg; April 17, 2012, Susp.	do	Do.
Owego, Town of, Tioga County	360839	December 29, 1972, Emerg; June 15, 1977, Reg; April 17, 2012, Susp.	do	Do.
Owego, Village of, Tioga County	360840	December 22, 1972, Emerg; May 16, 1977, Reg; April 17, 2012, Susp.	do	Do.
Richford, Town of, Tioga County	361216	August 10, 1976, Emerg; May 15, 1985, Reg; April 17, 2012, Susp.	do	Do.
Spencer, Town of, Tioga County	360841	October 16, 1975, Emerg; May 15, 1985, Reg; April 17, 2012, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Spencer, Village of, Tioga County	361471	December 16, 1976, Emerg; May 15, 1985, Reg; April 17, 2012, Susp.	.....do	Do.
Tioga, Town of, Tioga County	360842	August 15, 1975, Emerg; May 17, 1982, Reg; April 17, 2012, Susp.	.....do	Do.
Waverly, Village of, Tioga County	361343	June 27, 1974, Emerg; March 16, 1983, Reg; April 17, 2012, Susp.	.....do	Do.
Region IV				
Georgia:				
East Ellijay, City of, Gilmer County	130089	July 3, 1975, Emerg; November 3, 1999, Reg; April 17, 2012, Susp.	.....do	Do.
Ellijay, City of, Gilmer County	130090	April 22, 1975, Emerg; August 15, 1990, Reg; April 17, 2012, Susp.	.....do	Do.
Gilmer County, Unincorporated Areas	130317	October 29, 1982, Emerg; August 15, 1990, Reg; April 17, 2012, Susp.	.....do	Do.
Tennessee:				
Gallatin, City of, Sumner County	470185	May 27, 1975, Emerg; August 3, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Goodlettsville, City of, Sumner County	470287	April 21, 1975, Emerg; June 15, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Hendersonville, City of, Sumner County	470186	May 28, 1974, Emerg; November 4, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Millersville, City of, Sumner County	470388	August 30, 1982, Emerg; June 15, 1984, Reg; April 17, 2012, Susp.	.....do	Do.
Portland, City of, Sumner County	470187	February 14, 1975, Emerg; August 4, 1987, Reg; April 17, 2012, Susp.	.....do	Do.
Sumner County, Unincorporated Areas	470349	August 5, 1975, Emerg; June 19, 1985, Reg; April 17, 2012, Susp.	.....do	Do.
Westmoreland, Town of, Sumner County.	470415	N/A, Emerg; May 19, 2005, Reg; April 17, 2012, Susp.	.....do	Do.
White House, City of, Sumner County	470339	May 13, 1975, Emerg; June 1, 1988, Reg; April 17, 2012, Susp.	.....do	Do.
Region V				
Michigan:				
Grayling, City of, Crawford County	260901	May 21, 1992, Emerg; June 25, 1992, Reg; April 17, 2012, Susp.	.....do	Do.
South Branch, Township of, Crawford County.	261021	May 6, 1998, Emerg; N/A, Reg; April 17, 2012, Susp.	.....do	Do.
Minnesota:				
Barnesville, City of, Clay County	270078	May 2, 1974, Emerg; March 2, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Center City, City of, Chisago County	270685	September 5, 1975, Emerg; January 28, 1983, Reg; April 17, 2012, Susp.	.....do	Do.
Chisago, City of, Chisago County	270707	June 28, 1982, Emerg; January 7, 1983, Reg; April 17, 2012, Susp.	.....do	Do.
Chisago County, Unincorporated Areas	270682	September 4, 1975, Emerg; April 18, 1983, Reg; April 17, 2012, Susp.	.....do	Do.
Clay County, Unincorporated Areas	275235	August 7, 1970, Emerg; May 5, 1972, Reg; April 17, 2012, Susp.	.....do	Do.
Dilworth, City of, Clay County	270080	March 20, 1974, Emerg; May 19, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Georgetown, City of, Clay County	270082	March 20, 1975, Emerg; July 18, 1983, Reg; April 17, 2012, Susp.	.....do	Do.
Glyndon, City of, Clay County	270083	September 26, 1975, Emerg; March 2, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Hawley, City of, Clay County	270084	April 22, 1974, Emerg; March 16, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Lindstrom, City of, Chisago County	270683	September 4, 1975, Emerg; January 7, 1983, Reg; April 17, 2012, Susp.	.....do	Do.
Moorhead, City of, Clay County	275244	March 19, 1971, Emerg; February 18, 1972, Reg; April 17, 2012, Susp.	.....do	Do.
North Branch, City of, Chisago County	270072	September 15, 1987, Emerg; May 19, 1997, Reg; April 17, 2012, Susp.	.....do	Do.
Stacy, City of, Chisago County	270074	October 8, 1975, Emerg; July 6, 1984, Reg; April 17, 2012, Susp.	.....do	Do.
Wyoming, City of, Chisago County	270076	N/A, Emerg; August 30, 2010, Reg; April 17, 2012, Susp.	.....do	Do.
Region VI				
Arkansas:				
Russellville, City of, Pope County	050178	July 17, 1970, Emerg; July 18, 1970, Reg; April 17, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Oklahoma:				
Bixby, City of, Wagoner County	400207	March 6, 1974, Emerg; September 28, 1979, Reg; April 17, 2012, Susp.	.....do	Do.
Broken Arrow, City of, Wagoner County	400236	November 27, 1974, Emerg; August 17, 1981, Reg; April 17, 2012, Susp.	.....do	Do.
Catoosa, City of, Wagoner County	400185	January 8, 1976, Emerg; August 1, 1980, Reg; April 17, 2012, Susp.	.....do	Do.
Coweta, City of, Wagoner County	400216	March 21, 1978, Emerg; September 18, 1986, Reg; April 17, 2012, Susp.	.....do	Do.
Okay, Town of, Wagoner County	400217	July 8, 1977, Emerg; September 28, 1982, Reg; April 17, 2012, Susp.	.....do	Do.
Porter, Town of, Wagoner County	400434	September 28, 1977, Emerg; January 26, 1983, Reg; April 17, 2012, Susp.	.....do	Do.
Red Bird, Town of, Wagoner County	400321	October 21, 1976, Emerg; October 9, 1979, Reg; April 17, 2012, Susp.	.....do	Do.
Tulsa, City of, Wagoner County	405381	November 20, 1970, Emerg; August 13, 1971, Reg; April 17, 2012, Susp.	.....do	Do.
Wagoner, City of, Wagoner County	400219	January 14, 1976, Emerg; October 19, 1982, Reg; April 17, 2012, Susp.	.....do	Do.
Wagoner County, Unincorporated Areas	400215	July 15, 1981, Emerg; December 2, 1988, Reg; April 17, 2012, Susp.	.....do	Do.
Texas:				
Emory, Town of, Rains County	480977	September 13, 2002, Emerg; N/A, Reg; April 17, 2012, Susp.	.....do	Do.
Point, City of, Rains County	481156	September 21, 1981, Emerg; April 17, 1985, Reg; April 17, 2012, Susp.	.....do	Do.
Rains County, Unincorporated Areas	480975	January 15, 2003, Emerg; N/A, Reg; April 17, 2012, Susp.	.....do	Do.
Region VIII				
South Dakota:				
Deadwood, City of, Lawrence County	460045	November 26, 1974, Emerg; February 3, 1982, Reg; April 17, 2012, Susp.	.....do	Do.
Lawrence County, Unincorporated Areas	460094	April 30, 1974, Emerg; May 17, 1990, Reg; April 17, 2012, Susp.	.....do	Do.
Lead, City of, Lawrence County	460190	September 20, 1999, Emerg; N/A, Reg; April 17, 2012, Susp.	.....do	Do.
Spearfish, City of, Lawrence County	460046	October 30, 1974, Emerg; September 2, 1981, Reg; April 17, 2012, Susp.	.....do	Do.

*.....do =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: March 27, 2012.

David L. Miller,

Associate Administrator, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–8391 Filed 4–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1215]

Changes in Flood Elevation Determinations

Correction

In rule document 2011–24275 appearing on pages 58409–58411 in the issue of Wednesday, September 21, 2011, make the following correction:

§ 65.4 [Corrected]

■ 1. On page 58410, in the table, in the first column, below the eight row, the table should appear as follows:

Texas: Collin	City of Plano (10–06–0997P).	June 23, 2011; June 30, 2011; *The Plano Star Courier.*	The Honorable Phil Dyer, Mayor, City of Plano, 1520 Avenue K, Plano, TX 75074.	August 31, 2010	480140

[FR Doc. C1–2011–24275 Filed 4–6–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1248]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Mobile	Unincorporated areas of Mobile County (11–04–1740P).	November 24, 2011; December 1, 2011; *The Press-Register*.	The Honorable Connie Hudson, President, Mobile County Commission, 205 Government Street, Mobile, AL 36644.	March 30, 2012	015008
Connecticut: Hartford	Town of West Hartford (10–01–2143P).	October 13, 2011; October 20, 2011; *The Hartford Courant*.	The Honorable Scott Slifka, Mayor, Town of West Hartford, 50 South Main Street, West Hartford, CT 06107.	October 3, 2011	095082
Florida:					
Broward	City of Deerfield Beach (12–04–0283P).	December 2, 2011; December 9, 2011; *The Sun-Sentinel*.	The Honorable Peggy Noland, Mayor, City of Deerfield Beach, 150 Northeast 2nd Avenue, Deerfield Beach, FL 33441.	November 22, 2011	125101
Broward	Town of Lauderdale-By-The-Sea (11–04–7642P).	November 3, 2011; November 10, 2011; *The Sun-Sentinel*.	The Honorable Roseann Minnet, Mayor, Town of Lauderdale-By-The-Sea, 4501 Ocean Drive, Lauderdale-By-The-Sea, FL 33308.	October 26, 2011	125123
Idaho:					
Shoshone	City of Osburn (11–10–1374P).	October 27, 2011; November 3, 2011; *The Shoshone News Press*.	The Honorable Robert McPhail, Mayor, City of Osburn, 921 East Mullan Avenue, Osburn, ID 83849.	March 2, 2012	160116
Shoshone	Unincorporated areas of Shoshone County (11–10–1374P).	October 27, 2011; November 3, 2011; *The Shoshone News Press*.	Mr. Jon Cantamessa, Shoshone County Commissioner, District 3, 700 Bank Street, Suite 120, Wallace, ID 83873.	March 2, 2012	160114
Illinois:					
Grundy	Unincorporated areas of Grundy County (11–05–8349P).	October 26, 2011; November 2, 2011; *The Paper*.	Mr. Ron Severson, Grundy County, Chairman of the Board, 1320 Union Street, Morris, IL 60450.	November 10, 2011	170256
Grundy and Livingston.	Village of Dwight (11–05–8349P).	October 26, 2011; November 2, 2011; *The Paper*.	Mr. Bill Wilkey, Village of Dwight President, 209 South Prairie Avenue, Dwight, IL 60420.	November 10, 2011	170423
Iowa: Story	City of Ames (11–07–1005P).	October 27, 2011; November 3, 2011; *The Ames Tribune*.	The Honorable Ann Campbell, Mayor, City of Ames, P.O. Box 811, 515 Clark Avenue, Ames, IA 50010.	March 2, 2012	190254
Oregon: Deschutes	Unincorporated areas of Deschutes County (11–10–1524P).	November 29, 2011; December 6, 2011; *The Bend Bulletin*.	Mr. Erik Kropp, Interim Deschutes County Administrator, 1300 Northwest Wall Street, 2nd Floor, Bend, OR 97701.	April 4, 2012	410055
Texas: Hays	City of Buda (11–06–4776P).	December 7, 2011; December 14, 2011; *The Hays Free Press*.	The Honorable Sarah Mangham, Mayor, City of Buda, 121 Main Street, Buda, TX 78610.	April 12, 2012	481640
Washington: King County.	City of Burien (11–10–0033P).	October 28, 2011; November 4, 2011; *The Highline Times*.	The Honorable Joan McGilton, Mayor, City of Burien, 400 Southwest 152nd Street, Suite 300, Burien, WA 98166.	November 4, 2011	530321
Wisconsin:					
Calumet	City of Brillion (11–05–3616P).	October 27, 2011; November 3, 2011; *The Zander Press*.	The Honorable Gary Deiter, Mayor, City of Brillion, 225 Apollo Court, Brillion, WI 54110.	March 2, 2012	550036
Calumet	Unincorporated areas of Calumet County (11–05–3616P).	October 27, 2011; November 3, 2011; *The Zander Press*.	Mr. Jay Shambeau, Calumet County Administrator, 206 Court Street, Chilton, WI 53014.	March 2, 2012	550035
Manitowoc	Unincorporated areas of Manitowoc County (11–05–7812P).	November 7, 2011; November 14, 2011; *The Herald Times Reporter*.	Mr. Bob Ziegelbauer, Manitowoc County Executive, Manitowoc County Courthouse, 1010 South 8th Street, Manitowoc, WI 54220.	October 28, 2011	550236

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

Dated: March 15, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–8406 Filed 4–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2012–0003]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama:					
Baldwin (FEMA Docket No.: B–1235).	City of Gulf Shores (11–04–5389P).	October 7, 2011; October 14, 2011; *The Islander.*	The Honorable Robert S. Craft, Mayor, City of Gulf Shores, 1905 West 1st Street, Gulf Shores, AL 36547.	September 29, 2011	015005
Baldwin (FEMA Docket No.: B–1235).	City of Gulf Shores (11–04–6730P).	October 11, 2011; October 18, 2011; *The Islander.*	The Honorable Robert S. Craft,Mayor, City of Gulf Shores, 1905 West 1st Street, Gulf Shores, AL 36547.	October 4, 2011	015005
Madison (FEMA Docket No.: B–1235).	City of Huntsville (11–04–3252P).	September 8, 2011; September 15, 2011; *The Huntsville Times.*	The Honorable Tommy Battle, Mayor, City of Huntsville, 308 Fountain Circle, 8th Floor, Huntsville, AL 35801.	January 13, 2012	010153
Tuscaloosa (FEMA Docket No.: B–1231).	Town of Coaling (11–04–2431P).	September 8, 2011; September 15, 2011; *The Tuscaloosa News.*	The Honorable Charles Foster, Mayor, Town of Coaling, 11281 Stephens Loop, Coaling, AL 35453.	January 13, 2012	010480
Tuscaloosa (FEMA Docket No.: B–1231).	Unincorporated areas of Tuscaloosa County (11–04–2431P).	September 8, 2011; September 15, 2011; *The Tuscaloosa News.*	The Honorable W. Hardy McCollum, Probate Judge, Tuscaloosa County Commission, 714 Greensboro Avenue, Tuscaloosa, AL 35401.	January 13, 2012	010201
Arizona:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pima (FEMA Docket No.: B–1231).	Unincorporated areas of Pima County (11–09–0275P).	September 20, 2011; September 27, 2011; *The Daily Territorial*.	The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	January 25, 2012	040073
Arkansas:					
Benton (FEMA Docket No.: B–1228).	City of Bentonville (11–06–1914P).	August 30, 2011; September 6, 2011; *The Benton County Daily Record*.	The Honorable Bob McCaslin, Mayor, City of Bentonville, 117 West Central Avenue, Bentonville, AR 72712.	January 4, 2012	050012
Benton (FEMA Docket No.: B–1228).	Unincorporated areas of Benton County (11–06–1914P).	August 30, 2011; September 6, 2011; *The Benton County Daily Record*.	The Honorable Robert Clinard, Benton County Judge, 215 East Central Avenue, Bentonville, AR 72712.	January 4, 2012	050419
California:					
Yuba (FEMA Docket No.: B–1225).	Unincorporated areas of Yuba County (11–09–0045P).	August 25, 2011; September 1, 2011; *The Appeal-Democrat*.	The Honorable Roger Abe, Chairman, Yuba County Board of Supervisors, 915 8th Street, Suite 109, Marysville, CA 95901.	December 30, 2011	060427
Colorado:					
Douglas (FEMA Docket No.: B–1231).	Town of Castle Rock (11–08–0329P).	September 8, 2011; September 15, 2011; *The Douglas County News-Press*.	The Honorable Paul Donahue, Mayor, Town of Castle Rock, 100 North Wilcox Street, Castle Rock, CO 80104.	January 13, 2012	080050
Douglas (FEMA Docket No.: B–1231).	Unincorporated areas of Douglas County (11–08–0329P).	September 8, 2011; September 15, 2011; *The Douglas County News-Press*.	The Honorable Jill E. Repella, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	January 13, 2012	080049
Florida:					
Broward (FEMA Docket No.: B–1235).	City of Deerfield Beach (11–04–7254P).	October 6, 2011; October 13, 2011; *The Sun-Sentinel*.	The Honorable Peggy Noland, Mayor, City of Deerfield Beach, 150 Northeast 2nd Avenue, Deerfield Beach, FL 33441.	September 29, 2011	125101
Monroe (FEMA Docket No.: B–1231).	Unincorporated areas of Monroe County (11–04–5095P).	September 28, 2011; October 5, 2011; *The Key West Citizen*.	The Honorable Heather Carruthers, Mayor, Monroe County, 530 Whitehead Street, Key West, FL 33040.	February 2, 2012	125129
Orange (FEMA Docket No.: B–1231).	City of Orlando (11–04–5608P).	September 29, 2011; October 6, 2011; *The Orlando Weekly*.	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, 3rd Floor, Orlando, FL 32808.	September 20, 2011	120186
Pinellas (FEMA Docket No.: B–1231).	City of Gulfport (10–04–7908P).	September 15, 2011; September 22, 2011; *The St. Petersburg Times*.	The Honorable Mike Yakes, Mayor, City of Gulfport, 2401 53rd Street, Gulfport, FL 33707.	January 20, 2012	125108
Pinellas (FEMA Docket No.: B–1231).	Unincorporated areas of Pinellas County (10–04–7908P).	September 15, 2011; September 22, 2011; *The St. Petersburg Times*.	The Honorable Susan Latvala, Chair, Pinellas County Board of Supervisors, 315 Court Street, Clearwater, FL 33756.	January 20, 2012	125139
Georgia:					
Liberty (FEMA Docket No.: B–1235).	City of Hinesville (11–04–0768P).	September 30, 2011; October 7, 2011; *The Coastal Courier*.	The Honorable James Thomas, Jr., Mayor, City of Hinesville, 115 East Martin Luther King, Jr. Drive, Hinesville, GA 31313.	September 26, 2011	130125
Liberty (FEMA Docket No.: B–1235).	Unincorporated areas of Liberty County (11–04–0768P).	September 30, 2011; October 7, 2011; *The Coastal Courier*.	The Honorable John D. McIver, Chairman, Liberty County Board of Commissioners, 112 North Main Street, Hinesville, GA 31310.	September 26, 2011	130123
Maryland:					
Washington (FEMA Docket No.: B–1225).	Unincorporated areas of Washington County (10–03–2211P).	June 3, 2011; June 10, 2011; *The Herald-Mail*.	The Honorable Terry L. Baker, President, Washington County Board of Commissioners, 100 West Washington Street, Room 226, Hagerstown, MD 21740.	October 10, 2011	240070
Nevada:					
Clark (FEMA Docket No.: B–1231).	City of Las Vegas (11–09–0799P).	September 1, 2011; September 8, 2011; *The Las Vegas Review-Journal*.	The Honorable Oscar B. Goodman, Mayor, City of Las Vegas, 400 Stewart Avenue, 10th Floor, Las Vegas, NV 89101.	January 6, 2012	325276
Clark (FEMA Docket No.: B–1231).	City of North Las Vegas (11–09–0799P).	September 1, 2011; September 8, 2011; *The Las Vegas Review-Journal*.	The Honorable Shari L. Buck, Mayor, City of North Las Vegas, 2200 Civic Center Drive, North Las Vegas, NV 89030.	January 6, 2012	320007
New Jersey:					
Bergen (FEMA Docket No.: B–1228).	Township of Mahwah (11–02–0617P).	February 7, 2011; February 14, 2011; *The Record*.	The Honorable William C. Laforet, Mayor, Township of Mahwah, 475 Corporate Drive, Mahwah, NJ 07430.	June 14, 2011	340049
Bergen (FEMA Docket No.: B–1228).	Borough of Ramsey (11–02–0617P).	February 7, 2011; February 14, 2011; *The Record*.	The Honorable Christopher C. Botta, Mayor, Borough of Ramsey, 33 North Central Avenue, Ramsey, NJ 07446.	June 14, 2011	340064
Middlesex (FEMA Docket No.: B–1228).	Township of Cranbury (10–02–0830P).	September 16, 2011; September 23, 2011; *The Cranbury Press*.	The Honorable David J. Stout, Mayor, Township of Cranbury, 23–A North Main Street, Cranbury, NJ 08512.	December 8, 2010	340258
New York:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dutchess (FEMA Docket No.: B–1228).	Town of East Fishkill (10–02–0092P).	February 23, 2011; March 2, 2011; *The Poughkeepsie Journal*.	The Honorable John J. Hickman, Jr., Supervisor, Town of East Fishkill, 330 State Route 376, Hopewell Junction, NY 12533.	August 16, 2011	361336
Pennsylvania:					
Adams (FEMA Docket No.: B–1234).	Township of Franklin (11–03–0400P).	July 19, 2011; July 26, 2011; *The Gettysburg Times*.	The Honorable Daniel Fetter, Chairman, Township of Franklin Board of Supervisors, 55 Scott School Road, Cashtown, PA 17310.	November 23, 2011	421250
Delaware (FEMA Docket No.: B–1234).	Township of Haverford (11–03–1170P).	August 3, 2011; August 10, 2011; *The Daily Times*.	The Honorable William F. Wechsler, President, Township of Haverford Board of Commissioners, 2325 Darby Road, Havertown, PA 19083.	December 8, 2011	420417
Lycoming (FEMA Docket No.: B–1228).	Township of Muncy (10–03–0172P).	February 23, 2011; March 2, 2011; *The Williamsport Sun-Gazette*.	The Honorable Paul Wentzler, Chairman, Township of Muncy Board of Supervisors, 1922 Pond Road, Pennsdale, PA 17756.	June 30, 2011	421847
Montgomery (FEMA Docket No.: B–1234).	Township of Lower Merion (10–03–0696P).	September 15, 2011; September 22, 2011; *The Main Line Times*.	The Honorable Elizabeth S. Rogan, President, Township of Lower Merion Board of Commissioners, 75 East Lancaster Avenue, Ardmore, PA 19003.	December 30, 2010	420701
Puerto Rico:					
Puerto Rico (FEMA Docket No.: B–1234).	Commonwealth of Puerto Rico (10–02–1774P).	August 9, 2011; August 16, 2011; *El Nuevo Dia*.	The Honorable Luis G. Fortuno, Governor, Commonwealth of Puerto Rico, Calle Fortaleza #63, San Juan, PR 00901.	August 2, 2011	720000
Texas:					
Bexar (FEMA Docket No.: B–1225).	City of Selma (11–06–0764P).	August 11, 2011; August 18, 2011; *The Daily Commercial Recorder*.	The Honorable Tom Daly, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	December 16, 2011	480046
Collin (FEMA Docket No.: B–1228).	City of Wylie (11–06–0830P).	August 24, 2011; August 31, 2011; *The Wylie News*.	The Honorable Eric Hogue, Mayor, City of Wylie, 300 Country Club Road, Building 100, Wylie, TX 75098.	December 29, 2011	480759
Denton (FEMA Docket No.: B–1225).	City of Lewisville (11–06–3720P).	August 10, 2011; August 17, 2011; *The Lewisville Leader*.	The Honorable Dean Ueckert, Mayor, City of Lewisville, 151 West Church Street, Lewisville, TX 75029.	December 15, 2011	480195
El Paso (FEMA Docket No.: B–1225).	City of El Paso (11–06–2150P).	August 11, 2011; August 18, 2011; *The El Paso Times*.	The Honorable John F. Cook, Mayor, City of El Paso, 2 Civic Center Plaza, 10th Floor, El Paso, TX 79901.	August 4, 2011	480214
Kendall (FEMA Docket No.: B–1228).	City of Boerne (10–06–3371P).	August 12, 2011; August 19, 2011; *The Boerne Star*.	The Honorable Mike Schultz, Mayor, City of Boerne, 402 East Blanco Road, Boerne, TX 78006.	December 19, 2011	480418
Kendall (FEMA Docket No.: B–1228).	Unincorporated areas of Kendall County (10–06–3371P).	August 12, 2011; August 19, 2011; *The Boerne Star*.	The Honorable Gaylan Schroeder, Kendall County Judge, 201 East San Antonio Street, Suite 120, Boerne, TX 78006.	December 19, 2011	480417
Montgomery (FEMA Docket No.: B–1234).	City of Montgomery (10–06–1397P).	October 4, 2011; October 11, 2011; *The Conroe Courier*.	The Honorable John Fox, Mayor, City of Montgomery, 101 Old Plantersville Road, Montgomery, TX 77356.	October 27, 2011	481483
Tarrant (FEMA Docket No.: B–1234).	City of Arlington (10–06–3286P).	September 15, 2011; September 22, 2011; *The Fort Worth Star-Telegram*.	The Honorable Dr. Robert N. Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76010.	January 20, 2012	485454
Travis (FEMA Docket No.: B–1225).	Unincorporated areas of Travis County (11–06–0223P).	August 11, 2011; August 18, 2011; *The Austin American-Statesman*.	The Honorable Samuel T. Biscoe, Travis County Judge, 314 West 11th Street, Suite 520, Austin, TX 78701.	August 4, 2011	481026
Williamson (FEMA Docket No.: B–1225).	City of Georgetown (11–06–2998P).	August 17, 2011; August 24, 2011; *The Williamson County Sun*.	The Honorable George Garver, Mayor, City of Georgetown, 113 East 8th Street, Georgetown, TX 78626.	December 22, 2011	480668
Virginia:					
Loudoun (FEMA Docket No.: B–1234).	Unincorporated areas of Loudoun County (10–03–0387P).	October 27, 2010; November 3, 2010; *The Loudoun Times-Mirror*.	The Honorable Scott K. York, Chairman at Large, Loudoun County Board of Supervisors, 1 Harrison Street Southeast, 5th Floor, Leesburg, VA 20177.	October 19, 2010	510090
Wyoming:					
Fremont (FEMA Docket No.: B–1231).	City of Lander (11–08–0099P).	September 11, 2011; September 18, 2011; *The Lander Journal*.	The Honorable Mick Wolfe, Mayor, City of Lander, 240 Lincoln Street, Lander, WY 82520.	January 16, 2012	560020

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

Dated: March 15, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–8403 Filed 4–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2011–0002]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below of the modified BFEs for each community listed. These modified BFEs have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Yavapai (FEMA Docket No.: B–1225).	Town of Clarkdale (11–09–1419P).	August 3, 2011; August 10, 2011; *The Verde Independent.*	The Honorable Doug Von Gausig, Mayor, Town of Clarkdale, 39 North 9th Street, Clarkdale, AZ 86324.	December 8, 2011	040095
California:					
Alameda (FEMA Docket No.: B–1225).	City of Fremont (11–09–0580P).	August 25, 2011; September 1, 2011; *The Argus.*	The Honorable Bob Wasserman, Mayor, City of Fremont, 3300 Capitol Avenue, Fremont, CA 94538.	August 16, 2011	065028
San Luis Obispo (FEMA Docket No.: B–1225).	City of Morro Bay (10–09–3119P).	August 16, 2011; August 23, 2011; *The Tribune.*	The Honorable William Yates, Mayor, City of Morro Bay, 595 Harbor Street, Morro Bay, CA 93442.	December 21, 2011	060307
Colorado:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Jefferson (FEMA Docket No.: B–1225).	City of Lakewood (11–08–0637P).	August 25, 2011; September 1, 2011; *The Golden Transcript*.	The Honorable Bob Murphy, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	August 16, 2011	085075
Larimer (FEMA Docket No.: B–1231).	Unincorporated areas of Larimer County (11–08–0189P).	September 8, 2011; September 15, 2011; *The Fort Collins Coloradoan*.	The Honorable Tom Donnelly, Chairman, Larimer County Board of Commissioners, 200 West Oak Street, 2nd Floor, Fort Collins, CO 80522.	September 29, 2011	080101
Florida:					
Broward (FEMA Docket No.: B–1231).	Town of Hillsboro Beach (11–04–3579P).	June 28, 2011; July 5, 2011; *The Sun-Sentinel*.	The Honorable Dan Dodge, Mayor, Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062.	June 21, 2011	120040
Lake (FEMA Docket No.: B–1225).	Unincorporated areas of Lake County (11–04–4633P).	August 12, 2011; August 19, 2011; *The Daily Commercial*.	The Honorable Jennifer Hill, Chair, Lake County Board of, Commissioners, 315 West Main Street, Tavares, FL 32778.	December 19, 2011	120421
Orange (FEMA Docket No.: B–1231).	City of Orlando (11–04–2561P).	June 30, 2011; July 7, 2011; *The Orlando Weekly*.	The Honorable Buddy Dyer, Mayor, City of Orlando, 400 South Orange Avenue, 3rd Floor, Orlando, FL 32808.	November 4, 2011	120186
Sumter (FEMA Docket No.: B–1231).	Unincorporated areas of Sumter County (11–04–6000P).	September 8, 2011; September 15, 2011; *The Sumter County Times*.	The Honorable Don Burgess, Chairman, Sumter County Board of Commissioners, 7375 Powell Road, Wildwood, FL 34785.	August 30, 2011	120296
Volusia (FEMA Docket No.: B–1219).	Unincorporated areas of Volusia County (11–04–5578X).	August 1, 2011; August 8, 2011; *The Beacon*.	Mr. James Dinneen, Volusia County Manager, 123 West Indiana Avenue, DeLand, FL 32720.	December 6, 2011	125155
Montana:					
Missoula (FEMA Docket No.: B–1219).	Unincorporated areas of Missoula County (11–08–0184P).	July 28, 2011; August 4, 2011; *The Missoula Independent*.	The Honorable Bill Carey, Chairman, Missoula County Board of Commissioners, 199 West Pine Street, Missoula, MT 59802.	December 2, 2011	300048
New Jersey:					
Middlesex (FEMA Docket No.: B–1225).	Township of North Brunswick (11–02–1340P).	August 24, 2011; August 31, 2011; *The North and South Brunswick Sentinel*.	The Honorable Francis Womack III, Mayor, Township of North Brunswick, 710 Hermann Road, North Brunswick, NJ 08902.	December 29, 2011	340271
Middlesex (FEMA Docket No.: B–1225).	Township of South Brunswick (11–02–1340P).	August 24, 2011; August 31, 2011; *The North and South Brunswick Sentinel*.	The Honorable Frank Gambatese, Mayor, Township of South Brunswick, 540 Ridge Road, Monmouth Junction, NJ 08852.	December 29, 2011	340278
North Carolina:					
Buncombe (FEMA Docket No.: B–1225).	Unincorporated areas of Buncombe County (11–04–2928P).	August 24, 2011; August 31, 2011; *The Asheville Citizen-Times*.	Ms. Wanda Greene, Buncombe County Manager, 205 College Street, Suite 300, Asheville, NC 28801.	August 15, 2011	370031
Forsyth (FEMA Docket No.: B–1225).	Town of Kernersville (11–04–0470P).	July 21, 2011; July 28, 2011; *The Kernersville News* and *The Winston-Salem Journal*.	The Honorable Dawn H. Morgan, Mayor, Town of Kernersville, 134 East Mountain Street, Kernersville, NC 27284.	November 25, 2011	370319
Forsyth (FEMA Docket No.: B–1225).	Unincorporated areas of Forsyth County (11–04–0470P).	July 21, 2011; July 28, 2011; *The Kernersville News* and *The Winston-Salem Journal*.	Mr. J. Dudley Watts, Jr., Forsyth County Manager, 201 North Chestnut Street, Winston-Salem, NC 27101.	November 25, 2011	375349
Oklahoma:					
Oklahoma (FEMA Docket No.: B–1225).	City of Oklahoma City (10–06–3231P).	August 4, 2011; August 11, 2011; *The Journal Record*.	The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, Oklahoma City, OK 73102.	August 29, 2011	405378
Pennsylvania:					
Delaware FEMA Docket No.: B–1225).	Township of Haverford (11–03–0098P).	July 5, 2011; July 12, 2011; *The Daily Times*.	The Honorable William F. Wechsler, President, Township of Haverford Board of Commissioners, 2325 Darby Road, Havertown, PA 19083.	November 9, 2011	420417
South Carolina:					
Dorchester (FEMA Docket No.: B–1231).	Unincorporated areas of Dorchester County (10–04–8306P).	August 24, 2011; August 31, 2011; *The Summerville Journal Scene*.	The Honorable Larry S. Hargett, Chairman, Dorchester County Council, 201 Johnston Street, Dorchester, SC 29477.	December 29, 2011	450068
Spartanburg (FEMA Docket No.: B–1231).	Unincorporated areas of Spartanburg County (11–04–4008P).	September 8, 2011; September 15, 2011; *The Spartanburg Herald-Journal*.	The Honorable Jeffrey A. Horton, Chairman, Spartanburg County Council, 366 North Church Street, Suite 1000, Spartanburg, SC 29303.	August 30, 2011	450176
Tennessee:					
Tipton (FEMA Docket No.: B–1231).	City of Munford (11–04–1663P).	June 16, 2011; June 23, 2011; *The Leader*.	The Honorable Dwayne Cole, Mayor, City of Munford, 1397 Munford Avenue, Munford, TN 38058.	October 21, 2011	470422
Tipton (FEMA Docket No.: B–1231).	Unincorporated areas of Tipton County (11–04–1663P).	June 16, 2011; June 23, 2011; *The Leader*.	The Honorable Jeff Huffman, Tipton County Executive, 220 U.S. Route 51 North, Suite 2, Covington, TN 38019.	October 21, 2011	470340
Texas:					

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas (FEMA Docket No.: B–1225).	City of Garland (11–06–2614P).	August 3, 2011; August 10, 2011; *The Dallas Morning News*.	The Honorable Ronald E. Jones, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	July 27, 2011	485471
Dallas (FEMA Docket No.: B–1215).	City of Irving (10–06–0922P).	June 1, 2011; June 8, 2011; *The Dallas Morning News*.	The Honorable Herbert A. Gears, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	October 6, 2011	480180
Denton and Tarrant (FEMA Docket No.: B–1225).	City of Fort Worth (11–06–1407P).	June 28, 2011; July 5, 2011; *The Fort Worth Star-Telegram*.	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	November 2, 2011	480596
Gregg and Harrison (FEMA Docket No.: B–1225).	City of Longview (11–06–0244P).	August 3, 2011; August 10, 2011; *The Longview News-Journal*.	The Honorable Jay Dean, Mayor, City of Longview, 300 West Cotton Street, Longview, TX 75601.	August 25, 2011	480264
Tarrant (FEMA Docket No.: B–1225).	City of Euless (10–06–3064P).	March 4, 2011; March 11, 2011; *The Fort Worth Star-Telegram*.	The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039.	July 11, 2011	480593
Tarrant (FEMA Docket No.: B–1225).	City of Keller (11–06–0636P).	July 14, 2011; July 21, 2011; *The Fort Worth Star-Telegram*.	The Honorable Pat McGrail, Mayor, City of Keller, 1100 Bear Creek Parkway, Keller, TX 76248.	July 7, 2011	480602
Tarrant (FEMA Docket No.: B–1225).	City of North Richland Hills (11–06–0636P).	July 14, 2011; July 21, 2011; *The Fort Worth Star-Telegram*.	The Honorable Oscar Trevino, Jr., P.E., Mayor, City of North Richland Hills, 7301 Northeast Loop 820, North Richland Hills, TX 76180.	July 7, 2011	480607
Williamson (FEMA Docket No.: B–1225).	Unincorporated areas of Williamson County (10–06–3690P).	July 27, 2011; August 3, 2011; *The Williamson County Sun*.	The Honorable Dan A. Gattis, Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	December 2, 2011	481079

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

Dated: March 13, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–8402 Filed 4–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

Correction

In rule document 2011–15507 appearing on pages 36373–36384 in the issue of June 22, 2011, and C1–2011–15507 appearing on page 61279 in the issue of October 4, 2011, make the following corrections:

§ 67.11 [Corrected]

■ 1. On page 36379, in § 67.11, the table entitled ''Clinton County, Iowa, and Incorporated Areas'' is corrected to read as set forth below:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Clinton County, Iowa, and Incorporated Areas Docket No.: FEMA–B–1100			
Mississippi River	Approximately 11.2 miles downstream of U.S. Route 30 ...	+585	City of Camanche, City of Clinton, Unincorporated Areas of Clinton County.
	Approximately 12.8 miles upstream of State Highway 136	+594	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Camanche
Maps are available for inspection at 917 3rd Street, Camanche, IA 52730.

City of Clinton
Maps are available for inspection at 110 5th Avenue South, Clinton, IA 52732.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Clinton County			
Maps are available for inspection at 329 East 11th Street, DeWitt, IA 52742.			

■ 2. On pages 36379–36380, in § 67.11, the table entitled ''Muscatine County, Iowa, and Incorporated Areas'' is corrected to read as set forth below:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Muscatine County, Iowa, and Incorporated Areas **Docket No.: FEMA–B–1089**			
Mississippi River	Approximately 7.1 miles downstream of State Route 92	+554	City of Muscatine, Unincorporated Areas of Muscatine County.
	Approximately 3.3 miles upstream of the confluence with Pine Creek.	+560	
Mud Creek	Approximately 1.2 miles upstream of Story Avenue	+658	City of Wilton.
	Approximately 1.4 miles upstream of Story Avenue	+658	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Muscatine
Maps are available for inspection at 215 Sycamore Street, Muscatine, IA 52761.

City of Wilton
Maps are available for inspection at 104 East 4th Street, Wilton, IA 52778.

Unincorporated Areas of Muscatine County
Maps are available for inspection at 3610 Park Avenue West, Muscatine, IA 52761.

[FR Doc. C2–2011–15507 Filed 4–6–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

Correction

In rule document 2011–31276 beginning on page 76055 in the issue of Tuesday, December 6, 2011, make the following corrections:

§ 67.11 [Corrected]

■ 1. On page 76056, under the **ADDRESSES** heading, the following text should read as set forth below:

City of Lebanon
Maps are available for inspection at the Municipal Building, 401 South Meridian Street, Lebanon, IN 46052.

Town of Whitestown
Maps are available for inspection at the Town Hall, 3 South Main Street, Whitestown, IN 46075.

Unincorporated Areas of Boone County

Maps are available for inspection at the Boone County Area Plan Commission, 116 West Washington Street, Lebanon, IN 46052.

■ 2. On page 76057, under the **ADDRESSES** heading, the following text should read as set forth below:

City of East Chicago

Maps are available for inspection at 4444 Railroad Avenue, East Chicago, IN 46312.

City of Gary

Maps are available for inspection at 401 West Broadway, Gary, IN 46402.

City of Hammond

Maps are available for inspection at 5925 Calumet Avenue, Hammond, IN 46322.

City of Whiting

Maps are available for inspection at 1443 119th Street, Whiting, IN 46394.

Town of Dyer

Maps are available for inspection at 1 Town Square, Dyer, IN 46311.

Town of Griffith

Maps are available for inspection at 111 North Broad Street, Griffith, IN 46319.

Town of Lowell

Maps are available for inspection at 501 East Main Street, Lowell, IN 46356.

Town of Merrillville

Maps are available for inspection at 7820 Broadway, Merrillville, IN 46410.

Town of Munster

Maps are available for inspection at 1005 Ridge Road, Munster, IN 46321.

Town of Schererville

Maps are available for inspection at 10 East Joliet Street, Schererville, IN 46375.

Unincorporated Areas of Lake County

Maps are available for inspection at 2293 North Main Street, Crown Point, IN 46307.

■ 3. On the same page, under the second **ADDRESSES** heading, the following text should read as set forth below:

Town of Cruger

Maps are available for inspection at the Town Hall, 225 Railroad Street, Cruger, MS 38924.

Unincorporated Areas of Holmes County

Maps are available for inspection at the Holmes County Courthouse, 300 Yazoo Street, Lexington, MS 39095.

■ 4. On page 76058, under the **ADDRESSES** heading, the following text should read as set forth below:

Township of Fox

Maps are available for inspection at the Fox Township Municipal Building, 116 Irishtown Road, Kersey, PA 15846.

Township of Ridgway

Maps are available for inspection at the Township Municipal Building, 164 Ridgway Drive, Ridgway, PA 15853.

■ 5. On the same page, under the second **ADDRESSES** heading, the following text should read as set forth below:

Township of Antrim

Maps are available for inspection at the Antrim Township Municipal Building, 10655 Antrim Church Road, Greencastle, PA 17225.

Township of Guilford

Maps are available for inspection at the Guilford Township Building, 115 Spring Valley Road, Chambersburg, PA 17201.

Township of Letterkenny

Maps are available for inspection at the Letterkenny Township Building, 4924 Orrstown Road, Orrstown, PA 17244.

Township of Lurgan

Maps are available for inspection at the Lurgan Township Building, 8650 McClays Mill Road, Newburg, PA 17240.

Township of Peters

Maps are available for inspection at the Peters Township Building, 5342 Lemar Road, Mercersburg, PA 17236.

Township of Southampton

Maps are available for inspection at the Township Building, 705 Municipal Drive, Southampton, PA 17257.

Township of Washington

Maps are available for inspection at the Washington Township Building, 13013 Welty Road, Waynesboro, PA 17268.

■ 6. On page 76059, under the **ADDRESSES** heading, the following text should read as set forth below:

Borough of New Beaver

Maps are available for inspection at the New Beaver Borough Office, 778 Wampum New Galilee Road, New Galilee, PA 16141.

Borough of Wampum

Maps are available for inspection at the Borough Secretary's Office, 355 Main Street, Wampum, PA 16157.

Township of Hickory

Maps are available for inspection at the Hickory Township Hall, 127 Eastbrook-Neshannock Falls Road, New Castle, PA 16105.

Township of Mahoning

Maps are available for inspection at the Mahoning Township Municipal Building, 4538 West State Street, Hillsville, PA 16132.

Township of Perry

Maps are available for inspection at the Perry Township Hall, 284 Reno Road, Portersville, PA 16051.

Township of Pulaski

Maps are available for inspection at the Township Hall, 1172 State Route 208, Pulaski, PA 16117.

Township of Taylor

Maps are available for inspection at the Taylor Township Board of Supervisors Office, 218 Industrial Street, West Pittsburg, PA 16160.

Township of Union

Maps are available for inspection at the Union Township Board of Supervisors Office, 1910 Wilson Drive, New Castle, PA 16101.

Township of Wilmington

Maps are available for inspection at the Wilmington Township Hall, 669 Wilson Mill Road, New Castle, PA 16105.

[FR Doc. C1–2011–31276 Filed 4–6–12; 8:45 am]

BILLING CODE 1501–05–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 99–25; MB Docket No. 07–172, RM–11338, FCC 12–29]

Creation of a Low Power Radio Service; Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts LPFM and translator licensing policies that conform to the Local Community Radio Act (''LCRA''). The LCRA requires the FCC to balance the competing demands of LPFM and translator applicants when making licensing decisions. Section 5 of the Act requires the Commission to ensure that: licenses are available for both LPFM and translator stations; licensing decisions are based on community needs; and translator and LPFM stations remain equal in status.

The item finds that a previously adopted cap on translator applications pending from Auction No. 83 is inconsistent with the LCRA's directives, and adopts a market-specific processing policy. The item finds that this approach most faithfully implements Section 5's directives, and will allow the Commission to resume the processing of approximately 6,500 translator applications that have been pending since 2003, while also ensuring that the upcoming LPFM window will provide a real opportunity for significant community radio licensing in major metropolitan areas.

The item also adopts national and market caps to prevent the trafficking of translator construction permits. Finally, the item relaxes the May 1, 2009, date restriction to allow pending translator applications from Auction No. 83 that are subsequently granted to rebroadcast the signals of AM stations at night.

DATES: The amendment to 47 CFR 74.1232(d) of the Rules will be effective May 9, 2012.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, (202) 418–2789. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Fourth Report and Order (Fourth R&O), FCC 12–29, adopted March 19, 2012, and released March 19, 2012. The full text of the Fourth R&O is available for inspection and copying during regular business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com*, or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

Paperwork Reduction Act of 1995 Analysis

This Fourth R&O adopts new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13, 109 Stat 163 (1995) (codified in 44 U.S.C. 3501–3520)). These information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. The Commission will publish a separate notice in the **Federal Register** inviting comment on the new information collection requirements adopted in this document. The requirements will not go into effect until OMB has approved them and the Commission has published a notice announcing the effective date of the information collection requirements. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public

Law 107–198, see 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis of Order

1. On July 12, 2011, the Commission released a *Third Further Notice of Proposed Rule Making* (''*Third Further Notice*'') in this proceeding, seeking comment on the impact of the enactment of the Local Community Radio Act of 2010 (''LCRA'') on the procedures previously adopted to process the approximately 6,500 applications that remain pending from the 2003 FM translator window. There, the Commission tentatively concluded that the previously adopted translator licensing procedures, which would limit each applicant to ten pending applications, would be inconsistent with the LCRA's goals. It proposed to modify those procedures and instead adopt a market-specific translator application dismissal process, dismissing pending translator applications in identified spectrum-limited markets in order to preserve adequate low power FM (''LPFM'') licensing opportunities. It also sought comment on whether, based on the enactment of the LCRA, the Commission should modify its rules permitting only those translator stations authorized on or prior to May 1, 2009, to rebroadcast the signals of AM stations.

2. In this *Fourth Report and Order,* we adopt the market-specific translator application processing and dismissal policies proposed in the *Third Further Notice,* incorporating certain modifications proposed by commenters. These policies are designed to fully and faithfully effectuate the licensing directives set forth at section 5 of the LCRA while also taking into account the constraints of limited spectrum and technical licensing requirements. We are founding these procedures on our extensive spectrum availability studies set forth in Appendices A and B, which establish that limited LPFM licensing opportunities remain in many markets. We have determined, based on these studies, that the next LPFM window presents a critical, and indeed possibly a last, opportunity to nurture and promote a community radio service that can respond to unmet listener needs and underserved communities in many urban areas. As explained herein, we find that it is necessary to dismiss significant numbers of translator applications in spectrum limited markets to fulfill that opportunity. Nevertheless, these procedures are also designed to facilitate to the maximum extent possible the grant of the pending translator applications in all markets—whether spectrum is limited or abundant. In adopting these procedures, we note that neither the Commission nor any commenter has identified a fundamentally different approach that would both satisfy section 5's mandate and permit the rapid and efficient licensing of both LPFM and translator stations. With regard to the 6,500 applications that remain pending from the 2003 FM translator window, we also adopt a national cap of 50 applications and a market-based cap of one application per applicant per market for the 156 markets identified in Appendix A to minimize the potential for speculative licensing conduct. Finally, we modify the May 1, 2009, date restriction to allow pending FM translator applications that are granted to be used as cross-service translators.

3. In the *Third Order on Reconsideration,* we also dismiss petitions for reconsideration of the *Third Report and Order* as they relate to the now-abandoned ten-application cap processing policy.

I. Discussion

A. Section 5 of the LCRA: Broad Interpretive Principles

1. Background

4. The LCRA, signed into law by President Obama on January 4, 2011, expands LPFM licensing opportunities by repealing the requirement that LPFM stations be certain minimum distances from nearby stations operating on ''third-adjacent'' channels. Section 5 of the LCRA also sets forth criteria that the Commission must take into account when licensing FM translator, FM booster and LPFM stations.

5. In the *Third Further Notice,* we proposed to interpret section 5 to establish the following broad principles:

- Section 5(1) requires the Commission to adopt licensing procedures that ensure some minimum number of licensing opportunities for both LPFM and translator services across the nation;
- Read together with section 5(2), section 5(1) requires the Commission to provide licensing opportunities for both services in as many local communities as possible; and
- We tentatively concluded that our primary focus under section 5(1) must be to ensure that translator licensing procedures do not foreclose or unduly limit future LPFM licensing, because the more flexible translator licensing standards will make it much easier to license new translator stations in spectrum-limited markets than new LPFM stations.

6. In addition, we sought comment on whether to consider existing stations in making a ''licenses are available'' finding under section 5(1), pointing out that because of the large number of existing translators within the top 200 Arbitron-rated markets, ''taking into account existing translators … would militate in favor of the dismissal of [pending] translator applications, at least in markets where there is little or no remaining spectrum for future LPFM stations or where substantially fewer licensing opportunities remain.'' We tentatively concluded that the suspended national cap of ten translator applications per applicant in the Auction No. 83 pool of pending translator applications is inconsistent with the statutory mandate to ensure some minimum number of LPFM licensing opportunities in as many local communities as possible. Instead, we proposed a market-specific process of dismissing all pending translator applications in certain spectrum-limited markets in order to preserve a certain number of LPFM licensing opportunities, while allowing processing of translator applications outside those markets.

2. Comments

7. Among all the parties submitting comments in response to the *Third Further Notice,* there is broad support for eliminating the cap of ten translator applications and using market-specific spectrum availability metrics to *implement* section 5 requirements. However, on the issue of *interpreting* section 5, divergent arguments were presented by translator supporters, on the one hand, and LPFM supporters on the other. Their positions are summarized in the following sections, addressing interpretive issues presented by sections 5(1)–(3) of the LCRA. We also note that Senators Cantwell and McCain and Representatives Doyle and Terry, the original sponsors of the LCRA, submitted a letter expressing their support for our interpretation of section 5 of the LCRA and for our proposed approach to effectuating the statute.

a. Section 5(1)—Ensuring That Licenses Are Available

8. LPFM advocates support our view that section 5(1) of the LCRA requires the Commission to ensure that the processing of translator applications does not preclude future opportunities for new LPFM licenses. Prometheus cites to the Congressional history of the LCRA and the Sponsors' Letter to

support this position. LPFM supporters contend that Congress intended that the Commission take existing licenses into account when assessing whether its licensing procedures would ensure that licenses are available rather than establish a ''going forward'' only standard that ignores legacy licensing. LPFM advocates also argue that section 5(1) requires the Commission to preserve a significant number of licensing opportunities for *new* LPFM stations in *all* markets where this is possible.

9. Translator supporters disagree with these positions. These commenters oppose an interpretation of section 5(1) that, in their view, would favor LPFM stations over translators and urge the Commission not to devise licensing procedures to redress perceived imbalances in past licensing. NPR argues that our proposal unduly favors future LPFM service at the expense of the pending FM translator applicants by taking into account the number of existing LPFM and translator stations. NPR also argues that ''ensuring that licenses are available'' includes current *and* future FM translator station applicants. Similarly, EMF notes that the LCRA never ''directly'' references applications from Auction No. 83, and emphasizes Congress' use of ''new'' at the beginning of section 5 to argue that section 5(1) ''requires that 'new' licenses for both translators and LPFM stations be made available.'' NAB argues that a policy of dismissing translator applications where translators but not LPFM stations could be located would counter section 5(1)'s mandate that licenses be available for translator stations.

b. Section 5(2)—Assessing the ''Needs of the Local Community''

10. Commenters are divided also in interpreting section 5(2) of the LCRA. LPFM advocates suggest that section 5(2) should be interpreted as a mandate favoring localism, and in particular LPFM stations, which they argue provide the greatest localism benefit of any broadcast service. Indeed, commenters note that the LPFM service was established in part to address the perceived loss of local programming during a period of significant radio consolidation. Some parties argue that translators, which do not originate programming, fail to serve local community needs and are not truly local, while LPFM stations better serve the goals of localism. LPFM proponents also suggest that, when making licensing decisions, the Commission could address the needs of local communities by considering demographic data. Specifically, they argue that urban communities, well served by commercial and noncommercial services, have less need for translator services and more need for local community-level programming, while rural communities, poorly served by full-service facilities, have need for both translators and LPFM stations.

11. On the other hand, translator advocates argue that translators can serve the needs of the local community and note that the Commission and Congress have found that to be the case. For example, translators can provide emergency information, as well as regional and state news. Translators can also serve the local community by providing a format not currently available in that area. Thus, they argue it is wrong to assume that LPFM stations better serve local community needs than do translators. NPR criticizes our analysis of section 5(2) on the ground that we focused on the differences between translators and LPFM stations, rather than focusing on how both services serve the needs of the local community by expanding the programming choices available to listeners. NPR also argues that some communities might actually have a greater need for a translator than for an LPFM station because a translator may be filling a coverage gap for a significant full-power station. Common Frequency replies that urban communities served by multiple translators have more need for a first LPFM station.

c. Section 5(3)—''Equal in Status''

12. The *Third Further Notice* noted that section 5(3) refers specifically to ''stations'' rather than to ''applications,'' suggesting that it could be applied only to existing stations and that future LPFM applications could have priority over pending FM translator applications. However, the *Third Further Notice* also recognized that the Commission had used the terms ''stations'' and ''applications'' interchangeably in discussing the ''co-equal status'' of LPFM stations and FM translator stations and that the Commission had framed this issue in terms of whether to follow or waive the current ''cut-off'' rules which protect prior-filed Auction No. 83 translator applications from subsequently-filed LPFM station applications. The *Third Further Notice* stated that it seems reasonable to assume that Congress intended the same meaning when it used the word ''station'' in the LCRA.

13. Translator proponents argue that, for regulatory purposes, the terms ''stations'' and ''applications'' are interchangeable. Translator proponents argue that either changing the Commission's market-based approach or waiving the cut-off rules in favor of future-filed LPFM applications would not be consistent with section 5(3). Mullaney Engineering argues that the services are not ''equal in status'' if LPFM applicants are allowed to invalidate the cut-off protection rights of previously-filed translator applications. NPR likewise believes that waiving cut-off rules to give preference to later-filed LPFM applications would violate the ''equal in status'' mandate. Other translator supporters express concern that this approach would disproportionately favor the licensing of future LPFM stations and thereby violate section 5(3)'s equal in status mandate. They claim that trying to make LPFM and translators equal in numbers would suppress translator licensing and artificially encourage unwanted LPFMs.

14. LPFM supporters disagree, arguing that, while the grant of a station license conveys certain vested and statutorily protected interests to a licensee, those interests do not attach to a pending application. Prometheus argues that section 5(3) does not refer to the cut-off rule, but instead merely requires that translators and LPFM stations be secondary to full-service stations and equal to each other. Prometheus further asserts that section 5(3) does not prohibit the Commission from giving LPFM applicants priority over translator applicants, particularly when read in the context of section 5(2)'s requirement that licensing serve the needs of local communities and section 307(b)'s requirement that the Commission distribute radio service in the public interest. Prometheus states that the Commission should balance the two services by aiding in the development of LPFM.

15. Other LPFM advocates argue that the cut-off protection rule is a regulatory custom that the Commission can waive if it serves the public interest. Some commenters argue for giving LPFM stations priority because translators consume valuable radio spectrum while failing to provide original local programming. LPFM advocates also argue that the Commission must compensate for the ''head start'' that the translator service has to the comparatively new LPFM service. Commenters further argue that the current rules favor translators. Some suggest that, in order to achieve a true equality between the LPFM service and translators, the technical rules governing the LPFM service should be changed to match those of translators. Common Frequency contends that

section 5(3) calls for a goal of *equal spectrum* for each service.

3. Analysis

16. We adopt the interpretations of the three section 5 licensing standards proposed in the *Third Further Notice.* In its broadest terms, section 5(1) clearly requires the Commission to ensure that some minimum number of FM translator and LPFM ''licenses are available'' throughout the nation when licensing new FM translator and LPFM stations. We also find that section 5 is most reasonably interpreted to require consideration of existing licenses. As we observed in the *Third Further Notice,* the word ''new'' appears in the first clause of section 5 but not in subparagraph 1, suggesting that we should consider the availability of both new and existing stations in ensuring that ''licenses are available'' for both services. In addition, our interpretation is consistent with the title of section 5, ''Ensuring Availability of Spectrum for Low-Power FM Stations,'' as well as the Commission's longstanding license allocation policies under section 307(b) of the Communications Act of 1934, as amended (''Act''), which directs the Commission to ensure ''a fair, efficient, and equitable distribution of radio service'' ''among the several States and communities.'' In contrast, interpreting section 5 to require us to license new translator and LPFM stations without regard to the number of operating stations in each service, as EMF advocates, would be inconsistent with ensuring the availability of *spectrum* for both services, as well as section 307(b)'s direction. We also find support for our interpretation in the comments of LPFM advocates discussed above. Accordingly, we conclude that the mandate of section 5(1) to ensure that ''licenses are available'' is reasonably interpreted to require consideration of both existing and future licenses in the translator and LPFM services when licensing new stations in those services.

17. We reject arguments that interpreting section 5(1) to require consideration of existing licenses is unreasonable because such an interpretation would ''favor'' LPFM licensing. The LCRA necessarily requires the Commission to make choices between licensing new LPFM and translator stations in some cases, given that the two services compete for the same limited spectrum. Making such choices based on the overall spectrum available to each service does not ''favor'' one service over the other. On the contrary, the fact that our interpretation of section 5(1) enables us to account for the present disparities between the two services in terms of the number of licensed stations supports its reasonableness. We also reject EMF's argument that the LCRA ''says nothing'' about the processing of the applications which remain pending from the 2003 translator window because it does not expressly address them. These applications are unquestionably subject to section 5 requirements which apply ''when licensing new FM translator stations * * * .'' Rather, we agree with NPR that the language of section 5(1) encompasses pending as well as future applications.

18. We also adopt our proposed interpretation of sections 5(1) and (2) together to require that LPFM and translator licenses be available in as many ''local communit[ies]'' as possible, according to their needs. We recognize that translators and LPFM stations both serve the needs of communities, albeit in different ways, and conclude that we must take these factors into consideration in implementing section 5(2). In particular, translators, which are inexpensive to construct and operate, can effectively bring service to rural and under-served areas. LPFM stations, on the other hand, which typically utilize volunteer staffs, operate under great budget constraints, and serve smaller geographic areas, may be less effective in meeting the needs of small communities and areas of low population density. Translators also are essential components of local and regional transmission systems that efficiently deliver valued programming to listeners. Nevertheless, as we explained in the *Third Further Notice,* the Commission has historically accorded no weight to translators in assessing the comparative needs of a community for radio service under its section 307(b) licensing policies. In contrast, the LPFM service was created ''to foster a program service responsive to the needs and interests of small community groups, particularly specialized community needs that have not been well served by commercial broadcast stations.'' Numerous LPFM service and comparative licensing criteria are designed to promote these goals. These criteria include a requirement that licensees be local, a licensing preference for those applicants with an established community presence, and a licensing preference for those applicants that pledge to locally originate at least eight hours of programming per day. In addition, ownership restrictions and time-share rules necessarily result in expanded ownership diversity. Based on these factors, we find that LPFM stations are uniquely positioned to meet local needs, particularly in areas of higher population density where LPFM service is practical and sustainable.

19. We also adopt our tentative conclusion that our primary focus under section 5 must be to ensure that translator licensing procedures do not foreclose or unduly limit future LPFM licensing, because the more flexible translator licensing standards will make it much easier to license new translator stations in spectrum-limited markets than new LPFM stations. Our market-specific analyses, which are set forth in Appendices A and B, establish that few LPFM licenses have been issued and limited LPFM licensing opportunities remain in many markets due to the relatively inflexible LPFM technical rules and high spectrum utilization. In contrast, given the more flexible translator licensing standards and the limited LPFM licensing opportunities in many markets, the next round of LPFM licensing will have only a modest impact on licensing opportunities for future translator stations. Thus, our principal challenge in effectuating the mandates of sections 5(1) and 5(2) is to identify and preserve LPFM licensing opportunities where few or no LPFM stations currently operate. We note that this goal is fully consistent with Congress's decisions to eliminate third adjacent channel distance separation requirements and to permit second adjacent channel spacing waivers, and thereby, expand the LFPM service.

20. Our interpretation of section 5 has clear implications for the translator processing and dismissal procedures we adopt in this proceeding. These procedures must be responsive to two different situations. The first concerns markets where, taking into account both licensed stations and the potential for additional stations, ample LPFM licensing opportunities are present. Procedures in these markets must *balance* translator and LPFM licensing in a manner that ''ensures'' a level of future LPFM licensing that the Commission determines is sufficient to satisfy statutory requirements. Secondly, in markets where insufficient spectrum remains to satisfy these requirements, the translator processing and dismissal procedures, including amendment and settlement procedures, should preserve *all* identified LPFM licensing opportunities, *i.e.,* should facilitate the grant of *only* those translator applications that would not diminish or ''block'' future LPFM licensing in these markets.

21. On the other hand, we agree with NAB that, consistent with our statutory interpretation, our policies should seek

to avoid the dismissal of translator applications where LPFM stations ''cannot'' be licensed. We note that, however, that capacity to identify such situations is limited. The FM database is dynamic, with LPFM filing opportunities being created, eliminated or modified daily due to FM application and allotment filings. Moreover, revised LPFM technical licensing rules that are now under consideration will materially affect licensing opportunities. Given the limited LPFM licensing opportunities in many markets, the modest impact that LPFM licensing will have on future translator licensing in those markets and the difficulties in establishing with certainty that a translator application ''cannot'' preclude an LPFM filing, we conclude that adoption of a conservative processing regime that fully protects scarce spectrum for future LPFM stations would be consistent with section 5, read as a whole.

22. We adopt our tentative conclusion that the nationwide ten translator application-cap dismissal policy we established prior to the LCRA's enactment is inconsistent with section 5 because it would not provide a certain and effective way to ensure that LPFM ''licenses are available'' for local communities in many markets. Under that policy, translator applications that prevent or ''block'' LPFM licensing opportunities would likely be eligible for processing in markets where the need for LPFM licensing opportunities is greatest and spectrum most limited. Based on the market-specific analyses set forth in Appendices A and B, we also conclude that no or limited useful spectrum for LPFM stations is likely to remain in numerous specific radio markets where typically few or no LPFM stations now operate unless translator dismissal procedures reliably result in the dismissal of all ''blocking'' translator applications.

23. With regard to section 5(3), we asked in the *Third Further Notice* whether the requirement that translator and LPFM stations remain ''equal in status'' prohibits waivers of the LPFM cut-off rule, which prioritizes pending FM translator applications over later-filed LPFM applications, explaining that such an interpretation would require the Commission to dismiss any pending FM translator applications that it determines must make way for LPFM licensing opportunities, rather than deferring action on such applications and later processing any that remain pending after the completion of dismissal and settlement procedures adopted to implement section 5. We identified several factors that support such an interpretation. The cut-off rules are a principal characteristic of the two services, establishing their ''equal'' status as to each other. While acknowledging that section 5(3) refers to ''stations,''' we noted in the *Third Further Notice* that the Commission has used ''stations'' and ''applications'' interchangeably in considering whether to give priority to applications filed in the upcoming LPFM window, a central issue in this proceeding since 2005. Thus, we explained, section 5(3) could be reasonably interpreted to prohibit waivers of the LPFM cut-off rule.

24. Prometheus disagrees with this reasoning, pointing out that the ''plain language'' of section 5(3) does not refer to the Commission's cut-off rules. It contends that section 5(3) merely ''authorizes the existing arrangements between licensed LPFM and translator stations as they relate to full-service stations. Both can be displaced by primary stations but neither can displace the other; and in this sense these stations should remain equal.'' Prometheus concludes that section 5(3) is not a bar to giving priority to LPFM applications filed in the upcoming window. Based on this interpretation, Prometheus advocates a processing policy under which action on certain translator applications would be deferred. Those applications that remain pending would be subject to dismissal if a conflicting LPFM application is filed. Prometheus, however, also recognizes that the translator dismissal procedures proposed in the *Third Further Notice* would be permissible under Prometheus's differing section 5(3) interpretation.

25. We are not persuaded that Prometheus's narrow interpretation of section 5(3) is reasonable. For the reasons discussed above, we believe that the equality mandated by section 5(3) for FM translator stations vis-à-vis LPFM stations is most reasonably interpreted to encompass applications as well as authorized stations in order to be meaningful. That view is consistent with the Commission's treatment of the issue of the relative status of LPFM and translator stations prior to the LCRA's enactment, and nothing in the legislative history supports a contrary interpretation. Our interpretation also is consistent with the fact that the section 5 mandates apply ''when licensing new FM translator stations, FM booster stations and low-power FM stations.'' That is, section 5 as a whole concerns the processing of *applications.* Thus, we believe that Prometheus's interpretation is inconsistent with section 5(3) when it is considered in the context of section 5 as a whole.

26. Although we find that the ''equal in status'' requirement of section 5(3) is most reasonably interpreted to bar LPFM cut-off rule waivers, we need not resolve this issue. Assuming *arguendo* that we could give priority to LPFM applications filed in the upcoming window over pending translator applications, we nevertheless conclude that the processing regime we adopt herein more rapidly and efficiently effectuates the LCRA's goals than would Prometheus's alternate approach. Most importantly, it avoids the translator licensing delays that would result from a deferral approach. Under such an approach, all translator application processing would remain frozen until all LPFM applications are on file and have been analyzed. Only at that point could the Commission attempt to process ''non-conflicting'' translator and LPFM applications simultaneously. In addition to these delays, translator grants under Prometheus's approach would have to be conditioned on subsequent LPFM licensing decisions, with the risk of displacement potentially discouraging or delaying construction efforts. Alternatively, the Commission could delay translator application processing until initial licensing actions from the LPFM window are substantially completed, a process that would likely take a number of years. In contrast, as set forth in detail below, our tailored market-specific processing scheme is likely to allow the rapid licensing of at least one 1000 additional translator stations. Thus, we agree with the sponsors of the LCRA that the approach we adopt herein ''takes into account the needs of translator applicants'' as well as potential LPFM applicants.

27. We also conclude that the approach Prometheus advocates would be administratively burdensome and resource intensive. Prometheus's approach would require the Commission to identify with certainty the potential preclusive impact of pending LPFM window filings in order to determine which deferred FM translator applications may be acted on, yet the potential for LPFM application amendments and settlements would make it difficult to identify with certainty the breadth of the potential preclusive impact of pending LPFM window filings. Moreover, Prometheus's approach could lead to inequitable treatment of FM translator applications filed in the same window, with the opportunity for technical amendments resulting in certain translator applications that are deemed ready for processing before others receiving

preferential access to limited spectrum. Thus, we conclude for policy reasons that the problems associated with deferring action on pending FM translator applications that otherwise would be subject to dismissal under the policies we adopt herein substantially outweigh any benefits.

B. Implementing Section 5 of the LCRA: Proposed Market-Based Processing Policy

1. Background

28. Having tentatively concluded that the ten-application cap dismissal policy would run contrary to the LCRA's mandate, the Commission considered three alternative processing regimes and tentatively concluded that a market-specific, spectrum availability-based translator application dismissal policy would most faithfully implement section 5 of the LCRA. To determine LPFM opportunities in major markets, the Bureau undertook a nationwide LPFM spectrum availability analysis. The Bureau studied all top 150 radio markets, as defined by Arbitron, and smaller markets where more than four translator applications are pending. It centered a thirty-minute latitude by thirty-minute longitude grid over the center-city coordinates of each studied market. Each grid consisted of 961 points—31 points running east/west by 31 points running north/south. The Bureau analyzed each of the 100 FM channels (88.1 mHz—107.9 mHz) at each grid point to determine whether any channels remained available for future LPFM stations at that location. Only channels that fully satisfied co-, first- and second adjacent channel LPFM spacing requirements to all authorizations and applications, including pending translator applications, were treated as available. The area encompassed by the grid was designed to approximate ''core'' market locations that could serve significant populations. The results of that analysis were presented in the *Third Further Notice,* and identified the number of channels (''LPFM Channels'') currently available for LPFM use in each studied market. In calculating ''available'' LPFM channels, it included both the identified vacant channels and those channels currently licensed to LPFM stations which are authorized to operate at locations within each market's thirty-minute latitude by thirty-minute longitude grid.

29. The Commission proposed to dismiss all pending applications for new FM translators in any market in which the number of available LPFM Channels was below a specified LPFM channel floor (a ''dismiss all'' market), and to process all pending applications for new translators in markets in which the number of available LPFM channels met or exceeded the applicable LPFM channel floor (a ''process all'' market). In proposing the channel floors, the Commission was guided by the number of top 150-market NCE FM full power stations, noting that this service was most comparable to the LPFM service.

- Markets 1–20: 8 LPFM Channels
- Markets 21–50: 7 LPFM Channels
- Markets 51–100: 6 LPFM Channels
- Markets 101–150 and, in addition, smaller markets where more than 4 translator applications are pending: 5 LPFM Channels

30. The Commission sought comment on the methodology of its study, and whether a market-tier approach was a reasonable means for effectuating both section 5(1) and 5(2) directives. It also sought comment on whether use of Arbitron market-based assessments as used therein was reasonable for purposes of implementing section 5 of the LCRA, and tentatively concluded that a market-based analysis would provide a reasonable ''global'' assessment of LPFM spectrum availability in particular areas. It sought comment on whether defining the section 5(2) term ''local community'' in terms of markets was reasonable and whether it was appropriate to use the same definition for LPFM and translator purposes.

31. The Commission also sought comment on whether it should impose restrictions on the translator settlement process in the ''process all'' markets to ensure that engineering solutions to resolve application conflicts would not reduce the number of channels available for LPFM stations in these markets. Finally, in order to preserve the status quo during the pendency of this proceeding, it proposed to suspend the processing of any translator modification application that proposes a transmitter site for the first time within any market that has fewer LPFM channels available than the proposed channel floor. It also imposed an immediate freeze on the filing of translator ''move-in'' modification applications and directed the Bureau to dismiss any such application filed after the adoption of the *Third Further Notice.* It noted that the freeze would continue until the close of the upcoming LPFM filing window, but would not apply to any translator modification application which proposes to move its transmitter site from one location to another within the same spectrum-limited market. It sought comment on these proposals.

2. Comments

32. With a few exceptions, most commenters generally agreed that some form of the Commission's market-based approach was an acceptable methodology to carry out the mandate of section 5. However, many commenters suggested modifications to the proposal. Some commenters suggest changes that would potentially foster more opportunities for LPFM stations (which could result in the dismissal of more pending FM translator applications), while others favor processing more translator applications from the 2003 window (which also could result in fewer LPFM opportunities). We discuss them in turn below.

a. Defining the Market and Channel Floors

33. Prometheus and other LPFM proponents suggest that the Commission analyze the top markets using a smaller grid (21x21), arguing that the 31x31 grid studies an area ''far too large to adequately evaluate spectrum availability in most urban areas.'' Prometheus and REC each note that many available LPFM opportunities are located in sparsely populated (or unpopulated) areas on the fringe of the 31x31 grid. LPFM advocates likewise urge the Commission to separately evaluate named cities in hyphenated Arbitron markets, to set higher channel floors, to count only channels (and not locations) as counting toward a channel floor, and to only count new licensing opportunities when assessing LPFM channel availability.

34. Translator advocates largely disagree with these suggestions. NPR and NAB assert that a 21x21 grid ''provides a skewed analysis of market conditions'' and would violate the LCRA mandate that the two services remain equal in status because it would result in the dismissal of more translator applications. Indeed, they maintain that even the Commission's proposed 31x31 grid is too small, and argue that use of Arbitron market boundaries would provide a more accurate measure of current LPFM and FM translator station locations and potential LPFM licensing opportunities. EMF and other translator proponents likewise disagree with Prometheus's view that only channels should apply to the channel floors, maintaining that potential ''locations'' for LPFM stations should also count. By looking solely at channels, EMF maintains that the Commission is understating the number of potential LPFM stations that could actually be

constructed in the market. It argues that if LPFM is truly a localized service to small populations, channel re-use within a market is ''to be expected.''

b. Translator Amendment and Settlement Procedures

35. *In ''Dismiss All'' Markets.* NAB and others assert that we should process translator applications where an application grant would not obstruct a particular LPFM opportunity or where a dismissal would not create an additional LPFM opportunity. LPFM advocates oppose these suggestions. With respect to the former, they argue that this proposal in practice would likely result in the loss of significant LPFM licensing opportunities. With respect to the latter, they argue that the second-adjacent waiver process will create many LPFM opportunities in markets that otherwise appear to have no available LPFM channels (such as New York and Chicago). Common Frequency further urges the Commission to take into account LP–10 availability and the potential for intermediate frequency (''I.F.'') and second adjacent channel waivers in determining whether a particular translator application could preclude an LPFM licensing opportunity.

36. *In ''Process All'' Markets.* NPR and others argue that the Commission should not restrict the ability of pending translator applicants to make minor amendments to their applications, arguing that circumstances may have changed considerably since their applications were filed in 2003. NAB argues that the Commission should allow applicants to choose other channels as part of the settlement process, so long as the availability of LPFM opportunities is not reduced below the LPFM channel floor for that market. It does not, however, propose procedures to select among competing translator applicants while also safeguarding the pertinent LPFM channel floor. It notes that in many ''process all'' markets, the number of available LPFM channels far exceeds the channel floor.

37. LPFM advocates disagree, arguing that the ''availability of settlements negates the FCC's systemic approach to defining clear channel floors.'' Common Frequency maintains that the availability of settlements ''provides for an open-ended scenario where translator applicants could effectively cherry-pick the best channels, leaving the channels at the edges of the grid-area for LPFM applicants.''

3. Analysis—Revised Translator Application Processing and Dismissal Policies

38. Despite the divergence of views about interpreting the LCRA, there is relatively broad agreement with respect to our proposal to effectuate section 5 with market-specific spectrum availability metrics. Significantly, no commenter provided a comprehensive statutory interpretation pointing to a fundamentally different approach. Accordingly, we adopt, with certain modifications, the market-specific processing approach outlined in the *Third Further Notice.* As discussed above, our principal challenge in effectuating section 5(1) of the LCRA is to identify and preserve those LPFM licensing opportunities where few or no LPFM stations currently operate. The processing approach we adopt today furthers this goal by ensuring that LPFM licensing opportunities in spectrum-limited markets remain ''available.'' At the same time, we adopt translator application and amendment procedures that will permit the immediate licensing of certain pending translator applications in both ''dismiss all'' and ''process all'' markets, consistent with section 5(1) and 5(2) directives and the procedures set forth below. To conform our terminology to the revised processing standards, we will use the names ''spectrum limited'' and ''spectrum available'' markets to refer to what were previously characterized as ''dismiss all'' and ''process all'' markets, respectively.

39. We believe certain modifications are necessary to better ensure that our licensing decisions are based on community needs, as required by section 5 of the LCRA. As we noted in the *Third Further Notice* and as discussed above, LPFM stations are best suited to serve more densely populated markets. We have reviewed our grid studies and have determined that in some smaller ''spectrum available'' markets, many of the channels identified as available for LPFM are on the fringe of the 31x31 grid in unpopulated or very lightly populated areas. Indeed, in some cases, the population of the 21x21 grid represents more than 90 percent of the population of the 31x31 grid. We believe that LPFM stations can best serve the needs of local communities in areas with significant populations where LPFM service is practical and sustainable. Accordingly, we find that adoption of a smaller grid is appropriate in certain markets to compensate for low population levels on the outer fringes of the grid. We believe that use of a smaller grid in these markets will more faithfully implement section 5(2) of the LCRA than our original proposal because it identifies and preserves LPFM opportunities in core city areas, where the LPFM service can best serve community needs. We likewise find that this revised approach is more faithful to our interpretation of sections 5(1) and 5(2) of the LCRA. As set forth above, these sections, when read together, require us to ensure a certain level of future LPFM licensing in ''spectrum available'' markets. However, we believe that licensing opportunities identified as ''available'' in these smaller markets should be limited to those locations that are likely to be able to support viable LPFM stations. Our adoption of a 21x21 grid in certain markets will enable us to more accurately identify such opportunities.

40. Different considerations apply to the largest markets. Our analysis establishes that there are few or no LPFM licensing opportunities within the core areas of most of the top 50 markets, especially when compared to the number of licensed translator stations and the number of pending translator applications in these markets. Using the methodology set forth in paragraph 41 below, we have determined that only seven of the top 50 markets which are classified as ''spectrum limited'' exhibit the high population concentrations within the grid that occur in a number of smaller markets. That is, based on both raw population numbers and population distributions, the largest markets are more likely to include population centers outside core market locations that LPFM stations could serve. Thus, we find that our translator processing procedures must not preclude LPFM licensing opportunities beyond the studied 31x31 grids in the top 50 spectrum limited markets.

41. We have modified the LPFM spectrum availability study set forth in the *Third Further Notice* as follows. As before, we identified the number of available LPFM channels and licensed stations within the 31x31 grid and compared this number to each market's channel floor. These results are set forth in Appendix A. We then analyzed ''spectrum available'' markets to identify those where 75 percent or more of the total population in the 31x31 grid is located in the 21x21 grid. In these markets, the smaller grid contains the concentrated core population and, for the reasons explained in paragraph 39 above, we used the smaller grid to determine both the number of licensed stations and the number of channels available for future LPFM stations.

Thus, ''spectrum available'' markets are those markets in which the number of LPFM channels within the applicable grid meets or exceeds the market's channel floor. The results of our market studies using the 21x21 grid, where applicable, are presented in Appendix B. We did not subject the 31x31 ''spectrum limited'' markets to the 21x21 population threshold test for several reasons. First, any such market would necessarily remain a ''spectrum limited'' market on the basis of a 21x21 grid analysis. More importantly, the 31x31 grid analysis in each of these markets establishes that few opportunities remain within the larger grid for new LPFM stations. Thus, we find that it is necessary that our ''spectrum limited'' market translator application processing rules, as described below, protect all of the limited LPFM licensing opportunities within the larger grid in such markets. In addition, for the reasons stated above, we also will require a translator applicant in any top 50 spectrum limited market to demonstrate that its out-of-grid proposal would not preclude the only LPFM station licensing opportunity at that location (''Top 50 Market Preclusion Showing'') by making the showing described below. We note that the analyses in Appendices A and B are based on updated BIA data, resulting in several changes from the analysis attached to the *Third Further Notice,* including the addition of three radio markets listed in the appendices and the removal of two markets previously listed in Appendix A.

42. We next consider other proposed ''tweaks'' to our methodology. Prometheus and REC first urge us to set higher channel floors, arguing that, given the ''overstatement of LPFM availability in the Commission's methodology, the proposed floors are too low to achieve the envisioned LPFM license availability.'' They assert that there are a number of unknown factors in determining LPFM availability, including suitability and availability of the site, population levels, and demand for LPFM at these locations.

43. We believe that our adoption of the smaller grid in those markets with a core concentrated population largely addresses these concerns because it excludes from our analysis LPFM opportunities in areas with little or no population. It is also the case that our studies demonstrate that multiple grid points are available for many of the identified channels and that more than one LPFM station can operate on identified channels in some markets. We find that these factors adequately counter-balance uncertainties regarding site availability, site suitability and local demand for LPFM licenses. We will also continue to count both identified vacant channels and those channels currently licensed to LPFM stations as ''available.'' Excluding currently licensed LPFM channels from our ''available LPFM channels'' findings, as proposed by Prometheus and REC, would be inconsistent with our interpretation of section 5(1) to require consideration of existing licenses as part of the ''licenses are available'' metric. Moreover, eliminating licensed channels from consideration would not create many (if any) new LPFM opportunities because it would not convert any top 50 ''spectrum available'' market into a ''spectrum limited'' market. Finally, we decline to break out hyphenated Arbitron markets into separate submarkets, as suggested by REC and others, because we believe that ample LPFM opportunities remain in most submarkets. Also, without clear delineation within the markets, there would be no reasonable way of determining which translators would be processed, should two cities within a market have different spectrum available/spectrum limited outcomes.

44. NAB does not oppose the channel floors, *per se,* but urges us to count both channels and locations toward the channel floors. We reject this suggestion. As Prometheus notes, the Commission cannot determine whether there is demand for a future LPFM station at any identified location. Moreover, as we have emphasized previously, this may be the last opportunity to meaningfully expand opportunities to provide LPFM service due to the combined impacts of limited spectrum and the strict technical licensing standards mandated by the LCRA. In contrast, and as we also explained in the *Third Further Notice,* flexible translator licensing rules ensure that abundant translator licensing opportunities will remain after the forthcoming LPFM window. Thus, consistent with the broad interpretive principles set forth above, we find that it is appropriate to use conservative techniques to assess LPFM availability in a given market, including counting available LPFM channels, not locations.

45. In the *Third Further Notice,* we proposed ''LPFM Channel Floors'' of potential LPFM licensing opportunities in the 150 largest markets, as well as smaller markets where more than four translator applications are pending. These channel floors range from 8 potential LPFM channels in the top 20 markets to 5 potential LPFM channels below the top 100 markets. We based these figures on a rough approximation of the number of noncommercial educational (''NCE'') stations in the top 150 markets. We selected the NCE FM service as a point of reference because that service is the radio service most similar to the LPFM service and, therefore, the best gauge of local community needs for such service. Commenters who addressed our proposed channel floors disputed neither our reasoning nor the specific ranges of channel floors or markets selected for those ranges. Thus, based on our examination of the record, we conclude that the proposed channel floors are a reasonable standard. We find that these floors adequately further the development of the LPFM service in spectrum-limited markets, as intended by section 5(1) of the LCRA, and strike an effective balance by ensuring that licenses for both LPFM and translator services are available in as many communities as possible, as required by our collective reading of sections 5(1) and 5(2) of the LCRA. Accordingly, we adopt the channel floors as proposed in the *Third Further Notice.*

46. We will, however, revise our processing approach with regard to certain translator applications in both ''spectrum limited'' and ''spectrum available'' markets. As an initial matter, we recognize that our use of the 21x21 grid in certain markets has turned some ''spectrum available'' markets into ''spectrum limited'' markets. For the reasons discussed above, we find that translators serve community needs, especially those in rural or underserved areas. As such, we agree with NAB that translator applicants in ''spectrum limited'' markets should be given an opportunity to demonstrate that their applications, if granted, would not preclude any LPFM opportunities. We also will permit minor amendments to meet this ''no preclusion'' test. Translator applicants proposing ''move-in'' modifications and modification applications that propose to move into a ''spectrum limited'' market will also be allowed to make such a showing. This approach is also consistent with our combined reading of sections 5(1) and 5(2) because it furthers the statutory goal of ensuring that the Commission provide licensing opportunities for both services in as many communities as possible. Prometheus and others fail to explain how this narrow exception to allow continued translator processing in a ''spectrum limited'' market will preclude LPFM opportunities, given that, as described in more detail below, we will require translator applicants to protect all channel/point combinations with the assumption that all LPFM

applicants in these markets will be eligible for second-adjacent channel waivers. We likewise agree that translator applicants in ''spectrum available'' markets should be afforded some opportunity to amend their applications. As noted by many translator advocates, circumstances have changed since 2003, and transmitter sites may no longer be available. As described in more detail below, we will provide applicants with a limited opportunity to amend their applications so long as their proposals do not eliminate any LPFM channel/point combination in any of the 156 market grids and, where applicable, satisfy the Top 50 Market Preclusion Showing. We do not believe that allowing translator applicants these limited opportunities to amend their applications will impede our ability to guarantee licensing opportunities equivalent to the LPFM channel floors we adopt herein.

47. Accordingly, we direct the Bureau to issue a public notice requiring all applicants affected by the national application cap and/or the one application per applicant per market limitation (discussed below) to identify applications for continued processing, consistent with these limits. The auctions anti-collusion rule will remain in effect during this process. Upon completion of this selection/dismissal process, the Bureau will process the remaining applications in ''spectrum available'' markets, starting with the singletons. Mutually exclusive applications from this group will then be placed on public notice and afforded a 60–90 day window to resolve their application conflicts via settlement or amendment. Any amendment of an application that precludes any LPFM channel/point combination identified in the grid studies will result in application dismissal. Amendments will be processed on a first-come, first-served basis, with all unamended applications having cut-off protection against amendments filed during the settlement period.

48. Applicants with proposals in ''spectrum limited'' markets will be given one opportunity to modify their proposals to eliminate all preclusive impacts on protected LPFM channel/point combinations. An applicant in a top 50 ''spectrum limited'' market proposing facilities outside the studied 31x31 grid also will need to demonstrate either that no LPFM station could be licensed at the proposed transmitter site or, if an LPFM station could be licensed at the site, that an additional channel remains available for a future LPFM station at the same site. Applications that conflict with protected channel/point combinations or fail to make such a Top 50 Market Preclusion Showing and that are not amended to come into compliance with these requirements will be dismissed. As explained above, applications in 31x31 grid ''spectrum limited'' markets must protect all channel/point combinations within this grid. Applicants in 21x21 grid ''spectrum limited'' markets must protect all channel/point combinations only within this grid. We limit ''spectrum limited'' grid protection requirements in these markets because, as noted above, we believe that this standard will protect those areas where LPFM stations can best serve the needs of local communities and, therefore, will most faithfully implement sections 5(1) and 5(2). From this point, all remaining applications will generally proceed down the same singleton/MX/settlement/auction/long form path. Amendments will be processed on a first-come, first-served basis, including for the purpose of determining whether an additional LPFM channel remains available at a specific location outside the grid. We terminate the freeze on the grant of pending Auction No. 83 translator applications and direct the Bureau to resume application processing in accordance with these procedures.

49. We provide the following guidance on translator application processing. ''Protected'' LPFM channel/point combinations will be determined differently in ''spectrum available'' and ''spectrum limited'' markets. In a ''spectrum available'' market, a channel/point combination must be protected only if LPFM operations at the site would be fully spaced to all pending translator applications on co-, first- and second-adjacent channels (and, of course, would satisfy all other spacing requirements). Thus, a translator applicant in a ''spectrum available'' market that does not modify its technical proposal would always qualify for further processing because the proposed translator facility cannot conflict, by definition, with any protected channel/point combinations. ''Spectrum available'' market amendments, however, may not conflict with protected LPFM channel/point combinations. ''Spectrum limited'' calculations, including Top 50 Market Preclusion Showing calculations, will assume the dismissal of all translator applications in the market. This differing treatment of pending translator applications is based on our determination that sufficient channels are/are not available *if all translator applications remain pending.* Moreover, the ''spectrum limited'' channel/point and Top 50 Market Preclusion Showing calculations, will not take into account second-adjacent channel spacings to authorized stations and other pending applications, *i.e.,* will assume that an LPFM applicant could make a sufficient showing to obtain a second-adjacent channel spacing waiver. Finally, ''spectrum limited'' calculations will not take into account I.F. spacing requirements. We find that these more restrictive ''spectrum limited'' market processing standards are necessary to safeguard LPFM licensing opportunities in these markets. As noted, the protection scheme for ''spectrum available'' markets 1–50 and for all other studied markets are limited to the particular grid used in each market. LPFM licensing opportunities outside the grid in these markets are not protected in either ''spectrum limited'' or ''spectrum available'' markets. Thus, a translator application specifying a site at a distance equal to or greater than the minimum LPFM-translator distance separation requirements and otherwise in compliance with licensing rules would be grantable under these processing standards in all ''spectrum limited'' markets 51 and smaller and all ''spectrum available'' markets.

C. Prevention of Trafficking in Translator Station Construction Permits and Licenses

1. Background

50. The *Third Further Notice* tentatively concluded that our proposed market-based translator application processing policy would not be sufficient to deter speculative licensing conduct because the remaining translator filings present significant issues of abuse of our licensing process. It tentatively concluded that nothing in the LCRA limits the Commission's ability to address the potential for licensing abuses by any applicant in Auction No. 83, and sought comment on processing policies to deter the potential for speculative abuses among the remaining translator applicants. Specifically, it sought comment on whether to establish an application cap for the applications that would remain pending in non-spectrum limited markets and unrated markets, and asked whether a cap of 50 or 75 applications in a window would force filers with a large number of applications to concentrate on those proposals and markets where they have *bona fide* service aspirations. The *Third Further Notice* also asked whether applicants

should be limited to one or a few applications in any particular market, noting that a limitation of this sort could limit substantially the opportunity to warehouse and traffic in translator authorizations while promoting diversity goals. It also sought comment on alternative approaches to protect against abuses in the translator licensing process.

2. Comments

51. Many commenters support some form of cap, with several supporting a cap of 50 or 75 per applicant nationally, as proposed in the *Third Further Notice.* Alan W. Jurison suggests that such a high cap should be coupled with new translator ownership rules and a waiver system to allow *bona fide* applicants to file numerous applications nationally. Others support our suggestion of having a cap on the number of applications per market. Kyle Magrill suggests a tiered, market-based cap whereby the more applications an applicant files nationally, the further the number of applications per market must decrease.

52. However, EMF opposes any cap at all, believing it will reduce translator services to smaller markets. Other commenters argue that caps fail to distinguish serious applicants from speculators and suppress competition. Some commenters simply disagree with the concerns over speculative filings described in the *Third Further Notice.* For example, Kyle Magrill suggests that non-commercial applicants may have filed large numbers of translator applications because they believed that it was the best way to ensure they would obtain a permit, and even those permits that were sold have resulted in new facilities on the air serving the public interest. Edgewater Broadcasting, Inc., and Radio Assist Ministry, Inc., also note that applicants accused of trafficking have not in fact violated any of the Commission's Rules.

53. Several commenters propose alternatives to caps or additional safeguards against trafficking: placing limitations on the number of outstanding translator construction permits an applicant can have; restricting sales of permits to allow applicants to only recover costs; or preventing outright the sale of unbuilt construction permits. NPR suggests establishing a holding period obligating future translator permittees to construct and operate newly authorized translators.

3. Analysis

54. We conclude that both a national cap and a market-based cap for the markets identified in Appendix A are appropriate to limit speculative licensing conduct and necessary to bolster the integrity of the remaining Auction 83 licensing. Without such caps, we believe that the translator licensing process we adopt herein could result in the prosecution of thousands of applications for the primary purpose of for-profit assignments of the issued translator authorizations. If the permits were issued in an auction, then we would be much less concerned about such speculation in permits. However, as we noted in the *Third Further Notice,* we expect that a substantial portion of the remaining grants will be made pursuant to our settlement procedures rather than through auctions.

55. We first must address whether the adoption of national and per-market caps on the processing of pending translator applications to protect the integrity of the translator licensing process is consistent with section 5 of the LCRA. Although that provision mandates that the Commission consider the availability of translator licenses to serve the needs of local communities in licensing new translators, it does not limit the Commission's authority under the Act to adopt measures to protect the integrity of its licensing processes. Accordingly, we conclude that adoption of the caps to safeguard the integrity of our licensing processes is consistent with section 5's requirement to ensure that licenses are available to both LPFM and translator services.

56. We next address the public interest benefits of translator application caps. As set forth above, the initiation of new translator service resulting from a grant of some of those applications may benefit the public interest. At the same time, we believe strongly that remedial limits are needed to protect the integrity of our licensing process. Non-feeable application procedures and flexible auction and translator settlement rules clearly have facilitated and encouraged the filing of speculative proposals. Our CDBS database shows that successful Auction 83 applicants have sold more than 700 translator authorizations and let almost 1000 permits expire without completing construction. In some markets, certain applicants have filed dozens of applications, even though it is inconceivable that one entity would construct and operate all of the proposed stations. The filers that will be affected by our national cap and by our per-market cap account for much of this licensing activity. While we recognize that high-volume filers did not violate our rules, these types of speculative filings are fundamentally at odds with the core Commission broadcast licensing policies and contrary to the public interest.

57. Although we have considered a number of alternatives, we find that imposing a cap on applications is the most administratively feasible solution for processing this large group of long-pending applications. As some comments suggest, a longer term solution may require structural changes to the translator licensing process, *e.g.,* holding period and/or construction requirements, no-profit restrictions on the assignment of authorizations, a cap on application filings, etc. However, we believe that the caps we adopt today will both deter trafficking and provide the fastest path to additional translator and LPFM licensing in areas where the need for additional service is greatest. We emphasize that the cap procedures we adopt will give applicants the opportunity to elect which applications will be processed toward a grant. We expect that applicants will choose applications that will maximize new service to the public. Even with the dismissal of many of the pending translator applications pursuant to the application caps and our market-based processing policy, we are confident that the same or comparable licensing opportunities will remain available in a future translator filing window under our flexible translator licensing standards. In short, these dismissals will only delay, not deny, licenses to applicants whose translator applications are dismissed but who remain interested in effectuating their proposals.

58. We believe that a national cap of 50 applications per applicant from the pending Auction 83 applications is an appropriate limit. Because translators are relatively cheap to construct and operate, we believe it is feasible for the organizations that filed the highest volume of applications to construct and operate 50 additional stations. Accordingly, in balancing the competing goals of deterring speculation and expanding translator service to local communities, we conclude that a national cap of 50 applications is appropriate. We note that this cap is high enough to permit all but twenty applicants to prosecute all of their pending applications. We also note that even some translator advocates commented in support of a cap of 50 applications.

59. In addition to the national cap of 50 applications, we believe that a per-market cap of one application in the markets identified in Appendix A is appropriate. Our translator rules contemplate that a party may receive an authorization for a second or third FM translator serving substantially the same

area as the first only after making a ''showing of technical need for such additional stations.'' This is a spectrum efficiency rule based on our experience that parties rarely need such multiple translators. Yet in some cases, applicants in Auction 83 submitted dozens of applications for a particular market. These applications were clearly filed for speculative reasons or to skew our auction procedures, as it is inconceivable that a single entity would construct so many stations in a single market. Given the volume of pending applications, it is not administratively feasible to conduct a case-by-case assessment of technical need for such multiple applications within the markets identified in Appendix A. Accordingly, we will apply a cap of one translator application per applicant in the markets identified in Appendix A. For applications outside those markets, where the duplication issue is more manageable, we will apply our technical need rule on a case-by-case basis.

60. For translator applicants, our revised processing policies provide a straightforward licensing path that will likely result in more than 1000 new construction permits, thereby increasing the total number of authorizations issued out of Auction 83 to over 4500. At the same time, the national and per-market caps will require each affected applicant to prioritize its filings and to focus on proposals at locations where it has a *bona fide* interest in providing service. We believe that these restrictions are necessary to impose on these applicants a level of discipline similar to that which competitive bidding procedures provide in full service station licensing.

61. We will require parties with more than 50 pending applications nationally and/or more than one pending application in the markets identified in Appendix A to identify and affirm their continuing interest in those pending applications for which they seek further Commission processing, consistent with these limits. Both pending long form and short form applications will be subject to these applicant-based caps. In the event that an applicant does not timely comply with these dismissal procedures, we direct the staff to first apply the national cap, retaining on file the first 50 filed applications and dismissing those that were subsequently filed. The staff will then dismiss all but the first filed application in each of the markets identified in Appendix A.

D. Restrictions on the Use of FM Translators to Rebroadcast the Signals of AM Stations

1. Background

62. In 2009, the Commission authorized the use of FM translators with licenses or permits in effect as of May 1, 2009, to rebroadcast the signal of a local AM station. The limitation of cross-service translator usage to already-authorized FM translators was adopted with the intention of preserving opportunities for future LPFM licensing. Two parties filed petitions for partial reconsideration of this aspect of the *2009 Translator Order.* Both petitions argue that the limitation of cross-service translators does not serve the public interest and is unfair to both AM stations and FM translator applicants.

63. The practical effect of the date limit imposed in the *2009 Translator Order* was to exclude pending Auction No. 83 FM translator applications as well as future FM translator applications from the pool of potential cross-service translators. In the *Third Further Notice,* we asked whether it would be appropriate to remove this limit on cross-service translators with respect to those pending applications. Specifically, we asked whether the limit should be removed for those applications which were on file as of May 1, 2009. We stated that resolving this issue before processing of the pending translator applications would align FM translator processing outcomes more closely with demand by enabling applicants to take the rebroadcasting option into account in the translator settlement and licensing processes, thereby advancing the goals of section 5(2) of the LCRA. We also noted that allowing cross-service translators had been a very successful deregulatory policy.

2. Comments

64. Most commenters support removing the date restriction for pending FM translator applications. These commenters point to the public service benefits that FM translators have provided to AM stations. Some argue that the need for the date restriction is going away now that the Commission will be opening an LPFM window.

65. To the extent that commenters take a contrary position, most argue for some type of restriction or limitation on cross-service translators in general. Some LPFM proponents argue for qualifying criteria for cross-service translators, such as local ownership, lack of in-market FM ownership by the AM licensee, diversity of ownership, amount of local programming, and quality of AM signal. REC Networks and Prometheus argue that the 250-watt power level allowed for ''fill-in'' AM translators should be reduced before cross-service translators are expanded. NPR argues that the date restriction should be kept in place unless the Commission adopts strong anti-trafficking rules so that traffickers in the current pool of Auction 83 applicants will not benefit from the change.

3. Analysis

66. We will modify the date restriction to allow pending FM translator applications that are granted to be used as cross-service translators. As we explained in the *Third Further Notice,* the limitation of cross-service translator usage to already-authorized translators was adopted with the intention of preserving opportunities for future LPFM licensing. In the *Third Further Notice,* we decided to revisit this pre-LCRA policy. We proposed changes in the FM translator application processing rules designed to accomplish more effectively the goal of preserving spectrum for future LPFM licensing. Given those proposed changes, as stated above, we indicated that removing the date limit, at least for the pending translator applications, could align FM translator licensing outcomes more closely with demand, thereby advancing the goals of section 5(2) of the LCRA.

67. With our adoption of the revised translator application processing policies described above, we believe we have effectively addressed the LPFM spectrum issue that prompted the pre-LCRA date limitation on cross-service translators. Having done so, we believe the translators that are put into service from the pool of pending applications should be put to their best use, consistent with the directive of section 5(2) to carry out FM translator licensing ''based on the needs of the local community.'' Our view is that, with the FM translator processing policies described above in effect, the public interest benefits from expanding cross-service translator service are considerably more significant than any downside from allowing any forthcoming Auction No. 83 authorizations to be used for such service.

68. With respect to the proposed restrictions or limitations on cross-service translators sought by LPFM proponents, most are essentially untimely petitions for reconsideration of the *2009 Translator Order.* Accordingly, and because we intend to consider modifications to our FM translator rules and procedures more generally in a separate proceeding, as discussed

below, we decline to consider these arguments here. In any event, we believe the LPFM proponents who argue for such restrictions fail to recognize the significant public interest benefits that will accrue from expanding the pool of potential cross-service translators. In the *2009 Translator Order,* we described the substantial benefits to local listeners that cross-service translators were providing, for example, providing pre-sunrise and post-sunset coverage of traffic, weather, news and sports programming and improving localism, competition and diversity in a number of radio markets. The record here confirms those benefits and supports a change in the date limitation to allow permits or licenses arising from pending FM translator applications to be used as cross-service translators.

69. Again, we intend to revise our FM translator rules before the next FM translator auction window, so parties will have an opportunity to present their views at that time with respect to any appropriate modifications in our translator rules and procedures. If parties wish to argue that priority should be given in future translator auction windows to Class D AM stations or AM stations that lack a co-owned FM outlet, then they may do so in that proceeding.

70. Accordingly, we grant reconsideration of the *2009 Translator Order* to the extent of allowing authorizations arising from pending FM translator applications to be used as cross-service translators. With respect to future FM translator applications, we will address their potential use as cross-service translators in a future rulemaking to revise our FM translator rules.

II. Third Order on Reconsideration

71. *In the Third Report and Order* discussed above, the Commission established a going-forward limit of ten pending short-form applications per applicant from FM translator Auction No. 83, and directed the Bureau to resume processing the applications of those applicants in compliance with this numerical cap.

72. Petitions for reconsideration opposing the cap were filed by CSN International, National Religious Broadcasters, Positive Alternative Radio, Inc., and Educational Media Foundation *et. al.* In light of our adoption of the market-specific translator application dismissal process described in this *Fourth Report and Order,* we dismiss them as moot.

III. Procedural Matters

73. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the proposals suggested in this document. The FRFA is set forth in Appendix C.

74. *Paperwork Reduction Act.* This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (U.S.C. 3501–3520). The requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. The Commission will publish a separate notice in the **Federal Register** inviting comments on the new information collection requirements adopted in this document. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix C, infra.

75. *Congressional Review Act.* The Commission will send a copy of this *Fourth Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Final Regulatory Flexibility Analysis.

76. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Further Notice of Proposed Rulemaking* (*Third Further Notice*) in MM Docket No. 99–25, and MB Docket No. 07–172, RM–11338. The Commission sought written public comment on the proposals in the *Third Further Notice,* including comment on the IRFA. We received no comments specifically directed toward the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Fourth Report and Order

77. This rulemaking proceeding was initiated to seek comment on how the enactment of section 5 of the Local Community Radio Act of 2010 (''LCRA'') would impact the procedures previously adopted to process the approximately 6,500 applications which remain from the 2003 FM translator window. The Commission previously established a processing cap of ten pending short-form applications per applicant from FM translator Auction No. 83. The *Fourth Report and Order* concludes that that this cap was inconsistent with the LCRA licensing criteria. It further concludes that a market-specific, spectrum availability-based translator application dismissal policy most faithfully implements section 5 of the LCRA. Specifically, it sets forth a dismissal policy in which the Commission will impose a national application cap and/or a one application per applicant per market in the markets identified in Appendix A of the *Fourth Report and Order.* It directs the Media Bureau to issue a Public Notice asking applicants to identify applications for continued processing, consistent with these limits. Upon completion of this selection/dismissal process, the Bureau will process the remaining applications in ''spectrum available'' markets, as defined in the *Fourth Report and Order.* Applicants will be able to file amendments demonstrating that their applications will not preclude any LPFM channel/point combination identified in the grid studies. Those applications that fail to do so will be dismissed.

78. Applicants with proposals remaining in ''spectrum limited'' markets, as defined in the *Fourth Report and Order,* will also be given one opportunity to modify their proposals to eliminate all preclusive impacts on protected LPFM channel/point combinations. Applications that conflict with protected channel/point combinations and that are not amended to eliminate all such conflicts will be dismissed.

79. The *Fourth Report and Order* also modifies certain recently adopted FM translator service rule changes as a result of the enactment of the LCRA. Specifically, it modifies the date restriction contained in § 74.1232(d) of the Rules to allow pending FM translator applications that are granted to be used as cross-service translators.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

80. None.

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

81. The RFA directs the Commission to provide a description of and, where

feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as encompassing the terms ''small business,'' ''small organization,'' and ''small governmental entity.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

82. *Radio Broadcasting.* The policies adopted in the *Fourth Report and Order* apply to radio broadcast licensees, and potential licensees of radio service. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc. Master Access Radio Analyzer Database as of January 31, 2011, about 10,820 (97 percent) of 11,100 commercial radio stations) have revenues of $7 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

83. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

84. *FM translator stations and low power FM stations.* The policies adopted in the *Fourth Report and Order* affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. Currently, there are approximately 6131 licensed FM translator stations and 860 licensed LPFM stations. In addition, there are approximately 646 applicants with pending applications filed in the 2003 translator filing window. Given the nature of these services, we will presume that all of these licensees and applicants qualify as small entities under the SBA definition.

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

85. In the *Fourth Report and Order,* we require Auction No. 83 applicants to identify which applications they wish to preserve to come into compliance with the national and market-based caps. This will enable the Commission to move quickly through a backlog of applications that have been pending since 2003 and open a new filing window for the LPFM service.

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

86. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

87. The *Fourth Report and Order* establishes a market-specific, spectrum availability-based approach to the processing of remaining translator applications. It also establishes national and market-specific application caps. In adopting these policies, several alternative approaches were considered:

88. *Size of Grid.* The Commission considered alternatives to the 31x31 market study grid proposed in the *Third Further Notice.* For example, it considered a smaller, 21x21 grid, as well as a larger grid based on Arbitron market boundaries. The *Fourth Report and Order* adopts a 31x31 grid, but adopts a 21x21 grid in markets where 75 percent or more of the population is located in that smaller grid.

89. *Processing of Translator Application in Spectrum-Limited Markets.* The *Third Further Notice* proposed to dismiss all applications in certain spectrum-limited markets. One alternative considered was to allow continued processing of certain translator applications in ''spectrum limited'' markets. The *Fourth Report and Order* adopts this policy.

90. We believe that the adopted policies offer significant benefits to small entities. The market-based approach ensures additional spectrum for LPFM stations in markets in which it is most limited while also ensuring the immediate licensing of translator stations in communities in which ample spectrum remains for both services, including many major markets. Use of the smaller grid and allowing the processing of additional translators benefit small entities because they will increase licensing opportunities for both LPFM stations and translators. Adoption of the application caps will benefit translator and LPFM proponents because it will allow the Commission to quickly act on applications that have been pending for more than eight years and to open an LPFM window in the near future.

91. We likewise believe that removing the date restriction contained in § 74.1232(d) of the rules to allow pending FM translator applications that are granted to be used as cross-service translators will benefit small entities because it will expand opportunities for translator licensees to rebroadcast AM service.

F. Report to Congress

92. The Commission will send a copy of the *Fourth Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the *Fourth Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Fourth Report and Order* and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

93. Accordingly, *it is ordered* that the Petitions for Reconsideration filed by Robert A. Lynch on July 28, 2009, and Edward A. Schober on July 28, 2009, *are granted in part* to extent set forth above.

94. *It is further ordered* that the Petitions for Reconsideration filed by CSN International on February 4, 2008; National Religious Broadcasters on February 15, 2008; and Positive Alternative Radio, Inc. and Educational Media Foundation on February 19, 2008, *are dismissed as moot.*

95. *It is further ordered* that pursuant to the authority contained in sections 4(i), 301, 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C, 154(i), 301, 302, 303(e), 303(f) and 303(r), and the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), this *Fourth Report and Order* is hereby *adopted* and Part 74 of the Commission's rules *are amended* as set forth in Appendix D, effective 30 days after publication in the **Federal Register**.

96. *It is further ordered* that the rules adopted herein will become effective thirty (30) days after publication in the **Federal Register**, except for any rules or requirements involving Paperwork Reduction Act burdens, which shall become effective upon announcement in the **Federal Register** of OMB approval and an effective date of the rule(s).

97. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fourth Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 74

Radio.

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary.

Rule changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 74 to read as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336, and 554.

■ 2. Section 74.1232(d) is revised to read as follows:

§ 74.1232 Eligibility and licensing requirements.

* * * * *

(d) An authorization for an FM translator whose coverage contour extends beyond the protected contour of the commercial primary station will not be granted to the licensee or permittee of a commercial FM radio broadcast station. Similarly, such authorization will not be granted to any person or entity having any interest whatsoever, or any connection with a primary FM station. Interested and connected parties extend to group owners, corporate parents, shareholders, officers, directors, employees, general and limited partners, family members and business associates. For the purposes of this paragraph, the protected contour of the primary station shall be defined as follows: the predicted 0.5mV/m contour for commercial Class B stations, the predicted 0.7 mV/m contour for commercial Class B1 stations and the predicted 1 mV/m field strength contour for all other FM radio broadcast stations. The contours shall be as predicted in accordance with § 73.313(a) through (d) of this chapter. In the case of an FM radio broadcast station authorized with facilities in excess of those specified by § 73.211 of this chapter, a co-owned commercial FM translator will only be authorized within the protected contour of the class of station being rebroadcast, as predicted on the basis of the maximum powers and heights set forth in that section for the applicable class of FM broadcast station concerned. An FM translator station in operation prior to March 1, 1991, which is owned by a commercial FM (primary) station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by such primary station until March 1, 1994. Thereafter, any such FM translator station must be owned by independent parties. An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties. An FM translator providing service to an AM fill-in area will be authorized only to the permittee or licensee of the AM radio broadcast station being rebroadcast, or, in the case of an FM translator authorized to operate on an unreserved channel, to a party with a valid rebroadcast consent agreement with such a permittee or licensee to rebroadcast that station as the translator's primary station. In addition, any FM translator providing service to an AM fill-in area must have been authorized by a license or construction permit in effect as of May 1, 2009, or pursuant to an application that was pending as of May 1, 2009. A subsequent modification of any such FM translator will not affect its eligibility to rebroadcast an AM signal.

* * * * *

[FR Doc. 2012–8404 Filed 4–6–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132–1275–02]

RIN 0648–XB116

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason Angling category retention limit adjustment; southern area trophy fishery closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) daily retention limit that applies to vessels permitted in the Highly Migratory Species (HMS) Charter/Headboat category (when fishing recreationally for BFT) should be adjusted for the remainder of 2012, based on consideration of the regulatory determination criteria regarding inseason adjustments and based on preliminary 2012 landings data. NMFS also closes the southern area Angling category fishery for large medium and giant (''trophy'') BFT. These actions are being taken consistent with the BFT fishery management objectives of the 2006 Consolidated HMS Fishery Management Plan (Consolidated HMS FMP) and to prevent overharvest of the 2012 Angling category quota.

DATES: Effective April 7, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the

authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota allocated by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated HMS FMP (71 FR 58058, October 2, 2006) and in accordance with implementing regulations.

The 2012 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2012. The Angling category season opened January 1, 2012, and continues through December 31, 2012. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT (measuring 27 to less than 73 inches (68.5 to less than 185 cm)) applies (§ 635.23(b)(2)). An annual limit of one large medium or giant BFT (73 inches or greater) per vessel also applies (§ 635.23(b)(1)). These retention limits apply to HMS Angling and HMS Charter/Headboat category permitted vessels (when fishing recreationally for BFT).

The currently codified Angling category quota is 182 mt (94.9 mt for school BFT, 82.9 mt for large school/small medium BFT, and 4.2 mt for large medium/giant BFT).

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the retention limit for any size class of BFT based on consideration of the criteria provided under § 635.27(a)(8), which include:

- The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock;
- The catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made;
- The projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year;
- The estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing;
- Effects of the adjustment on accomplishing the objectives of the fishery management plan;
- Variations in seasonal distribution, abundance, or migration patterns of BFT;
- Effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and
- Review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

Retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charterboats.

NMFS has considered the set of criteria cited above and their applicability to the Angling category BFT retention limit for the 2012 Angling category fishery. NMFS examined the results of the 2008 through 2011 fishing seasons under the applicable daily retention limits, as well as the observed trend in the recreational fishery over that time period toward heavier fish, particularly in the small medium size range (59 to less than 73 inches). Data and dockside observations from 2008 through 2011 indicated a shift in availability to the large school/small medium size class (47 to less than 73 inches (119 to less than 185 cm)), particularly to large school BFT (47 to less than 59 inches (119 to less than 150 cm)) in 2008 and to small medium BFT in 2009 through 2011. Large school and small medium BFT traditionally have been managed as one size class (47 to less than 73 inches). Over the last 5 years, NMFS has found that as this cohort of fish aged and grew in weight but remained under 73 inches (i.e., the upper range of the large school/small medium size class), the large school/small medium subquota was attained with fewer fish landed.

In 2010 and in 2011, based on considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS adjusted the Angling category retention limit from the default level to prohibit the retention of small medium BFT for the remainder of the respective fishing years (75 FR 33531, June 14, 2010, and 76 FR 18416, April 4, 2011). Recognizing the different nature, socio-economic needs, and recent landings results of private and charter/headboat vessels, NMFS implemented separate limits for each. Effective June 12 through December 31, 2010, and effective April 2 through December 31, 2011, the limit was one school or large school BFT per vessel per day/trip for private vessels (i.e., those with HMS Angling category permits), and was one school BFT and one large school BFT per vessel per day/trip for charter vessels (i.e., those with HMS Charter/Headboat permits, when fishing recreationally for BFT).

It is important that NMFS constrain landings to BFT subquotas both to adhere to the current FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (e.g., fish caught at each age) that was assumed in the projections of stock rebuilding. However, based on the annual growth rate of BFT and preliminary 2012 recreational catch information, it is reasonable to assume that the cohort of fish described above largely has grown to greater than 73 inches, i.e., has moved through the recreational large school/small medium size class.

Based on current considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that the Angling category retention limit applicable to HMS Charter/Headboat category participants (when fishing recreationally) should be adjusted from the default level, and that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery. For example, charter operators historically have indicated that a multi-fish retention limit is vital to their ability to attract customers. In addition, 2011 Large Pelagics Survey estimates indicate that charter/headboat BFT landings constitute approximately 35 percent of recent recreational landings, with the remaining 65 percent landed by private vessels.

Therefore, for private vessels (i.e., those with HMS Angling category permits), the limit is maintained at one school, large school, or small medium BFT per vessel per day/trip (i.e., one BFT measuring 27 to less than 73 inches). For charter vessels (i.e., those with HMS Charter/Headboat permits), the limit is one school BFT and one large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (i.e., one BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches). These retention limits are effective in all areas, except for the Gulf of Mexico, where NMFS prohibits targeted fishing for BFT. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing.

NMFS anticipates that the BFT daily retention limits in this action will result

in landings during 2012 that would not exceed the available subquotas as codified in 2011. However, NMFS will monitor 2012 landings closely and will adjust the daily retention limit further through additional inseason actions if warranted.

The determination to adjust the daily retention limit is based primarily on: the usefulness of information obtained from recreational BFT catches for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)); catch to date and the likelihood of closure of the Angling category if no adjustment is made (§ 635.27(a)(8)(ii)); the effects of the adjustment on accomplishing the objectives of the Consolidated HMS FMP (§ 635.27(a)(8)(vi)); variations in seasonal distribution, abundance, or migration patterns of BFT (§ 635.27(a)(8)(vii)); and the anticipated availability of school, large school, and small medium BFT on the fishing grounds (§ 635.27(a)(8)(ix)).

Angling Category Large Medium and Giant ''Trophy'' Fishery Closure

The codified BFT quotas provide for 4.2 mt of large medium and giant (trophy) BFT (measuring greater than 73 inches) to be harvested from the regulatory area by vessels fishing under the Angling category quota, with 1.4 mt for the area north of 39°18′ N. lat. (off Great Egg Inlet, NJ) and 2.8 mt for the area south of 39°18′ N. lat.

Based on information from the NMFS Automated Landings Reporting System and the North Carolina Tagging Program, NMFS has determined that the codified Angling category trophy BFT subquota has been taken and that a closure of the southern area trophy BFT fishery is warranted at this time. Therefore, fishing for, retaining, possessing, or landing large medium or giant (''trophy'') BFT south of 39°18′ N. lat. by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (when fishing recreationally) must cease at 11:30 p.m. local time on April 7, 2012. This action is taken consistent with the regulations at § 635.28(a)(1).

These Angling category actions are intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities; and to be consistent with the objectives of the Consolidated HMS FMP.

HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survivability, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the Careful Catch and Release brochure available at *www.nmfs.noaa.gov/sfa/hms/.*

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *www.hmspermits.gov,* for updates.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on available BFT quotas, fishery performance in recent years, the availability of BFT on the fishing grounds, among other considerations, an adjustment to the recreational BFT daily retention limit is warranted. Analysis of available data shows that adjustment to the BFT daily retention limit from the default level would result in minimal risks of exceeding the ICCAT-allocated quota.

Furthermore, closure of the southern area Angling category trophy fishery is necessary to ensure sufficient quota remains available to ensure overall 2012 fishing year landings are consistent with ICCAT recommendations and the Consolidated HMS FMP. NMFS provides notification of closures and retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *www.hmspermits.gov.*

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive trophy BFT landings that potentially could result in future quota reductions for the Angling category and other BFT quota categories, depending on the magnitude of any Angling category overharvest. NMFS must close the southern area trophy BFT fishery before additional landings of these sizes of BFT accumulate. Delays in increasing the daily recreational BFT retention limits would adversely affect those Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.23(b)(3) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 3, 2012.

Carrie Selberg,

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

[FR Doc. 2012–8474 Filed 4–4–12; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 77, No. 68
Monday, April 9, 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 and Nutrition Service

7 CFR Part 226

RIN 0584–AE12

Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 affecting the management of the Child and Adult Care Food Program (CACFP). The Department is proposing to require institutions to submit an initial CACFP application to the State agency and, in subsequent years, periodically update the information in lieu of submitting a new application; require sponsoring organizations to vary the timing of reviews of sponsored facilities; require State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers; allow tier II day care homes to collect household income information and transmit it to the sponsoring organization; modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on a formula; and allow sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous fiscal year into the next fiscal year. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes.

DATES: To be assured of consideration, comments must be received on or before June 8, 2012.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted through one of the following methods:

- *Preferred method:* Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.

Comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Department will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Julie Brewer at the above address or telephone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Executive Summary
III. Background and Discussion of the Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (refer to **DATES**) will not be considered or included in the Administrative Record for the final rule.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (e.g., grouping and order of sections, use of headings, and paragraphing) make it clearer or less clear?

(4) Would the rule be easier to understand if it was divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled ''Background and Discussion of the Proposed Rule'' helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

II. Executive Summary

Purpose of the Regulatory Action

The Department is proposing to amend the regulations for CACFP at 7 CFR part 226 to codify several of the provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). This proposed rule would affect the management and administration of CACFP for State agencies, new and renewing institutions, sponsoring organizations, and sponsored facilities. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes to the organization of 7 CFR part 226.

Summary of the Major Provisions of the Regulatory Action

CACFP Initial Application Submission and Renewal Requirements

Current regulations require institutions to submit an initial application for CACFP participation and then to reapply to the CACFP on a schedule determined by the State agency, but not less than every one to three years. Section 331(b) of the Act amended section 17(d) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1766(d)) to require, in lieu of submitting a renewal application, that renewing institutions need only annually confirm that the institution is in compliance with the licensing

requirements of subsection 17(a)(5) of the NSLA (42 U.S.C. 1766(a)(5)) and submit to the State agency any additional necessary information, as specified by the Department.

This proposal would eliminate a renewal application for renewing institutions; however, such institutions would be required to annually certify that they still meet the program requirements for continued participation and to provide an update of the information provided on the initial application if the State agency has not already been notified of the changes. The exception to this is the budget submission for sponsoring organizations, which as in current regulations, must be submitted annually rather than through the certification process.

Varied Timing of Reviews Conducted by Sponsoring Organizations

Section 331(b) of the Act amended section 17(d)(2) of the NSLA (42 U.S.C. 1766(d)(2)) to require that sponsoring organizations vary the timing of unannounced reviews so they are unpredictable to sponsored facilities. We anticipate unannounced reviews will be more effective in detecting CACFP integrity issues. This proposed rule would require sponsoring organizations to ensure that the timing of unannounced reviews is varied in a way that would ensure they are unpredictable to the facility under review.

Permanent Agreements Between Sponsoring Organizations and Sponsored Centers

Section 331(c) of the Act amended section 17(j)(1) of the NSLA (42 U.S.C. 1766(j)(1)) to require State agencies to develop and provide for the use of a standard permanent operating agreement between sponsoring organizations of centers and their sponsored centers. This rule proposes to require State agencies to develop standard permanent agreements that sponsors of child care centers, adult day care centers, emergency shelters, at-risk afterschool care centers, or outside school hours care centers will enter into with their unaffiliated sponsored centers.

Transmission of Income Information by Sponsored Day Care Homes

Current regulations require a sponsoring organization, upon the request of a tier II day care home provider, to collect income eligibility applications from households (7 CFR 226.18(b)(12)). Section 333 of the Act amended section 17(f)(3)(A)(iii)(III) of the NSLA (42 U.S.C. 1766(f)(3)(A)(iii)(III)) to require sponsoring organizations to allow providers of tier II day care homes to assist in the transmission of household income information with the written consent of the parents or guardians of children in their care. This rule proposes to allow the tier II day care home to assist in collecting income eligibility applications from households and transmitting the applications to the sponsoring organization. The addition would limit the provider's assistance to collecting applications and transmitting them to the sponsoring organization, and prohibits tier II day care home providers from reviewing the applications.

Administrative Payment Rates to Sponsoring Organizations for Day Care Homes

Current regulations found at 7 CFR 226.12(a) require that administrative cost payments to a sponsoring organization of day care homes may not exceed the lesser of: (1) Actual expenditures for the costs of administering the CACFP less income to the CACFP, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's number of participating homes by the current administrative payment rate for day care home sponsors. In addition, current regulations specify that administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

Section 334 of the HHFKA amended section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to eliminate the ''lesser of'' cost and budget comparisons for calculating administrative payments to day care home sponsoring organizations. Instead, effective October 1, 2010, administrative reimbursements are determined only by multiplying the number of day care homes under the oversight of each sponsoring organization by the appropriate annually adjusted administrative reimbursement rate(s). This rule proposes to modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on the formula specified in Section 17 of the NSLA.

Carryover of Family or Group Day Care Home Sponsoring Organization Administrative Payments

Section 334 of the HHFKA amended section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to permit day care home sponsors to carry over and obligate a maximum of 10 percent of administrative payments into the succeeding fiscal year. Under this proposal, the Department would require the State agency to ensure that sponsoring organizations of day care homes seeking to carryover administrative funds include, in their annual budget submission for State agency review and approval, estimates of the amount of administrative funds that will be carried over and a description of the proposed purpose(s) for which those funds will be used.

Miscellaneous Changes

This proposal would make a number of changes that complement the requirements of the NSLA as amended by the HHFKA. Chief amongst these changes is a proposed re-organization of § 226.6, *State agency administrative responsibilities.* The re-organization is expected to improve the clarity of the regulations and to provide more uniformity to application and renewal requirements. The proposal moves the existing initial application requirements and the proposed renewal requirements to new §§ 226.6a and 226.6b, respectively.

Costs and Benefits

While CACFP institutions and State agencies administering CACFP will be affected by this rulemaking, the economic effect will not be significant.

III. Background and Discussion of the Proposed Rule

The Department is proposing to amend the regulations for CACFP at 7 CFR part 226. These changes are intended to implement several of the provisions of the HHFKA affecting the management and administration of CACFP for State agencies, new and renewing institutions, sponsoring organizations, and sponsored facilities.

The Department is proposing to require institutions to submit an initial CACFP application to the State agency and, in subsequent years, periodically update the information in lieu of submitting a new application; require sponsoring organizations to vary the timing of reviews of sponsored facilities; require State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers; allow tier II day care homes to

collect household income information and transmit it to the sponsoring organization; modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on a formula; and, allow sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous fiscal year into the next fiscal year. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes. The proposed amendments are discussed in more detail below.

CACFP Initial Application Submission and Renewal Requirements

Current regulations require institutions to submit an initial application for CACFP participation then reapply to the Program on a schedule determined by the State agency, but not less than every one to three years. As a result, the State agency must periodically re-determine if an institution is eligible to participate in the CACFP based on a renewal application process. Most of the requirements for the initial application process are currently found at §§ 226.6(b)(1) and 226.6(f) and most of the requirements for the renewal application process are found at §§ 226.6(b)(2) and 226.6(f).

Section 331(b) of the HHFKA amends section 17(d) of the NSLA (42 U.S.C. 1766(d)) to require, in lieu of submitting a renewal application, that renewing institutions need only annually confirm that the institution is in compliance with the licensing requirements of subsection 17(a)(5) of the NSLA (42 U.S.C. 1766(a)(5)) and submit to the State agency any additional necessary information, as specified by the Department. State agencies were advised of these requirements in a memorandum issued April 8, 2011, *Child Nutrition Reauthorization 2010: Child and Adult Care Food Program Applications* (CACFP 19–2011).

This provision enables the Department to determine the new renewal process and the information that annually must be submitted to the State agency. Reflecting the intent of the HHFKA, this provision to eliminate the renewal application, this proposal would require participating institutions to annually certify that they still meet the CACFP requirements for continued participation and to provide an update of the information provided on the initial application, if the State agency has not already been notified of the changes. Thus, even though management plans would be annually certified, the plans must be updated as necessary to ensure they provide a current reflection of CACFP operations. The exception to this is the budget submission for sponsoring organizations, which must still be submitted annually rather than through the certification process. These changes are expected to reduce current application process burden, because renewing institutions will no longer need to submit documentation demonstrating they meet CACFP requirements, but simply provide certification that they are still in compliance instead.

This proposed rule outlines the complete list of information that institutions would need to certify as unchanged or indicate that it has already updated with the State agency. All institutions would be required to annually certify that they are not on the National disqualified list; they are not ineligible for other publicly funded programs; the institution's principals have not been convicted of a crime in the past seven years indicating a lack of business integrity; they are still compliant with performance standards; and, they are licensed or approved or, if a sponsoring organization, that all of their facilities are licensed or otherwise approved. Sponsoring organizations would continue to submit an annual budget and would also certify that: their management plan is up-to-date; their outside employment policy is current; and their training has been provided for all facilities. In addition this rule proposes to require renewing institutions to certify that they have no unreported less-than-arms-length transactions or other potential conflicts of interest have occurred in the past year and that any anticipated less-than-arms-length transactions or other potential conflicts of interest in the upcoming year have been disclosed to the State agency—both of which would be new requirements. If the institution cannot certify that all of this required information is unchanged or has already been updated, the institution would be required to submit any information necessary to notify the State agency of the change at that time.

As noted above, two changes to the application and renewal process are being added to this proposed rule in order to improve CACFP management. In accordance with the Food and Nutrition Service (FNS) Instruction 796–2 *Financial Management—Child and Adult Care Food Program,* sponsoring organizations must disclose less-than-arms-length transactions and potential conflicts of interest. Nevertheless, the Department has found that this existing requirement has not adequately addressed the continued problems associated with these types of transactions. The Department's monitoring activities continue to find a number of sponsoring organizations that have not properly disclosed less-than-arms-length transactions and potential conflicts of interest, and that have not received the required prior approval from their State agencies. As a result, in many cases, CACFP funds have been used improperly, resulting in large overclaims against sponsoring organizations.

To better address this issue, this rule proposes to specifically require the disclosure of anticipated less-than-arms-length transactions and potential conflicts of interest in both the initial application submitted by a new sponsoring organization and, for renewing sponsors, in the annual information submission process. Accordingly, §§ 226.2, new 226.6a and 226.6b would incorporate this addition.

The second addition would require that institutions provide State agencies with the full legal names and any other names previously used, for all principals in the initial application and whenever the institution adds new principals. This change would also require a sponsoring organization to provide the full legal names, and any other names previously used, for all day care home providers and by the principals of its sponsored centers. The proposal adds this change to the regulations in every instance where institutions were previously required to report the full names of their principals, and the principals of their sponsored facilities, to the State agency. Thus, the proposed language would require ''full legal names and any other names previously used'' where it currently requires ''full names.'' This will ensure better identification of any individuals who may be later placed on the National disqualified list. Accordingly, §§ 226.2, 226.6a and 226.6b would incorporate this addition.

Another provision necessitated by these changes to the application process is the addition of a serious deficiency dealing with institutions that fail to submit acceptable or complete renewal information. The amendments made to NSLA by the HHFKA significantly modifying the current renewal application process means that renewing institutions would continue to be considered ''participating institutions.'' Under § 226.6(c)(2) of this proposal, an institution's failure to

properly submit renewal information would be considered a serious deficiency and the State agency would be required to follow the normal serious deficiency process for participating institutions. The corrective action in this case would be for the institution to submit the proper or corrected renewal information to the State agency in accordance with established procedures. As is true under the current renewal application process, State agencies would continue to have discretion in declaring renewing institutions seriously deficient, based on the type and magnitude of the missing information and the institution's willingness to quickly submit any missing information.

While reviewing the current regulations relating to application requirements, it became evident that the application and reapplication requirements for institutions are found in various places throughout 7 CFR part 226. To clearly articulate the new renewal process and distinguish it from the initial application process, the Department undertook a re-organization of the application and renewal requirements throughout 7 CFR part 226. Because the Department has received complaints about the length of § 226.6, the section in which the current application and reapplication requirements are found, the proposal moves the existing initial application requirements and the proposed renewal requirements to new §§ 226.6a and 226.6b, respectively. New § 226.6a is proposed to be titled ''*State agency application requirements for new institutions''* and § 226.6b is proposed to be titled ''*State agency annual information submission requirements for renewing institutions.''* This means that though §§ 226.6a and 226.6b do not look identical to current §§ 226.6(b)(1) and (b)(2), respectively, no requirements have been changed except for those outlined in this preamble.

With this new re-organization, the proposal would move the application or renewal requirements from the other sections in which they are currently located (namely §§ 226.6(b), 226.6(f), 226.16(b) and 226.17a(e)) to the relevant new sections. All application requirements contained in these sections would be deleted and, where necessary, would instead contain only cross references to §§ 226.6a and 226.6b. To assist the reader, distribution and derivation tables are posted on *www.regs.gov* and accompany this proposed rule. The distribution table identifies each existing section and where it would appear in the proposed amendatory language. The derivation table identifies each proposed new section and where it appears in the existing regulations.

Two additional proposed changes are included to provide a more uniform application process for day care homes and other facilities. Proposed §§ 226.6a(c)(5) and § 226.6b(d)(3) would require the State agency to collect from each sponsoring organization a list of all applicant day care homes, child care centers, outside-school-hours-care centers, at-risk afterschool care centers, and adult day care centers. Previously, this requirement appeared only in § 226.17a, although it is standard operating practice. Proposed § 226.6a(c)(9) would include requirements for facility applications for new institutions, these requirements are not new requirements but are proposed to be codified so that all application requirements are available in one place. Currently, facility application requirements are found at § 226.16(b). Additionally, CACFP 01–2008, *Facility Applications and Agreements in the Child and Adult Care Food Program (CACFP),* published November 15, 2007 discusses CACFP application requirements. These two proposed changes seek to provide a more uniform application process.

Finally, this rule proposes a change outside of the CACFP application process. In the proposed re-organization of § 226.6, paragraph (f)(4) restates existing regulations found at § 226.6(f)(1)(viii) that require State agencies to obtain from the State agency that administers the NSLP, a list of ''elementary'' schools in the State in which at least one-half of the children enrolled are certified to receive free or reduced-price meals. The State agency must provide the list of ''elementary'' schools to sponsoring organizations of day care homes. However, section 121 of the HHFKA amended section 17(f)(3)(A)(ii)(I)(bb) of the NSLA, to remove the word ''elementary'' from the definition of tier I day care homes. Since the proposed re-organization at § 226.6(f)(4) includes this provision, the Department is proposing to remove the term ''elementary'' from the regulatory text. The Department intends to issue a final rule that will make this change permanent in the near future.

We encourage commenters to limit their comments to the new changes proposed in this rule and to the proposed re-organization of §§ 226.6, 226.6a, and 226.6b. We are interested in whether the re-organization improves the clarity of the regulations.

Varied Timing of Reviews Conducted by Sponsoring Organizations

Current regulations require sponsoring organizations to conduct three reviews per year per sponsored facility, two of which must be unannounced. One of the unannounced reviews must include observation of a meal service. No more than six months may elapse between reviews (7 CFR 226.16(d)(4)(iii)).

Unannounced reviews are an effective tool in ensuring CACFP integrity. An unannounced review gives sponsoring organizations the opportunity to document how the facility operates on any given day and to offer technical assistance. In addition, unannounced reviews offer a first-hand opportunity to detect and identify areas of mismanagement (such as inaccurate meal counts, problems with recordkeeping, and menu and enrollment discrepancies) and allow sponsoring organizations to initiate immediate corrective action, up to and including declaring a facility seriously deficient.

However, unannounced reviews that follow a consistent pattern are predictable and, therefore, undermine the intent of the CACFP's unannounced review requirements. Examples of consistent patterns are unannounced reviews that always occur during the third week of January, the third week of May, and the third week of September; reviews that never occur during the first week of the month when claims are being processed; meal service observations that always occur during the lunch meal service or never occur on weekends or evenings. Such patterns hinder the sponsoring organization's ability to uncover management deficiencies and CACFP abuse by enabling facilities to predict when the sponsor review will occur.

Section 331(b) of the HHFKA amended section 17(d)(2) of the NSLA (42 U.S.C. 1766(d)(2)) to require that sponsoring organizations vary the timing of unannounced reviews so they are unpredictable to sponsored facilities. The expectation is that unannounced reviews would be more effective in detecting CACFP integrity issues. State agencies were advised of this requirement in a memorandum issued April 7, 2011, *Child Nutrition Reauthorization 2010: Varied Timing of Unannounced Reviews in the Child and Adult Care Food Program* (CACFP 16–2011).

The Department appreciates that it may be difficult for a sponsoring organization to create separate review schedules for each facility. However, as

required by the HHFKA amendments, sponsoring organizations can and should vary the scheduling of reviews within each month and each year and frequently change the intervals between reviews (e.g., 90, 105, 120, 135 days between reviews of facilities). Similarly, sponsoring organizations should alternate reviews of the breakfast, lunch, and supper meal service in facilities being reviewed.

To effect these changes, the proposal would revise § 226.16, *Sponsoring organization provisions,* by expanding the requirements relating to the frequency and type of required facility reviews in paragraph (d)(4)(iii) of that section. The additions would require sponsoring organizations to ensure that the timing of unannounced reviews is varied in a way that would ensure they are unpredictable to the facility. The proposed language also makes it clear that always reviewing the same meal service would be considered predictable and would be inconsistent with the CACFP requirements.

In addition, § 226.6, *State agency administrative responsibilities,* would be amended at paragraph (m)(3) of that section to expand the scope of the State agency review of sponsoring organizations' monitoring of facilities. Under the proposal, State agencies would be required to assess whether the timing of the sponsoring organization's facility reviews are varied and unpredictable, as required by § 226.16(d)(4)(iii). This addition ensures that State agencies, as part of their reviews of sponsoring organizations, would evaluate the timing and pattern of the facility reviews conducted by the sponsor to ensure that they are not predictable, and are in compliance with this requirement. As is currently the case, a sponsor's failure to comply with all of the requirements of § 226.16(d) could lead to a determination of a serious deficiency.

Permanent Agreements Between Sponsoring Organizations and Sponsored Centers

Current regulations require State agencies to develop and provide for the use of permanent agreements between sponsoring organizations and day care homes, but do not require such agreements for sponsoring organizations of centers and their sponsored centers.

Section 331(c) of the HHFKA amended section 17(j)(1) of the NSLA (42 U.S.C. 1766(j)(1)) to require State agencies to develop and provide for the use of permanent operating agreements between sponsoring organizations of centers and their sponsored centers and day care homes. To effect these changes, § 226.2, *Definitions,* would be amended by adding a definition of sponsored center. The definition would distinguish between affiliated and unaffiliated centers. Differentiating between affiliated and unaffiliated centers is necessary because only unaffiliated centers would be required to have an agreement with their sponsoring organization.

Unlike affiliated sponsored day care centers, unaffiliated sponsored day care centers are legally distinct from their sponsoring organization. For this reason, an agreement between the sponsoring organization and unaffiliated sponsored centers is essential to a clear understanding of responsibilities for participation in the CACFP. Because affiliated centers are not legally distinct from their sponsoring organization, the Department deems a requirement for an agreement unnecessary for affiliated centers. However, sponsoring organizations may, at their discretion, require an agreement with their affiliated centers.

Section 226.6, *State agency administrative responsibilities,* is proposed to be amended to include the requirement for State agencies to develop and provide for the use of a standard agreement between sponsoring organizations and unaffiliated child care centers. It also allows State agencies to approve an agreement developed by the sponsoring organization.

Section 226.16, *Sponsoring organization provisions,* is proposed to be amended to include the requirement for sponsors of child care centers, adult day care centers, emergency shelters, at-risk afterschool care centers, or outside school hours care centers to enter into a permanent agreement with their unaffiliated sponsored centers. At a minimum, the agreement would embody the requirements and the rights and responsibilities of both parties as currently set forth in § 226.17, *Child care center provisions,* § 226.17a, *At-risk afterschool care center provisions,* § 226.19, *Outside-school-hours care center provisions* and § 226.19a, *Adult day care center provisions,* as applicable. Corresponding changes were also made to update and align the requirements and responsibilities set forth in §§ 226.17, 226.17a, 226.19, and 226.19a. These include: (a) Requiring centers to permit visits by sponsoring organizations or State agencies to the center to review meal service and records and inform sponsoring organizations about changes in licensing status; (b) requiring sponsored child care centers to promptly inform the sponsoring organization about any change in its licensing or approval status; (c) establishing the right of centers to receive in a timely manner reimbursement from the sponsoring organizations for meals served; (d) requiring child care centers to meet any State agency approved time limit for submission of meal records; and (e) requiring sponsored child care centers to distribute to parents a copy of the sponsoring organization's notice to parents if directed to do so by the sponsoring organization.

Transmission of Income Information by Sponsored Day Care Homes

Current regulations require sponsoring organizations, upon the request of a tier II day care home provider, to collect income eligibility applications from households (7 CFR § 226.18(b)(12)). To eliminate any concerns households may have about sharing their income information with their provider, the current regulations prohibit providers from collecting the applications directly from households.

Section 333 of the HHFKA amended section 17(f)(3)(A)(iii)(III) of the NSLA (42 U.S.C. 1766(f)(3)(A)(iii)(III)) to require sponsoring organizations to allow providers of tier II day care homes to assist in the transmission of household income information with the written consent of the parents or guardians of children in their care. State agencies were advised of this requirement in a memorandum issued April 7, 2011, *Child Nutrition Reauthorization 2010: Transmission of Household Income Information by Tier II Family Day Care Homes in the Child and Adult Care Food Program* (CACFP 17–2011).

To effect these changes, the Department proposes to amend § 226.18, *Day care home provisions,* by revising paragraph (b)(12) of that section to allow the tier II day care home to assist in collecting completed income eligibility applications from households and transmitting the applications to the sponsoring organization. As proposed, the addition would limit the provider's assistance to collecting applications and transmitting them to the sponsoring organization, and would prohibit tier II day care home providers from reviewing the completed applications.

In addition, § 226.23, *Free and reduced-price meals,* paragraph (e)(2) is proposed to be amended to specify the steps a tier II day care home must take when assisting in the collection and transmission of applications. Sponsoring organizations would be required to explain in the letter to the household, that the household can return the application to either the sponsoring organization or the day care

home provider. Under the proposal, the household would give written consent for the provider to collect and transmit the household's application to the sponsoring organization by signing the letter sent by the sponsoring organization and returning it, along with the application, to the tier II day care home. To ensure that tier II day care home providers would not be able to view the applications, the Department suggests that the sponsoring organization's letter to the household encourage households to place their applications in a sealed envelope prior to giving it to their provider.

Administrative Payment Rates to Sponsoring Organizations for Day Care Homes

Current regulations found at 7 CFR 226.12(a) require that administrative cost payments to a sponsoring organization of day care homes may not exceed the lesser of: (1) Actual expenditures for the costs of administering the CACFP less income to the CACFP, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's number of participating homes by the current administrative payment rate for day care home sponsors. In addition, current regulations specify that administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative payments and food service payments for day care home operations.

Section 334 of the HHFKA amended section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to eliminate the ''lesser of'' cost and budget comparisons for calculating administrative payments to day care home sponsoring organizations. Instead, effective October 1, 2010, administrative reimbursements are determined only by multiplying the number of day care homes under the oversight of each sponsoring organization by the appropriate annually adjusted administrative reimbursement rate(s). As a result of this change, the expenditures for cost, the amount of costs approved in the administrative budget, or the 30 percent restriction no longer apply.

State agencies were advised of this change in a memorandum issued December 22, 2010, *Child Nutrition Reauthorization 2010: Administrative Payments to Family Day Care Home Sponsoring Organizations* (CACFP 06–2011). While this new provision will help streamline administrative payments to day care home sponsoring organizations and reduce reporting requirements, State agencies and sponsoring organizations are reminded that sponsoring organizations must continue to submit annual budgets that must be approved by the State agency. Further, sponsoring organizations remain responsible for correctly accounting for costs and for maintaining records and sufficient supporting documentation to demonstrate that costs charged to the Program: have actually been incurred; are allowable and allocable to the Program; and comply with applicable Program regulations and policies. State agencies must continue to recover reimbursements received for unallowable costs.

To effect this provision, paragraph (a) of § 226.12, *Administrative payments to sponsoring organizations for day care homes,* would be proposed to be revised to reflect the new formula. The proposal would also make technical changes to the administrative payment rates formula to reflect annual adjustments. These changes are intended only to clarify the base administrative payment rates without making any substantive changes to the adjustment process. In accordance with NSLA, the base reimbursement rates, which were published in the **Federal Register** on January 26, 1982 at 47 FR 3539, are the sum of the products obtained by multiplying each month the sponsoring organization's: Initial 50 day care homes by 42 dollars; Next 150 day care homes by 32 dollars; Next 800 day care homes by 25 dollars; and Additional day care homes by 22 dollars. The administrative payment rates will continue to be adjusted annually to reflect changes in the series for all items of the Consumer Price Index for All Urban Consumers, published by the Department of Labor.

Carryover of Family or Group Day Care Home Sponsoring Organization Administrative Payments

Section 334 of the HHFKA amends section 17(f)(3) of the NSLA (42 U.S.C. 1766(f)(3)) to permit day care home sponsors to carry over a maximum of 10 percent of administrative payments into the succeeding fiscal year. In accordance with the HHFKA, the 10 percent maximum on the amount of administrative funds that may be carried over must be based on the administrative payments received by the day care home sponsoring organization for the fiscal year. Administrative funds remaining at the end of the fiscal year that exceed 10 percent of that fiscal year's administrative payments must be returned to the State agency. If any remaining carryover funds are not obligated or expended by the sponsoring organization in the succeeding fiscal year, the sponsor is required to return the remaining funds to the State agency.

State agencies were advised of this new authority in a memorandum issued April 8, 2011, *Child Nutrition Reauthorization 2010: Carry Over of Unused Child and Adult Care Food Program Administrative Payments* (CACFP 18–2011). In that memorandum, State agencies were reminded that day care home sponsoring organizations continue to remain responsible for annual budget submissions, budget amendments, correctly accounting for costs, and maintaining records and sufficient supporting documentation to demonstrate that costs charged to the CACFP have actually been incurred, are allowable and allocable, and comply with all applicable CACFP regulations and policies.

Under this proposal, § 226.6b(c) proposes to require the State agency to ensure that sponsoring organizations of day care homes seeking to carryover administrative funds include, in their annual budget submission for State agency review and approval, estimates of the amount of administrative funds that will be carried over and a description of the proposed purpose(s) for which those funds will be used. Because the final administrative claims will often not be known when the annual budget is submitted to the State agency, the sponsor should use its best estimate of the carryover amount when preparing the annual budget. Thus, when the budget is being prepared and submitted, the carryover estimate would be based on a comparison of the administrative payments the sponsoring organization expects to receive under the homes-times-rates formula with the amount of anticipated allowable administrative costs incurred in the current fiscal year.

Much of the current regulatory budget approval process remains the same. However, this proposed rule would provide that as soon as possible after fiscal year closeout, the sponsoring organization would be required to submit an amended budget to the State agency for review and approval. The amended budget would identify the amount of administrative funds actually carried over and a description of the purpose(s) for which those funds have been or will be used. The sponsoring organization would be required to maintain documentation of obligations and expenditures associated with approved administrative carryover funds for review by the State agency. Consistent with current regulations, it is

still necessary for sponsoring organizations to use accrual accounting for the final claim of each fiscal year so that the end-of-year reconciliation and close-out can be performed.

Under proposed amendments to § 226.7, *State agency responsibilities for financial management,* paragraphs (g) and (j) of that section, State agencies would require the annual budget submission to include an estimate of the requested administrative fund carryover amounts and a description of the proposed purpose(s) for which those funds would be obligated or expended.

In approving a sponsoring organization's carryover request, a State agency would be required to take into consideration whether the day care home sponsoring organization has a financial management system that meets all CACFP requirements and whether the State agency is satisfied that the system is capable of controlling the custody, documentation and disbursement of carryover funds. The State agency would require a sponsoring organization carrying over administrative funds to submit an amended budget for State agency review and approval as soon as possible after fiscal year close-out. The amended budget would identify the amount of administrative funds actually carried over and describe the purpose(s) for which the carryover funds have been or will be used.

In addition, this rule proposes to require each State agency to establish procedures to recover administrative funds from sponsoring organizations of day care homes which are in excess of the 10 percent maximum carryover amount at the end of each fiscal year. Additionally, each State agency would also be required to establish procedures to recover any carryover amount not expended or obligated by the end of the fiscal year following the fiscal year in which the administrative funds were earned. As a result, State agencies would include a review of the documentation supporting carryover requests, obligations and expenditures when conducting a review of a sponsoring organization's administrative costs as currently required under § 226.6(m)(3)(iii). In addition, in implementing this proposed provision, State agencies would maintain a system that monitors the sponsoring organization's documentation of nonprofit status, and ensures that CACFP administrative funds are used principally for the benefit of participants. The accumulation of excessive balances in the sponsor's nonprofit food service account remains inconsistent with CACFP requirements, as described in FNS Instruction 796–2, Rev. 3, Section VI.

Finally, State agencies and sponsoring organizations are reminded that day care home sponsoring organizations are not required to carry over administrative funds. Any unexpended funds remaining at the end of the fiscal year, which could be carried over into the succeeding fiscal year, may be returned to the State agency at the sponsoring organization's option. In addition, nothing in this provision in any way limits or changes the requirements that a State agency: determine that all institutions are financially viable; establish an overclaim if the sponsor has used CACFP administrative funds improperly; or declare an institution seriously deficient on the basis of its improper use of CACFP administrative funds.

IV. Procedural Matters

A. Executive Order 12866 and Executive Order 13563

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 rule has been determined to be not significant and was not reviewed by the Office Management and Budget (OMB) in conformance with Executive Order 12866.

B. Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). It has been certified that this rule will not have a significant impact on a substantial number of small entities. While CACFP institutions and State agencies administering CACFP will be affected by this rulemaking, the economic effect will not be significant. This rule is expected to reduce administrative burdens and provide additional flexibility.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose on State, local and Tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

D. Executive Order 12372

The Program addressed in this action is listed in the Catalog of Federal Domestic Assistance under No. 10.558. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V, and related Notice published at 48 FR 29115, June 24, 1983, this is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

E. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. USDA has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

F. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' Although the provisions of this rule are not expected

to conflict with any State or local law, regulations, or policies, the rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted.

G. Civil Rights Impact Analysis

This proposed rule has been reviewed in accordance with Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts this rule might have on children on the basis of age, race, color, national origin, sex, or disability. A careful review of the rule revealed that the rule's intent does not affect the participation of protected individuals in CACFP.

H. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320), requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a new collection. The new provisions in this rule, which decreases current burden hours, by 595 will be merged into CACFP, OMB Control Number #0584–0055, expiration date 8/31/2013. The current collection burden inventory for CACFP is 7,006,434. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by June 8, 2012. Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: Child and Adult Care Food Program: Amendments Related to the Healthy Hunger-Free Kids Act of 2010.

OMB Number: 0584–New.

Expiration Date: Not Yet Determined.

Type of Request: New Collection.

Abstract: This rule proposes to codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA) affecting the management of CACFP. The Department is proposing to: require institutions to submit an initial CACFP application to the State agency and, in subsequent years, periodically update the information in lieu of submitting a new application; require sponsoring organizations to vary the timing of reviews of sponsored facilities; require State agencies to develop and provide for the use of a standard permanent agreement between sponsoring organizations and day care centers; allow tier II day care homes to collect household income information and transmit it to the sponsoring organization; modify the method of determining administrative payments to sponsoring organizations of day care homes by basing payments on a formula; and allow sponsoring organizations of day care homes to carry over up to 10 percent of their administrative funding from the previous fiscal year into the next fiscal year. These changes were effective October 1, 2010. This rule also proposes to incorporate several changes to the application and renewal process which are expected to improve the management of CACFP and to make a number of miscellaneous technical changes.

The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Respondents for this Proposed Rule: (Business' for and not-for-profit) Institutions.

Estimated Number of Respondents for this Proposed Rule: 250.

Estimated Number of Responses per Respondent for this Proposed Rule: (1).

Estimated Total Annual Responses: 250.

Estimated Total Annual Burden on Respondents for this Proposed Rule: (595)*.

**This represents an overall decrease from the existing burden for institutions.*

ESTIMATED ANNUAL BURDEN FOR 0584—NEW, CHILD AND ADULT CARE FOOD PROGRAM 7 CFR 226

Reporting						
	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Each new institution must submit to the State agency with its application all information required for its approval. Renewing institutions must certify that they are capable of operating the Program.	7 CFR 226.15(b)	250	1	250	8	2000 *Approved in OMB# 0584–0055, remains unchanged*

ESTIMATED ANNUAL BURDEN FOR 0584—NEW, CHILD AND ADULT CARE FOOD PROGRAM 7 CFR 226—Continued

Reporting						
	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
		(119)	(1)	(119)	(5)	(595) ***decrease of 595 from existing burden as a result of eliminating burden associated with renewing institutions.)*
Total Reporting for Proposed Rule.	.....	(119)	1	(119)	(5)	(595)
Total Existing Reporting Burden for 0584–0055, Part 226.	.....	.....	.....	.....	.....	6,274,964
Total Reporting Burden Decrease with Proposed Rule.	.....	.....	.....	.....	.....	−595
Total Reporting Burden for 0584–0055, Part 226 with Proposed Rule.	.....	.....	.....	.....	.....	6,274,369

Prior to the issuance of this Rule entitled ''Child and Adult Care Food Program: Amendments Related to the Healthy Hunger-Free Kids Act of 2010,'' 7 CFR 226.15(b) required that, all institutions submit to the State agency with its application all information required for its approval as set forth in 226.6(b) and 226.6(f). This rule eliminates the requirement for renewing institutions to submit an annual application for renewal; however, these institutions must demonstrate that they are capable of operating the Program in accordance with this part as set forth in § 226.6b(b).

Therefore, the burden associated with the renewing institutions to submit an annual application has been removed as a result of this Rule. A program adjustment will be made to the 7 CFR Part 226 Child and Adult Care Food Program information collection package (OMB control number 0584–0055) prior to its renewal date of August 31, 2013.

RECORDKEEPING

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Sponsoring organizations maintain agreements with unaffiliated sponsored centers.	7 CFR 226.16(h)(1).	200	1	200	*0	*0
Total Recordkeeping for Proposed Rule.	.....	200	1	200	*0	*0
Total Existing Recordkeeping Burden for 0584–0055, Part 226.	.....	.....	.....	.....	.....	731,470
Total Recordkeeping Burden for 0584–0055, Part 226 with Proposed Rule.	.....	.....	.....	.....	.....	731,470

* *The amount of additional burden is negligible.*

7 CFR 226.6, 226.15 and 226.16 require that, in order to participate in CACFP, State agencies and institutions must maintain records to demonstrate compliance with Program requirements. The regulations further require that State agencies and institutions maintain records for a period of three years.

SUMMARY OF BURDEN (OMB #0584–NEW)

Total number of respondents	250
Average number of responses per respondent	(1)
Total annual responses	250

SUMMARY OF BURDEN (OMB #0584–NEW)—Continued

Average hours per response	8
Total burden hours for part 226 with proposed rule	7,005,839
Current OMB inventory for part 226	7,006,434
Difference (new burden decrease requested with proposed rule)	*(595)

* *Burden is decreased from existing burden (595) due to the elimination of burden associated with renewing institutions.*

I. E-Government Act Compliance

The Department is committed to complying with the E-Government Act 2002 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.

J. Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications,

including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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.

In the spring of 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the HHFKA on tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

1. HHFKA Consultation Webinar & Conference Call—April 12, 2011
2. HHFKA Consultation In-Person—Rapid City, SD—March 23, 2011
3. HHFKA Consultation Webinar & Conference Call—June, 22, 2011
4. Tribal Self-Governance Annual Conference In-Person Consultation in Palm Springs, CA—May 2, 2011
5. National Congress of American Indians Mid-Year Conference In-Person Consultation, Milwaukee, WI—June 14, 2011

The five consultation sessions in total provided the opportunity to address Tribal concerns related to school meals. There were no comments about this regulation during any of the aforementioned Tribal Consultation sessions. Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of FY2012 as a venue for collaborative conversations with Tribal officials or their designees.

List of Subjects in 7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 226 is proposed to be amended as follows:

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for 7 CFR Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.2,

a. Revise definitions of ''*For-profit center*'', ''*New institution*'', ''*Renewing institution*'', and ''*State agency list*''; and

b. Add new definitions ''*Less-than-arms-length transaction*'', ''*Participating institution*'', and ''*Sponsored center*''.

The additions and revisions read as follows:

§ 226.2 Definitions.

* * * * *

For-profit center means a child care center, outside-school-hours care center, or adult day care center providing nonresidential care to adults or children that does not qualify for tax-exempt status under the Internal Revenue Code of 1986. For-profit centers serving adults must meet the criteria described in paragraph (a) of this definition. For-profit centers serving children must meet the criteria described in paragraphs (b)(1) or (b)(2) of this definition, except that children who only participate in the at-risk afterschool snack and/or meal component of the Program must not be considered in determining the percentages under paragraphs (b)(1) or (b)(2) of this definition.

(a) A for-profit center serving adults must meet the definition of *Adult day care center* as defined in this section and, during the calendar month preceding initial application and during any month that it claims reimbursement, the center receives compensation from amounts granted to the States under title XIX or title XX and twenty-five percent of the adults enrolled in care are beneficiaries of title XIX, title XX, or a combination of titles XIX and XX of the Social Security Act.

(b) A for-profit center serving children must meet the definition of *Child care center* or *Outside-school-hours care center* as defined in this section and one of the following conditions during the calendar month preceding initial application and during any month that it claims reimbursement:

(1) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) are eligible for free or reduced-price meals; or

(2) Twenty-five percent of the children in care (enrolled or licensed capacity, whichever is less) receive benefits from title XX of the Social Security Act and the center receives compensation from amounts granted to the States under title XX.

* * * * *

Less-than-arms-length transaction means a transaction under which one party to the transaction is able to control or substantially influence the actions of the other(s), as defined in FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program'').

* * * * *

New institution means an institution making an initial application to participate in the Program or an institution applying to participate in the Program after a lapse in participation.

* * * * *

Participating institution means an institution that holds a current Program agreement with the State agency to operate the Program. This includes renewing institutions.

* * * * *

Renewing institution means an institution that is participating in the Program at the time it submits renewal information.

* * * * *

Sponsored center means a child care center, at-risk afterschool care center, adult day care center, emergency shelter, or outside-school-hours care center that operates the Program under the auspices of a sponsoring organization. The two types of sponsored centers are as follows:

(a) An affiliated center is a part of the same legal entity as CACFP sponsoring organization; or

(b) An unaffiliated center is legally distinct from the sponsoring organization.

* * * * *

State agency list means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes a synopsis of information concerning seriously deficient institutions and providers terminated for cause in that State. The list must be made available to FNS upon request, and must include the following information:

(a) Institutions determined to be seriously deficient by the State agency, including the names and mailing addresses of the institutions, the basis for each serious deficiency determination, and the status of the institutions as they move through the possible subsequent stages of corrective action, proposed termination, suspension, agreement termination, and/or disqualification, as applicable;

(b) Responsible principals and responsible individuals who have been disqualified from participation by the State agency, including their full legal names and any other names previously used, mailing addresses, and dates of birth; and

(c) Day care home providers whose agreements have been terminated for cause by a sponsoring organization in

the State, including their full legal names and any other names previously used, mailing addresses, and dates of birth.

* * * * *

§ 226.4 [Amended]

3. In § 226.4, amend paragraph (f) by revising the citation ''§ 226.12(a)(3)'' to read ''§ 226.12(a)''.

4. In § 226.6:

a. Remove paragraph (b) introductory text and revise paragraphs (b)(1) through (3) and (b)(4)(i);

b1. Amend paragraph (b)(4)(ii) introductory text by removing the words '',except that:'' and adding a period in their place; and by adding a third sentence.

b2. Remove paragraphs (b)(4)(ii)(A) through (C);

c. Amend paragraph (c)(1)(i) by removing the words ''paragraph (b) of this section and in §§ 226.15(b) and 226.16(b)'' in the first sentence and adding the citation ''§ 226.6a'' in its place;

d. Amend paragraph (c)(1)(ii) introductory text by revising the first sentence;

e. Amend paragraph (c)(1)(iii)(A)(*8*) by adding the words ''full legal names and any other names previously used and'' both after the phrase ''possess the'' and after the word ''person's'';

f. Amend paragraph (c)(1)(iii)(B)(*1*)(*i*) by removing the word ''defer'' and adding the word ''deferred'' in its place;

g. Amend paragraphs (c)(1)(iii)(C) introductory text and (c)(1)(iii)(C)(*1*) by removing the words ''the institution's'' each time they appear and adding the words ''the new institution's'' in their place ;

h. Amend paragraph (c)(1)(iii)(E) in the last sentence by adding the words ''full legal names and any other names previously used,'' before the word ''mailing''.

i. Revise paragraph (c)(2);

j. Revise paragraphs (c)(3)(ii) introductory text and (c)(3)(ii)(A);

k. Redesignate paragraphs (c)(3)(ii)(B) through (c)(3)(ii)(U) as paragraphs (c)(3)(ii)(C) through (c)(3)(ii)(V) and add new paragraph (c)(3)(ii)(B);

l. Amend newly redesignated paragraph (c)(3)(ii)(D) by removing the words ''paragraphs (b)(1)(xviii) and (b)(2)(vii) of this section'' and adding the citation ''§ 226.6a(b)(6)'' in its place;

m. Amend newly redesignated paragraph (c)(3)(ii)(U) by removing the period at the end of the first sentence and adding '', as defined in paragraph (c)(1)(ii)(A) of this section; or'' in its place; and by removing the second sentence;

n. Amend paragraph (c)(3)(iii)(A)(*7*) by adding the words ''full legal names and any other names previously used and the'' before the word ''date'' each time it appears in the paragraph;

o. Revise paragraph (c)(3)(iii)(B);

p. Amend paragraph (c)(3)(iii)(C)(*4*) by removing the words ''application denial'' and adding the words ''proposed termination'' in its place;

q. Amend paragraph (c)(3)(iii)(D) introductory text by removing the phrase ''institution must renew its application, or its'' and adding the word ''institution's'' in its place;

r. Revise paragraph (c)(3)(iii)(D)(*2*);

s. Amend paragraph (c)(3)(iii)(D)(*3*) by removing the semicolon at the end of the sentence and adding a period in its place;

t. Amend paragraph (c)(3)(iii)(E)(*3*) by adding the words ''full legal names and any other names previously used,'' before the word ''mailing'';

u. Amend paragraph (c)(5)(i)(C)(*3*) by adding the words ''full legal names and any other names previously used,'' before the word ''mailing'';

v. Amend the second sentence of paragraph (c)(7)(ii) by removing the phrase ''paragraphs (b)(1)(xii) and (b)(2)(ii) of this section'' and adding the citation ''§ 226.6a(b)(2)'' in its place; removing the word ''must'' the first time it appears; and removing the words ''or renewing'' between the words ''new'' and ''institution'';

w. Revise the second sentence of paragraph (c)(7)(iii);

x. Amend the first sentence of paragraph (c)(7)(iv)(A) by removing the phrase ''paragraphs (b)(1)(xii) and (b)(2)(ii) of this section'' and adding the citation ''§ 226.6a(b)(2)''in its place; by removing the word ''must'' the first time it appears; by removing the words ''or renewing'' between the words ''new'' and ''institution''; and by removing the citation ''(c)(3)(ii)(B)'' and adding the citation ''(c)(3)(ii)(C)'' in its place;

y. Amend paragraph (c)(7)(iv)(B) by removing the phrase ''§ 226.16(b) and paragraphs (b)(1)(xii) and (b)(2)(ii) of this section'' and adding the citation ''§ 226.6a(b)(2)'' in its place;

z. Amend paragraph (c)(7)(C) by removing the phrase ''§ 226.16(b) and paragraphs (b)(1)(xii) and (b)(2)(ii) of this section'' and adding the citation ''§ 226.6a(b)(2)'' in its place;

aa. Amend paragraph (c)(8)(i)(B) by removing the word ''names'' and adding the words ''full legal names and any other names previously used'' in its place;

bb. Amend paragraph (c)(8)(i)(C) by removing the word ''names'' and adding the words ''full legal names and any other names previously used'' in its place;

cc. Amend paragraph (c)(8)(ii) by removing the word ''name'' and adding the words ''full legal names and any other names previously used'' in its place;

dd. Revise paragraph (f);

ee. Revise paragraph (k)(2)(i);

ff. Amend paragraph (k)(2)(iii) by removing the citation ''(c)(2)(iii)(C),'' and removing the words ''renewing institutions,'';

gg. Amend paragraph (k)(2)(iv) by removing the citation ''(c)(2)(iii)(C),'' and '', renewing,'';

hh. Amend paragraph (k)(3)(ii) by removing the citation ''(c)(2)(iii)(A),''; removing '', renewing,''; and removing the word ''participating'' the last time it appears;

ii. Amend paragraph (k)(3)(iv) by removing the citation ''(c)(2)(iii)(E),'' and removing '', renewing,'';

jj. Revise paragraph (k)(9);

kk. Amend paragraph (k)(10)(iii) by removing the words ''denial of a renewing institution's application,'' and removing the citation ''(c)(2)(iii)(D),'';

ll. Amend paragraph (m)(3), by redesignating paragraphs (m)(3)(vii) through (xii) as paragraphs (viii) through (xiii), respectively;

mm. Add new paragraph (m)(3)(vii);

nn. Amend newly redesignated paragraph (m)(3)(ix) by removing the semicolon and adding at the end, the words '', including whether the timing of its facility reviews was varied and unpredictable, as required by § 226.16(d)(4)(iii);''; and

oo. Revise paragraph (p).

The revisions and additions read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) *Program applications and agreements.* (1) *Application requirements for new institutions.* Each State agency must establish application review procedures, as described in § 226.6a, to determine the eligibility of new institutions and facilities for which applications are submitted by sponsoring organizations. The State agency must enter into written agreements with institutions in accordance with paragraph (b)(4) of this section.

(2) *Information submission requirements for renewing institutions.* Each State agency must establish renewal information review procedures, as described in § 226.6b, to determine the continued eligibility of renewing institutions.

(3) *State agency notification requirements.* (i) Any new institution applying for participation in the

Program must be notified in writing of approval or disapproval by the State agency, within 30 calendar days of the State agency's receipt of a complete application. Whenever possible, State agencies should provide assistance to institutions that have submitted an incomplete application. Any disapproved applicant institution or day care home must be notified of the reasons for its disapproval and its right to appeal under paragraph (k) or (l), respectively, of this section.

(ii) Any renewing institution must be provided written notification indicating whether it has completely and sufficiently met all renewal information requirements within 30 days of the submission of renewal information.

(4) * * *

(i) The State agency must require each institution that has been approved for participation in the Program to enter into an agreement governing the rights and responsibilities of each party. The State agency may allow a renewing institution to amend its existing Program agreement in lieu of executing a new agreement. The existence of a valid agreement, however, does not eliminate the need for a renewing institution to comply with the information submission requirements and related provisions of § 226.6b.

(ii) * * * The State agency and an institution that is a school food authority must enter into a single permanent agreement for all child nutrition programs administered by the school food authority and the State agency.

* * * * *

(c) * * *

(1) * * *

(ii) * * * The list of serious deficiencies is not identical for each category of institution (new or participating) because the type of information likely to be available to the State agency is different for new and participating institutions.* * *

* * * * *

(2) *Insufficient renewal information submissions.* If an institution submits renewal information that is incomplete, deficient, unapprovable or contains false information, this is considered a serious deficiency, and the State agency should follow the procedures for serious deficiencies committed by participating institutions outlined in paragraph (c)(3)(iii) of this section.

(3) * * *

(ii) *List of serious deficiencies for participating institutions.* The list of serious deficiencies is not identical for each category of institution (new or participating) because the type of information likely to be available to the State agency is different for new and participating institutions. Serious deficiencies for participating institutions are:

(A) Submission of false information on the institution's application or in its annual renewal submission, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity, as defined in paragraph (c)(1)(ii)(A) of this section.

(B) Failure to provide complete, adequate, or approvable information as part of the information submission process for renewing institutions;

* * * * *

(iii) * * *

(B) *Successful corrective action.* (*1*) If corrective action has been taken to fully and permanently correct the serious deficiency(ies) within the allotted time and to the State agency's satisfaction, the State agency must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the State agency has temporarily deferred its serious deficiency determination.

(*2*) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must:

(*i*) Continue with the actions (as set forth in paragraph (c)(3)(iii)(C) of this section) against the remaining parties; and

(*ii*) At the same time the notice is issued, the State agency must also update the State agency list to indicate that the serious deficiency(ies) has(ve) been corrected and provide a copy of the notice to the appropriate FNSRO.

(*3*) If the State agency initially determines that the institution's corrective action is complete, but later determines that the serious deficiency(ies) has recurred, the State agency must move immediately to issue a notice of intent to terminate and disqualify the institution, in accordance with paragraph (c)(2)(iii)(C) of this section.

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(D) * * *

(*2*) During this period, the State agency must base administrative payments on the formula set forth in § 226.12(a); and

* * * * *

(7) * * *

(iii) * * * As noted in § 226.6a(b)(2), a State agency is prohibited from approving an application submitted by a sponsoring organization on behalf of a sponsored facility, and either the facility or any of its principals is on the National disqualified list.

* * * * *

(f) *Miscellaneous responsibilities.* State agencies must require institutions to comply with the applicable provisions of this part and must provide or collect the information specified in this paragraph. Each State agency must:

(1) Annually inform institutions that are pricing programs of their responsibility to ensure that free and reduced-price meals are served to participants unable to pay the full price;

(2) Annually provide to all institutions a copy of the income standards to be used by institutions for determining the eligibility of participants for free and reduced-price meals under the Program;

(3) Annually require each institution to issue a media release, unless the State agency has issued a Statewide media release on behalf of all its institutions;

(4) Comply with the following requirements for tiering of day care homes:

(i) Coordinate with the State agency that administers the National School Lunch Program (the NSLP State agency) to ensure the receipt of a list of schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list of schools to sponsoring organizations of day care homes by February 15th each year unless the NSLP State agency has elected to base data for the list on a month other than October. In that case, the State agency must provide the list to sponsoring organizations of day care homes within 15 calendar days of its receipt from the NSLP State agency.

(ii) For tiering determinations of day care homes that are based on school or census data, the State agency must ensure that sponsoring organizations of day care homes use the most recent available data, as described in § 226.15(f).

(iii) For tiering determinations of day care homes that are based on the provider's household income, the State agency must ensure that sponsoring organizations annually determine the eligibility of each day care home, as described in § 226.15(f).

(iv) The State agency must provide all sponsoring organizations of day care homes in the State with a listing of State-funded programs, participation in which by a parent or child will qualify a meal served to a child in a tier II home for the tier I rate of reimbursement.

(v) The State agency must require each sponsoring organization of day care homes to submit to the State agency a list of day care home providers receiving tier I benefits on the basis of their participation in the SNAP. Within 30 days of receiving this list, the State agency will provide this list to the State agency responsible for the administration of the SNAP.

(vi) As described in § 226.15(f), tiering determinations are valid for five years if based on school data. The State agency must ensure that the most recent available data are used if the determination of a day care home's eligibility as a tier I day care home is made using school data. The State agency must not routinely require annual redeterminations of the tiering status of tier I day care homes based on updated school data. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that a day care home is no longer in a qualified area.

(5) Comply with the following requirements for determining the eligibility of at-risk afterschool care centers:

(i) Coordinate with the NSLP State agency to ensure the receipt of a list of elementary, middle, and high schools in the State in which at least one-half of the children enrolled are certified eligible to receive free or reduced-price meals. The State agency must provide the list of elementary, middle, and high schools to independent at-risk afterschool care centers and sponsoring organizations of at-risk afterschool care centers upon request. The list must represent data from the preceding October, unless the NSLP State agency has elected to base data for the list on a month other than October. If the NSLP State agency chooses a month other than October, it must do so for the entire State.

(ii) The State agency must determine the area eligibility for each independent at-risk afterschool care center and each sponsored at-risk afterschool center based on the documentation submitted by the sponsoring organization in accordance with § 226.15(g). The State agency must use the most recent data available, as described in paragraph (f)(5)(i) of this section. The State agency must use attendance area information that it has obtained, or verified with the appropriate school officials to be current, within the last school year. Area eligibility determinations are valid for five years for at-risk afterschool care centers that are already participating in the Program. The State agency may determine the date in the fifth year when the next five-year cycle of area eligibility will begin. The State agency must not routinely require annual redeterminations of area eligibility based on updated school data during the five-year period. However, a sponsoring organization, the State agency, or FNS may change the determination if information becomes available indicating that an at-risk afterschool care center is no longer area eligible.

(iii) The State agency must determine whether the afterschool care programs of at-risk afterschool care centers meet the at-risk eligibility requirements of § 226.17a(b) before the centers begin participating in the Program.

(iv) The State agency must determine whether institutions already participating as at-risk afterschool care centers continue to meet the eligibility requirements, described in § 226.17a(b).

(6) Upon receipt of census data from FNS (on a decennial basis), the State agency must provide each sponsoring organization of day care homes with census data showing areas in the State in which at least 50 percent of the children are from households meeting the income standards for free or reduced-price meals.

(7) At intervals and in a manner specified by the State agency, but not more frequently than annually, the State agency may:

(i) Require independent centers to submit a budget with sufficiently detailed information and documentation to enable the State agency to make an assessment of the independent center's qualifications to manage Program funds. Such budget must demonstrate that the independent center will expend and account for funds in accordance with regulatory requirements, FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program''), and parts 3015, 3016, and 3019 of this title and applicable Office of Management and Budget circulars;

(ii) Request institutions to report their commodity preference;

(iii) Require a private nonprofit institution to submit evidence of tax exempt status in accordance with § 226.15(a);

(iv) Require for-profit institutions to submit documentation on behalf of their centers of:

(A) Eligibility of at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) for free or reduced-price meals; or

(B) Compensation received under title XX of the Social Security Act of nonresidential day care services and certification that at least 25 percent of children in care (enrolled or licensed capacity, whichever is less) were title XX beneficiaries during the most recent calendar month.

(v) Require for-profit adult care centers to submit documentation that they are currently providing nonresidential day care services for which they receive compensation under title XIX or title XX of the Social Security Act, and certification that not less than 25 percent of enrolled participants in each such center during the most recent calendar month were title XIX or title XX beneficiaries;

(vi) Request each institution to indicate its choice to receive all, part or none of advance payments, if the State agency chooses to make advance payments available; and

(vii) Perform verification in accordance with § 226.23(h) and paragraph (m)(4) of this section. State agencies verifying the information on free and reduced-price applications must ensure that verification activities are conducted without regard to the participant's race, color, national origin, sex, age, or disability.

* * * * *

(k) * * *

(2) * * *

(i) *Application denial.* Denial of a new institution's application for participation (see § 226.6a, for State agency review of an institution's application, and paragraph (c)(1) of this section, for State agency denial of a new institution's application);

* * * * *

(9) *Abbreviated administrative review.* The State agency must limit the administrative review to a review of written submissions concerning the accuracy of the State agency's determination if the application was denied or the State agency proposes to terminate the institution's agreement because:

(i) The information submitted on the application was false (refer to paragraphs (c)(1)(ii)(A) and (c)(3)(ii)(A) of this section);

(ii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National disqualified list (refer to § 226.6a(b)(2));

(iii) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program (refer to paragraph (c)(3)(ii)(T) of this section and § 226.6a(b)(3)); or

(iv) The institution, one of its sponsored facilities, or one of the

principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity (refer to paragraph (c)(3)(ii)(U) of this section and § 226.6a(b)(4)).

* * * * *

(m) * * *

(3) * * *

(vii) Compliance with the requirements for submitting and ensuring the accuracy of the annual renewal information;

* * * * *

(p) *Sponsoring organization agreement.* (1) Each State agency shall develop and provide for the use of a standard form of written permanent agreement between each sponsoring organization and the day care homes or unaffiliated child care centers participating in the Program under such organization. The agreement shall specify the rights and responsibilities of both parties. The State agency may, at the request of the sponsor, approve an agreement developed by the sponsor. Nothing in this paragraph shall be construed to limit the ability of the sponsoring organization to suspend or terminate the permanent agreement in accordance with § 226.16(l).

(2) The State agency must also include in this agreement its policy to restrict transfers of day care homes between sponsoring organizations. The policy must restrict the transfers to no more frequently than once per year, except under extenuating circumstances, such as termination of the sponsoring organization's agreement or other circumstances defined by the State agency.

* * * * *

5. Add §§ 226.6a and 226.6b to read as follows:

§ 226.6a State agency application requirements for new institutions.

(a) *Application procedures for new institutions.* Each State agency must establish application procedures to determine the eligibility of new institutions under this part. For new private nonprofit and for-profit child care institutions, such procedures must also include a pre-approval visit by the State agency to confirm the information in the institution's application and to further assess the institution's ability to manage the Program. In addition, the State agency's application review procedures must ensure that the institution complies with the provisions in this section.

(b) *Institution application requirements.* The State agency's application review procedures must ensure that the following information is included in a new institution's application:

(1) *Budget.* The State agency must review and approve each institution's budget. The budget must demonstrate the institution's ability to manage Program funds in accordance with § 226.7, FNS Instruction 796–2, (''Financial Management—Child and Adult Care Food Program''), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. If the institution does not intend to use non-CACFP funds to support any required CACFP functions, the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs. If the institution intends to use any non-Program resources to meet CACFP requirements, these non-Program funds should be accounted for in the institution's budget, and the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs. Other information that must be in the budget includes:

(i) For sponsors, projected CACFP administrative earnings and expenses.

(ii) For sponsoring organizations of centers, all administrative costs, whether incurred by the sponsoring organization or its sponsored centers. If at any point a sponsoring organization determines that the meal reimbursements estimated to be earned during the budget year will be lower than that estimated in its administrative budget, the sponsoring organization must amend its administrative budget to stay within 15 percent of meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver in accordance with § 226.7(g)(1). Failure to do so will result in appropriate fiscal action in accordance with § 226.14(a).

(2) *Presence on the National disqualified list.* If an institution or one of its principals is on the National disqualified list and submits an application, the State agency may not approve the application. If a sponsoring organization submits an application on behalf of a facility, and either the facility or any of its principals is on the National disqualified list, the State agency may not approve the application. In accordance with § 226.6(k)(3)(vii), in this circumstance, the State agency's refusal to consider the application is not subject to administrative review.

(3) *Ineligibility for other publicly funded programs.* (i) *General.* A State agency is prohibited from approving an institution's application if, during the past seven years, the institution or any of its principals have been declared ineligible for any other publicly funded program by reason of violating that program's requirements. However, this prohibition does not apply if the institution or the principal has been fully reinstated in, or determined eligible for, that program, including the payment of any debts owed.

(ii) State agencies must collect from institutions:

(A) A statement listing the publicly funded programs in which the institution and its principals have participated in the past seven years; and

(B) A certification that, during the past seven years, neither the institution nor any of its principals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(C) In lieu of the certification, documentation that the institution or the principal previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed.

(iii) *Follow-up.* If the State agency has reason to believe that the institution or its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible.

(4) *Information on criminal convictions.* (i) A State agency is prohibited from approving an institution's application if any of the institution's principals have been convicted of any activity during the past seven years that indicated a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A); and

(ii) State agencies must collect from institutions a certification that neither the institution nor any of its principals have been convicted of any activity during the past seven years that indicated a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A);

(5) *Certification of truth of applications and submission of names and addresses.* State agencies must collect from institutions a certification that all information on the application is true and correct, along with the full legal names and any other names previously used, mailing address, and date of birth of the institution's executive director and chairman of the board of directors or, in the case of a for-profit center that does not have an

executive director or is not required to have a board of directors, the owner of the for-profit center;

(6) *Compliance with performance standards.* State agencies must collect from each new institution, information sufficient to document that it is financially viable, is administratively capable of operating the Program in accordance with this part, and has internal controls in effect to ensure accountability. To document this, any new institution must demonstrate in its application that it is capable of operating in conformance with the following performance standards. The State agency must only approve the applications of those new institutions that meet these performance standards, and must deny the applications of those new institutions that do not meet the standards. In ensuring compliance with these performance standards, the State agency should use its discretion in determining whether the institution's application, in conjunction with its past performance in CACFP, establishes to the State agency's satisfaction that the institution meets the following performance standards.

(i) *Performance Standard 1—Financial viability and financial management.* The new institution must be financially viable. Program funds must be expended and accounted for in accordance with the requirements of this part, FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program''), and parts 3015, 3016, and 3019 of this title. To demonstrate financial viability, the new institution must document that it meets the following criteria:

(A) *Description of need and recruitment.* A new sponsoring organization must demonstrate in its management plan that its participation will help ensure the delivery of Program benefits to otherwise unserved facilities or participants, in accordance with criteria developed by the State agency pursuant to paragraph (c)(6) of this section. A new sponsoring organization must demonstrate that it will use appropriate practices for recruiting facilities, consistent with § 226.6(p) and any State agency requirements;

(B) *Fiscal resources and financial history.* A new institution must demonstrate that it has adequate financial resources to operate CACFP on a daily basis, has adequate sources of funds to continue to pay employees and suppliers during periods of temporary interruptions in Program payments and/or to pay debts when fiscal claims have been assessed against the institution, and can document financial viability (for example, through audits, financial statements, etc.); and

(C) *Budgets.* Costs in the institution's budget must be necessary, reasonable, allowable, and appropriately documented;

(ii) *Performance Standard 2—Administrative capability.* The new institution must be administratively capable. Appropriate and effective management practices must be in effect to ensure that the Program operates in accordance with this part. To demonstrate administrative capability, the new institution must document that it meets the following criteria:

(A) Has an adequate number and type of qualified staff to ensure the operation of the Program in accordance with this part;

(B) If a sponsoring organization, documents in its management plan that it employs staff sufficient to meet the ratio of monitors to facilities, taking into account the factors that the State agency will consider in determining a sponsoring organization's staffing needs, as set forth in (c)(1) of this section; and

(C) If a sponsoring organization has Program policies and procedures in writing that assign Program responsibilities and duties, and ensure compliance with civil rights requirements; and

(iii) *Performance Standard 3—Program accountability.* The new institution must have internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the Program will operate in accordance with the requirements of this part. To demonstrate Program accountability, the new institution must document that it meets the following criteria:

(A) *Governing board of directors.* Has adequate oversight of the Program by an independent governing board of directors as defined at § 226.2;

(B) *Fiscal accountability.* Has a financial system with management controls specified in writing. For new sponsoring organizations, these written operational policies must assure:

(*1*) Fiscal integrity and accountability for all funds and property received, held, and disbursed;

(*2*) The integrity and accountability of all expenses incurred;

(*3*) That claims will be processed accurately, and in a timely manner;

(*4*) That funds and property are properly safeguarded and used, and expenses incurred, for authorized Program purposes; and

(*5*) That a system of safeguards and controls is in place to prevent and detect improper financial activities by employees;

(C) *Recordkeeping.* Maintains appropriate records to document compliance with Program requirements, including budgets, accounting records, approved budget amendments, and, if a sponsoring organization, management plans and appropriate records on facility operations;

(D) *Sponsoring organization operations.* If a new sponsoring organization, documents in its management plan that it will:

(*1*) Provide adequate and regular training of sponsoring organization staff and sponsored facilities in accordance with §§ 226.15(e)(12) and (e)(14) and 226.16(d)(2) and (d)(3);

(*2*) Perform monitoring in accordance with § 226.16(d)(4), to ensure that sponsored facilities accountably and appropriately operate the Program;

(*3*) If a sponsor of day care homes, accurately classify day care homes as tier I or tier II in accordance with § 226.15(f); and

(*4*) Have a system in place to ensure that administrative costs funded from Program reimbursements do not exceed regulatory limits set forth in §§ 226.6a(b)(1) and 226.12(a).

(E) *Meal service and other operational requirements.* Independent centers and facilities will follow practices that result in the operation of the Program in accordance with the meal service, recordkeeping, and other operational requirements of this part. These practices must be documented in the independent center's application or in the sponsoring organization's management plan and must demonstrate that independent centers or sponsored facilities will:

(*1*) Provide meals that meet the meal patterns set forth in § 226.20;

(*2*) Comply with licensing or approval requirements set forth in § 226.6(d);

(*3*) Have a food service that complies with applicable State and local health and sanitation requirements;

(*4*) Comply with civil rights requirements;

(*5*) Maintain complete and appropriate records on file; and

(*6*) Claim reimbursement only for eligible meals.

(7) *Nondiscrimination statement.* Institutions must submit their nondiscrimination policy statement and a media release, unless the State agency has issued a Statewide media release on behalf of all institutions;

(8) *Documentation of tax-exempt status.* All private nonprofit institutions must document their tax-exempt status; and

(9) *Preference for commodities or cash-in-lieu of commodities.* Institutions must state their preference to receive

commodities or cash-in-lieu of commodities.

(c) *Sponsoring organization application requirements.* In addition to the application requirements contained in paragraph (b) of this section, the State agency's application review procedures must ensure that the following information is included in a new sponsoring organization's application:

(1) *Management plan.* The State agency must establish factors, consistent with this section, that it will consider in determining whether a new sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. State agencies must collect from sponsoring organizations a complete management plan that includes:

(i) Detailed information on the organization's management and administrative structure;

(ii) A list or description of the staff assigned to Program monitoring. Each sponsoring organization of day care homes must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 50 to 150 day care homes it sponsors. A sponsoring organization of centers must document that, to perform monitoring, it will employ the equivalent of one full-time staff person for each 25 to 150 centers it sponsors. It is the State agency's responsibility to determine the appropriate level of staffing for monitoring for each sponsoring organization, consistent with these specified ranges and factors that the State agency will use to determine the appropriate level of monitoring staff for each sponsor. The monitoring staff equivalent may include the employee's time spent on scheduling, travel time, review time, follow-up activity, report writing, and activities related to the annual updating of children's enrollment forms;

(iii) The procedures to be used by the organization to administer the Program in, and disburse payments to, the child care facilities under its sponsorship;

(iv) For sponsoring organizations of day care homes, a description of the system for making tier I day care home determinations, and a description of the system of notifying tier II day care homes of their options for reimbursement; and

(v) Any additional information necessary to document the sponsoring organization's compliance with the performance standards set forth at paragraph (b)(6) of this section.

(2) *Outside employment policy.* State agencies must collect from sponsoring organizations an outside employment policy. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest. The policy will be effective unless disapproved by the State agency;

(3) *Bond.* Sponsoring organizations must submit a bond, if such bond is required by State law, regulation, or policy. If the State agency requires a bond for sponsoring organizations pursuant to State law, regulation, or policy, the State agency must submit a copy of that requirement and a list of sponsoring organizations posting a bond to the appropriate FNSRO on an annual basis;

(4) *Day care home enrollment information.* State agencies must collect from sponsoring organizations of day care homes current information on:

(i) The total number of children enrolled in all homes in the sponsorship;

(ii) An assurance that day care home providers' own children whose meals are claimed for reimbursement in the Program are eligible for free or reduced-price meals;

(iii) The total number of tier I and tier II day care homes that it sponsors;

(iv) The total number of children enrolled in tier I day care homes;

(v) The total number of children enrolled in tier II day care homes; and

(vi) The total number of children in tier II day care homes that have been identified as eligible for free or reduced-price meals;

(5) *Facility lists.* The State agency must collect from each sponsoring organization a list of all their applicant day care homes, child care centers, outside-school-hours-care centers, at-risk afterschool care centers, and adult day care centers;

(6) *Providing benefits to unserved facilities or participants.* (i) *Criteria.* The State agency must develop criteria for determining whether a new sponsoring organization's participation will help ensure the delivery of benefits to otherwise unserved facilities or participants, and must disseminate these criteria to new sponsoring organizations when they request information about applying to the Program; and

(ii) *Documentation.* The State agency must collect from the new sponsoring organization documentation that its participation will help ensure the delivery of benefits to otherwise unserved facilities or participants in accordance with the State agency's criteria;

(7) *Notice to parents.* The State agency must collect a copy of the sponsoring organization's notice to parents, in a form and, to the maximum extent practicable, language easily understandable by the participant's parents or guardians. The notice must inform them of their facility's participation in CACFP, the Program's benefits, the name and telephone number of the sponsoring organization, and the name and telephone number of the State agency responsible for administration of CACFP;

(8) *Serious deficiency procedures.* If the sponsoring organization chooses to establish procedures for determining a day care home seriously deficient that supplement the procedures in paragraph § 226.16(l), the State agency must collect a copy of those supplemental procedures in the application. If the State agency has made the sponsoring organization responsible for the administrative review of a proposed termination of a day care home's agreement for cause, pursuant to § 226.6(l)(1), the State agency must collect a copy of the sponsoring organization's administrative review procedures. The sponsoring organization's supplemental serious deficiency and administrative review procedures must comply with §§ 226.16(l) and 226.6(l);

(9) *Facility applications.* The State agency must ensure collection and review of the following information for every sponsored facility:

(i) An application for participation for each child care and adult day care facility accompanied by all necessary supporting documentation;

(ii) Timely information concerning the eligibility status of child care and adult day care facilities (such as licensing or approval actions);

(iii) For sponsoring organizations of day care homes, the full legal names and any other names previously used, mailing address, and date of birth of each provider;

(iv) Documentation that all day care homes and sponsored centers meet Program licensing or approval requirements; and

(v) The State agency must ensure that no facilities are participating under more than one sponsoring organization; and

(10) *Disclosure of potential conflicts of interest.* The State agency must require sponsoring organizations to disclose any less-than-arms-length transactions in the operation of CACFP that are anticipated in the upcoming year. The State agency approval of such transactions must be consistent with FNS Instruction 796–2 (''Financial

Management—Child and Adult Care Food Program''). Sponsoring organizations also must disclose to the State agency any other potential conflicts of interest, such as relationships among officers, board members, and employees.

(d) *Application requirements for independent and sponsored centers.* State agencies must obtain and review the following additional information from centers:

(1) *Participant eligibility information.* State agencies must collect current information on the number of enrolled participants eligible for free, reduced-price and paid meals;

(2) *Documentation of licensing/approval.* State agencies must collect documentation demonstrating that each center meets Program licensing or approval requirements;

(3) *Documentation of for-profit center eligibility.* State agencies must collect documentation that each for-profit center meets the definition set forth in § 226.2, *For-profit center;* and

(4) *At-risk afterschool care centers.* In addition to the general CACFP application requirements, State agencies must collect documentation from at-risk institutions demonstrating that each at-risk afterschool care center meets the program eligibility requirements in §§ 226.17a(a) and 226.17a(b), and sponsoring organizations must submit documentation that each sponsored at-risk afterschool care center meets the area eligibility requirements in § 226.17a(f).

§ 226.6b State agency annual information submission requirements for renewing institutions.

(a) *Annual information submission requirements for renewing institutions.* Each State agency must establish annual information submission procedures to confirm the continued eligibility of renewing institutions under this part. Renewing institutions must not be required to submit a free and reduced-price policy statement or a nondiscrimination statement unless substantive changes are made to either statement. In addition, the State agency's review procedures must ensure that institutions annually submit information or certify that certain information is still true based on the requirements of this section. For information that must be certified, any new changes made in the past year and not previously reported to the State agency must be updated in the renewal information submission. Any additional information submitted in the renewal must be certified by the institution to be true. This section contains the information that must be submitted, certified or updated annually.

(b) *Eligibility certification for institutions.* The State agency must ensure that all renewing institutions certify the following:

(1) *Presence on National disqualified list.* The State agency must ensure that renewing institutions certify that neither the institution nor its principals are on the National disqualified list. The State agency must also ensure that renewing sponsoring organizations certify that no sponsored facility or facility principal is on the National disqualified list. The State agency must compare the institution's certification with the National disqualified list to ensure its accuracy at the time of renewal;

(2) *Ineligibility for other publicly funded programs.* The State agency must ensure that renewing institutions submit a list of the publicly funded programs in which the institution and its principals have participated in the past seven years that have not been previously reported to the State agency. Institutions must certify that the institution and the institution's principals have not been declared ineligible for any other publicly funded program by reason of violating that program's requirements in the past seven years. In lieu of certification, if not previously submitted, the institution may submit documentation that the institution or the principal previously declared ineligible has been fully reinstated in, or determined eligible for, that program and has repaid any debts owed. If the State agency has reason to believe that the renewing institution or any of its principals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible;

(3) *Information on criminal convictions.* The State agency must ensure that renewing institutions certify that the institution's principals have not been convicted of any activity that occurred during the past seven years and that indicates a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A);

(4) *Submission of names and addresses.* The State agency must ensure that renewing institutions submit a certification that the full legal names and any other names previously used, mailing address, and date of birth of the institution's executive director and chairman of the board of directors or, in the case of a for-profit center that does not have an executive director or is not required to have a board of directors, the owner of the for-profit center;

(5) *Compliance with performance standards.* The State agency must ensure that each renewing institution certifies that it is still in compliance with the performance standards described in § 226.6a(b)(6), meaning it is financially viable, is administratively capable of operating the Program, and has internal controls in effect to ensure accountability;

(6) *Licensing.* The State agency must ensure that each independent center certifies that its licensing or approval status is up-to-date and that it continues to meet the licensing requirements outlined in §§ 226.6(d) and (e). Sponsoring organizations must certify that the licensing/approval status of their facilities is up-to-date and that they continue to meet the licensing requirements outlined in §§ 226.6(d) and (e). If the independent center or facility has a new license not previously on file with the State agency, a copy must be submitted unless the State agency has other means of confirming the licensing or approval status of any independent center or facility providing care; and

(7) *At-risk information.* The State agency must ensure that independent at-risk afterschool care centers or sponsoring organizations of at-risk afterschool care centers certify that they still meet the requirements of § 226.17a(b). Sponsoring organizations of at-risk afterschool care centers must provide area eligibility data in compliance with the provisions of § 226.15(g). In accordance with § 226.6(f)(5)(ii), State agencies must determine the area eligibility of each independent at-risk afterschool care center that is already participating in the Program.

(c) *Administrative budget submission for sponsoring organizations.* The State agency must ensure that renewing sponsoring organizations submit an administrative budget for the upcoming year with sufficiently detailed information concerning projected CACFP administrative earnings and expenses, as well as other non-Program funds to be used in Program administration, for the State agency to determine the allowability, necessity, and reasonableness of all proposed expenditures, and to assess the sponsoring organization's capability to manage Program funds. The administrative budget must demonstrate that the sponsoring organization will expend and account for funds in accordance with regulatory

requirements, FNS Instruction 796–2, (''Financial Management—Child and Adult Care Food Program''), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. In addition, the administrative budget submitted by a sponsor of centers must demonstrate that the administrative costs to be charged to the Program do not exceed 15 percent of the meal reimbursements estimated or actually earned during the budget year, unless the State agency grants a waiver in accordance with § 226.7(g)(1). For sponsoring organizations of day care homes seeking to carry over administrative funds in accordance with § 226.12(a)(3), the budget must include an estimate of requested administrative fund carryover amounts and a description of the proposed purpose(s) for which those funds will be obligated or expended.

(d) *Eligibility certification for sponsoring organizations.* In addition to the certification requirements in paragraph (b) of this section, the State agency must ensure that renewing sponsoring organizations certify the following:

(1) *Management plan.* The State agency must ensure that renewing sponsoring organizations certify that the sponsor has reviewed its current management plan on file with the State agency and that it is complete and up-to-date. If the management plan has changed, the sponsor must submit updates that meet the requirements of § 226.6a(c)(1). The State agency must establish factors, consistent with § 226.6a(c)(1), that it will consider in determining whether a renewing sponsoring organization has sufficient staff to perform required monitoring responsibilities at all of its sponsored facilities. As part of the annual review of the renewing sponsoring organization's management plan, the State agency must determine the appropriate level of staffing for the sponsoring organization, consistent with the staffing range of monitors set forth at § 226.6a(c)(1) and the factors the State agency has established.

(2) *Outside employment policy.* The State agency must ensure that renewing sponsoring organizations certify that the outside employment policy most recently submitted to the State agency remains current and in effect or the sponsor must submit an updated outside employment policy at the time of renewal. The policy must restrict other employment by employees that interferes with an employee's performance of Program-related duties and responsibilities, including outside employment that constitutes a real or apparent conflict of interest.

(3) *Facility lists.* The State agency must ensure that each sponsoring organization certifies that the list of all of their applicant day care homes, child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers on file with the State agency is current and up-to-date.

(4) *Facility training.* The State agency must ensure that renewing sponsoring organizations certify that all facilities under their sponsorships have adhered to the training requirements set forth in Program regulations.

(5) *Disclosure of potential conflicts of interest.* The State agency must ensure that sponsoring organizations certify that no unreported less-than-arms-length transactions or any other potential conflicts of interest have occurred in the last year and disclose any that are anticipated in the upcoming year. The State agency approval of anticipated less-than-arms-length transactions must be consistent with FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program'').

6. In § 226.7 by revising paragraph (g) and adding a sentence at the end of paragraph (j) to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(g) *Budget approval.* The State agency must review institution budgets as described in §§ 226.6a(b)(1) and 226.6b(c) and must limit allowable administrative claims by each sponsoring organization to the administrative costs approved in its budget, except as provided in this section. The budget must demonstrate the institution's ability to manage Program funds in accordance with this part, FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program''), parts 3015, 3016, and 3019 of this title, and applicable Office of Management and Budget circulars. Sponsoring organizations must submit an administrative budget to the State agency annually, and independent centers must submit budgets as frequently as required by the State agency. Budget levels may be adjusted to reflect changes in Program activities. If the institution does not intend to use non-CACFP funds to support any required CACFP functions, the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs. If the institution intends to use any non-Program resources to meet CACFP requirements, these non-Program funds should be accounted for in the institution's budget, and the institution's budget must identify a source of non-Program funds that could be used to pay overclaims or other unallowable costs.

(1) For sponsoring organizations of centers, the State agency is prohibited from approving the sponsoring organization's administrative budget, or any amendments to the budget, if the administrative budget shows the Program will be charged for administrative costs in excess of 15 percent of the meal reimbursements estimated to be earned during the budget year. However, the State agency may waive this limit if the sponsoring organization provides justification that it requires Program funds in excess of 15 percent to pay its administrative costs and if the State agency is convinced that the institution will have adequate funding to provide meals meeting the requirements of § 226.20. The State agency must document all waiver approvals and denials in writing, and must provide a copy of all such letters to the appropriate FNSRO.

(2) For sponsoring organizations of day care homes seeking to carry over administrative funds in accordance with § 226.12(a)(3), the State agency must require the budget to include an estimate of the requested administrative fund carryover amount and a description of the proposed purpose(s) for which those funds will be obligated or expended by the end of the fiscal year following the fiscal year in which they were received. In approving a carryover request, State agencies must consider whether the sponsoring organization has a financial management system that meets Program requirements and is capable of controlling the custody, documentation and disbursement of carryover funds. As soon as possible after fiscal year close-out, the State agency must require sponsoring organizations carrying over administrative funds to submit an amended budget for State agency review and approval. The amended budget must identify the amount of administrative funds actually carried over and describe the purpose(s) for which the carryover funds have been or will be used.

* * * * *

(j) * * * In addition, each State agency must establish procedures to recover administrative funds from sponsoring organizations of day care homes which are not properly payable under FNS Instruction 796–2 (''Financial Management—Child and

Adult Care Food Program''), are in excess of the 10 percent maximum carryover amount, or any carryover amounts not expended or obligated by the end of the fiscal year following the fiscal year in which they were received.

* * * * *

7. In § 226.9, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively; and add new paragraph (c) to read as follows:

§ 226.9 Assignment of rates of reimbursement for centers.

* * * * *

(c) If the State agency is allowing the use of claiming percentages or a blended per-meal rate of reimbursement as described in paragraph (b) of this section, the State agency must require centers to submit current eligibility information on enrolled participants, in order to calculate a blended rate or claiming percentage.

* * * * *

§ 226.10 [Amended]

8. In § 226.10, amend paragraph (a) by removing the citation''§ 226.6(f)(3)(iv)(F)'' in the first sentence and adding the citation ''§ 226.6(f)(7)(vi)'' in its place.

9. In § 226.12, revise paragraph (a) to read as follows:

§ 226.12 Administrative payments to sponsoring organizations for day care homes.

(a) *General.* Sponsoring organizations of day care homes receive payments for administrative costs, subject to the following conditions:

(1) Sponsoring organizations shall receive reimbursement for the administrative costs of the sponsoring organization in an amount that is not less than the product obtained each month by multiplying:

(i) The number of day care homes of the sponsoring organization submitting a claim for reimbursement during the month, by

(ii) The appropriate administrative rate(s) announced annually in the **Federal Register**.

(2) FNS determines these administrative reimbursement rates by annually adjusting the following base administrative rates as set forth in § 226.4(i):

(i) Initial 50 day care homes, 42 dollars;

(ii) Next 150 day care homes, 32 dollars;

(iii) Next 800 day care homes, 25 dollars;

(iv) Additional day care homes, 22 dollars.

(3) With State agency approval, a sponsoring organization may carry over a maximum of 10 percent of administrative funds received under paragraph (a)(1) of this section for use in the following fiscal year. If such funds are not obligated or expended in the following fiscal year, they must be returned to the State agency in accordance with § 226.7(j).

(4) State agencies must recover any administrative funds not properly payable in accordance with FNS Instruction 796–2 (''Financial Management—Child and Adult Care Food Program'').

* * * * *

10. In § 226.15:

a. Revise paragraphs (b) and (e)(1); and

b. Amend paragraph (g) by removing ''§ 226.6(f)(1)(ix)'' in the last sentence and adding ''§ 226.6(f)(5)'' in its place.

The revisions read as follows:

§ 226.15 Institution provisions.

* * * * *

(b) *New applications and renewals.* Each new institution must submit to the State agency with its application all information required for its approval as set forth in § 226.6a. Such information must demonstrate that a new institution has the administrative and financial capability to operate the Program in accordance with this part and with the performance standards set forth in § 226.6a(b)(6). Renewing institutions must certify that they are capable of operating the Program in accordance with this part and as set forth in § 226.6b(b).

* * * * *

(e) * * *

(1) Copies of the initial application, renewal information submissions, and supporting documents submitted to the State agency;

* * * * *

11. In § 226.16:

a. Revise paragraph (b);

b. Amend paragraph (d) introductory text by removing the words ''paragraph (b)(1) of this section'' in the second sentence and adding ''§ 226.6a(c)(1)'' in its place;

c. Amend paragraph (d)(4)(iii)(C) by removing the word ''and'' from the end of paragraph;

d. Amend paragraph (d)(4)(iii)(D) by removing the period from the end of the paragraph and adding a semicolon in its place;

e. Add new paragraphs (d)(4)(iii)(E) and (F);

f. Amend paragraph (f) by revising the citation ''§ 226.6(b)(4)(ii)(A)'' to read ''§ 226.6(b)(4)(ii)'';

g. Revise paragraph (h); and

h. Revise paragraph (l)(2)(vii).

The additions and revisions read as follows:

§ 226.16 Sponsoring organization provisions.

* * * * *

(b) Each new sponsoring organization must submit to the State agency with its application all information required for its approval, and the approval of the facilities under its jurisdiction, as set forth in § 226.6a. The application must demonstrate that the institution has the administrative and financial capability to operate the Program in accordance with the Program regulations. Renewing sponsoring organizations must submit information in accordance with § 226.6b.

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(E) The timing of unannounced reviews must be varied so that they are unpredictable to the facility; and

(F) All types of meal service must be subject to review and sponsoring organizations must vary the meal service reviewed.

* * * * *

(h) Sponsoring organizations of child care centers, adult day care centers, emergency shelters, at-risk afterschool care centers, or outside-school-hours care centers shall:

(1) Enter into a permanent agreement with unaffiliated sponsored centers and sponsored day care homes that at a minimum addresses the requirements set forth in the provisions of §§ 226.17, 226.17a, 226.18, 226.19, and 226.19a, as applicable. Nothing in the preceding sentence shall be construed to limit the ability of the sponsoring organization to suspend or terminate the permanent agreement in accordance with this part; and

(2) Make payments of program funds within five working days of receipt from the State agency, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year; except in those States where the State agency has chosen the option to implement a meals times rates payment system. In those States which implement this optional method of reimbursement, such disbursements may not exceed the rates times the number of meals documented at each facility during any fiscal year.

* * * * *

(l) * * *

(2) * * *

(vii) A determination that the day care home has been convicted of any activity

that occurred during the past seven years and that indicated a lack of business integrity, as defined in § 226.6(c)(1)(ii)(A).

* * * * *

12. Section 226.17 is revised to read as follows:

§ 226.17 Child care center provisions.

(a) Child care centers may participate in the Program either as independent centers or under the auspices of a sponsoring organization; provided, however, public and private nonprofit centers shall not be eligible to participate in the Program under the auspices of a for-profit sponsoring organization. Child care centers participating as independent centers shall comply with the provisions of § 226.15.

(b) All child care centers, independent or sponsored, shall meet the following requirements:

(1) Child care centers must have Federal, State, or local licensing or approval to provide day care services to children. Child care centers, which are complying with applicable procedures to renew licensing or approval, may participate in the Program during the renewal process, unless the State agency has information that indicates that renewal will be denied. If licensing or approval is not available, a child care center may participate if it demonstrates compliance with CACFP child care standards or any applicable State or local child care standards to the State agency. At-risk afterschool care centers shall comply with licensing requirements set forth in § 226.17a(d).

(2) Except for for-profit centers, child care centers shall be public, or have tax exempt status under the Internal Revenue Code of 1986.

(3) Each child care center participating in the Program must serve one or more of the following meal types—breakfast; lunch; supper; and snack. Reimbursement must not be claimed for more than two meals and one snack or one meal and two snacks provided daily to each child. At-risk afterschool care centers shall comply with limits on daily reimbursement set forth in § 226.17a(h).

(4) Each child care center participating in the Program shall claim only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. For-profit child care centers may not claim reimbursement for meals served to children in any month in which less than 25 percent of the children in care (enrolled or licensed capacity, whichever is less) were eligible for free or reduced-price meals or were title XX beneficiaries. However, children who only receive at-risk afterschool snacks and/or at-risk afterschool meals must not be included in this percentage. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(5) A child care center with preschool children may also be approved to serve a breakfast, snack, and supper to school-age children participating in an outside-school-hours care program meeting the criteria of § 226.19(b) that is distinct from its day care program for preschool-age children. The State agency may authorize the service of lunch to such participating children who attend a school that does not offer a lunch program, provided that the limit of two meals and one snack, or one meal and two snacks, per child per day is not exceeded.

(6) A child care center with preschool children may also be approved to serve a snack or meal to school-age children participating in an at-risk afterschool care program meeting the requirements of § 226.17a that is distinct from its day care program for preschool children, provided that the limit of two meals, and one snack, or one meal and two snacks, per child per day is not exceeded.

(7) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part must be addressed in a written agreement between the child care center and school. The center shall maintain responsibility for all Program requirements set forth in this part.

(8) Each child care center, except at-risk afterschool care centers, shall collect and maintain documentation of the enrollment of each child, including information used to determine eligibility for free and reduced-price meals in accordance with § 226.23(e)(1). In addition, Head Start participants need only have a Head Start statement of income eligibility, or a statement of Head Start enrollment from an authorized Head Start representative, to be eligible for free meal benefits under CACFP. Such documentation of enrollment must be updated annually, signed by a parent or legal guardian, and include information on each child's normal days and hours of care and the meals normally received while in care.

(9) Each child care center, except at-risk afterschool care centers, must maintain daily records of time of service meal counts by type (breakfast, lunch, supper, and snacks) served to enrolled children, and to adults performing labor necessary to the food service. At-risk afterschool care centers must maintain records as required by § 226.17a(k).

(10) Each child care center must require key staff, as defined by the State agency, to attend Program training prior to the center's participation in the Program, and at least annually thereafter, on content areas established by the State agency.

(11) Each child care center must permit the Department, the State agency, and the sponsoring organization, if applicable, to visit the child care center and review its meal service and records during its hours of child care operations.

(12) Sponsored child care centers must promptly inform the sponsoring organization about any change in its licensing or approval status.

(13) Unaffiliated sponsored child care centers have the right to receive in a timely manner reimbursement for meals served to eligible children for which the sponsoring organization has received payment from the State agency. However, if, with the child care center's consent, the sponsoring organization will incur costs for the provision of program foodstuffs or meals on behalf of the center, and subtract such costs from Program payments to the center, the particulars of this arrangement shall be specified in the agreement. The sponsoring organization must not withhold Program payments to any child care center for any other reason, except that the sponsoring organization may withhold from the child care center any amounts that the sponsoring organization has reason to believe are invalid, due to the child care center having submitted a false or erroneous meal count.

(14) The State agency and an independent child care center have the right to terminate the agreement for cause or, subject to § 226.6(c), convenience. Sponsoring organizations and unaffiliated sponsored centers have the right to terminate the agreement for cause or convenience.

(15) If the State agency has approved a time limit for submission of meal records by child care centers, child care centers must be in compliance.

(16) If so instructed by its sponsoring organization, sponsored child care centers must distribute a copy of the sponsoring organization's notice to parents.

(c) Unaffiliated sponsored child care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement

shall embody the provisions set forth in paragraph (b) of this section.

(d) Independent child care centers shall enter into a written permanent agreement with the State agency which specifies the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement shall embody the applicable provisions set forth in paragraph (b) of this section.

(e) Each child care center shall comply with the recordkeeping requirements established in § 226.10(d), paragraph (b) of this section and, if applicable, § 226.15(e). Failure to maintain such records shall be grounds for the denial of reimbursement.

(f) Nothing in this section shall be construed to limit the ability to terminate the permanent agreement with an independent or unaffiliated sponsored center in accordance with this part.

13. In § 226.17a:

a. Revise paragraph (a)(1) introductory text;

b. Remove paragraphs (a)(1)(v), (e), (f), (g), and (l), redesignate paragraphs (h) through (k) as paragraphs (e) through (h), respectively, and redesignate paragraphs (m) through (q) as paragraphs (i) through (m) respectively;

c. Amend paragraph (b)(1)(iv) by removing the words ''paragraph (i)'' and adding ''paragraph (f)'' in their place;

d. Amend newly redesignated paragraph (f)(3) by removing the words '', except in cases where the State agency has determined it is most efficient to incorporate area eligibility decisions into the three-year application cycle'' from the third sentence; and

e. Add new paragraph (n).

The addition and revision read as follows:

§ 226.17a At-risk afterschool care center provisions.

(a) * * *

(1) *Eligible organizations.* To receive reimbursement for at-risk afterschool snacks and at-risk afterschool meals, organizations must meet the criteria below.

* * * * *

(n) *Permanent agreements.* Unaffiliated sponsored at-risk afterschool care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement shall embody the provisions set forth in § 226.17(b).

14. In § 226.18, revise paragraph (b)(12) as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * *

(12) The responsibility of the sponsoring organization, upon the request of a tier II day care home, to collect applications and determine the eligibility of enrolled children for free or reduced-price meals and the ability of the tier II day care home to assist in collecting applications from households and transmitting the applications to the sponsoring organization. However a tier II day care home may not review the collected applications and sponsoring organizations may prohibit a tier II day care home from assisting in collection and transmittal of applications if the day care home does not comply with the process as described in § 226.23(e)(2)(viii);

* * * * *

15. In § 226.19, add paragraph (d) as follows:

§ 226.19 Outside-school-hours care center provisions.

* * * * *

(d) Unaffiliated sponsored outside-school-hours-care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement must address the provisions set forth in § 226.17(b).

16. In § 226.19a, add paragraph (d) as follows:

§ 226.19a Adult day care center provisions.

* * * * *

(d) Unaffiliated sponsored adult day care centers shall enter into a written permanent agreement with the sponsoring organization which specifies the rights and responsibilities of both parties. At a minimum, the agreement must address the provisions set forth in § 226.17(b).

17. In § 226.23,

a. Amend paragraph (e)(2)(vi), by removing the word ''and'' from the end of the paragraph;

b. Amend paragraph (e)(2)(vii)(B), by removing the period and adding ''; and'' in its place; and

c. Add paragraph (e)(2)(viii).

The addition reads as follows:

§ 226.23 Free and reduced-price meals.

* * * * *

(e) * * *

(2) * * *

(viii) If a tier II day care home elects to assist in collecting and transmitting the applications to the sponsoring organization, it is the responsibility of the sponsoring organization to establish procedures to ensure the provider does not review or alter the application. The household consent form must explain that:

(A) The household is not required to complete the income eligibility form in order for their children to participate in CACFP;

(B) The household may return the application to either the sponsoring organization or the day care home provider;

(C) By signing the letter and giving it the day care home provider, the household has given the day care home provider written consent to collect and transmit the household's application to the sponsoring organization; and

(D) The application will not be reviewed by the day care home provider.

* * * * *

Dated: April 2, 2012.

Robin D. Bailey, Jr.,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2012–8332 Filed 4–6–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2011–BT–TP–0071]

RIN 1904–AC67

Energy Conservation Program: Test Procedures for Light-Emitting Diode Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to establish test procedures for light-emitting diode (LED) lamps to support implementation of labeling provisions by the Federal Trade Commission (FTC) established under the Energy Policy and Conservation Act (EPCA). The proposed test procedures define methods for measuring the lumen output, input power, and relative spectral distribution (to determine correlated color temperature, or CCT) of LED lamps. Further, the proposed test procedures define methods for measuring the lumen maintenance of the LED source (the component of the LED lamp that produces light) to project the rated lifetime of LED lamps. The rated lifetime of the LED lamp is the time required for the LED source component of the lamp to reach lumen maintenance of 70 percent (that is, 70 percent of initial light output). After reviewing

available industry standards for determining the lumen output, input power, CCT, and rated lifetime, as well as current best practices and technological developments, DOE tentatively identified that the test methods described in the relevant Illuminating Engineering Society of North America (IES) standards are appropriate for developing test procedures for LED lamps. The proposed test procedures are based in large part on IES standards LM–79–2008, ''Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products'' for determining lumen output, input power, and CCT, and LM–80–2008, ''Approved Method: Measuring Lumen Maintenance of LED Sources'' and TM–21–2011, ''Projecting Long Term Lumen Maintenance of LED Light Sources,'' for determining rated lifetime, with some modifications as required.

DATES: DOE will hold a public meeting on Thursday, May 3, 2012, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than June 25, 2012. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to the Public Participation section near the end of this notice.

Any comments submitted must identify the NOPR for Test Procedures for LED lamps, and provide docket number EERE–2011–BT–TP–0071 and/or regulatory information number (RIN) number 1904–AC67. Comments may be submitted using any of the following methods:

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

2. *Email: LEDLamps-2011-TP-0071@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *Lucy.deButts@ee.doe.gov.*

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Ari.Altman@hq.doe.gov*

SUPPLEMENTARY INFORMATION:

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, et

seq.; ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.''

Under EPCA, this program consists of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. This rulemaking establishes test procedures that manufacturers of light-emitting diode (LED) lamps would use to meet obligations under labeling requirements promulgated by the Federal Trade Commission (FTC) under section 324(a)(6) of EPCA (42 U.S.C. 6294(a)(6)).

Test Procedure Rulemaking Process

When the U.S. Department of Energy (DOE) proposes test procedures, it must offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) EISA 2007 section 321(b) amended EPCA (42 U.S.C. 6294(a)(2)(C)) to direct FTC to consider the effectiveness of lamp labeling for power levels or watts, light output or lumens, and lamp lifetime. This test procedure rulemaking for LED lamps is being conducted to support FTC's determination that LED lamps, which had previously not been labeled, require labels under EISA section 321(b) and 42 U.S.C. 6294(a)(6) in order to assist consumers in making purchasing decisions. 75 FR 41696, 41698 (July 19, 2010).

FTC has published a final rule for light bulb [1] labeling (Lighting Facts) that went into effect on January 1, 2012. 75 FR 41696 (July 19, 2010) The FTC Lighting Facts label covers three types of medium screw base lamps: general service incandescent lamps (GSIL), compact fluorescent lamps (CFL), and general service LED lamps.[2] The label requires manufacturers to disclose information about the lamp's brightness [3] (lumen output), estimated annual energy cost, life [4] (rated lifetime), light appearance (correlated color temperature (CCT)), and energy use (input power). FTC requires that the estimated annual energy cost is calculated by multiplying the energy used by annual operating hours and an estimate for energy cost per kilowatt-hour. FTC references DOE test procedures, when available, for testing lamps for the FTC Lighting Facts label. This test procedure rulemaking would enable FTC to reference a DOE test procedure for LED lamps.

In this notice of proposed rulemaking (NOPR), DOE proposes test procedures for determining the lumen output, input power, CCT, and rated lifetime of LED lamps. DOE invites comment on all aspects of the proposed test procedure for LED lamps.

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes test procedures for determination of lumen output, input power, CCT, and rated lifetime of an LED lamp. Specifically, DOE proposes to incorporate by reference IES [5] LM–79–2008 [6] for determination of lumen output, input power, and CCT, UL [7] 1993–2009 [8] for support of the in-situ temperature measurement test (ISTMT), IES standards LM–80–2008 [9] and TM–21–2011 [10] for determination of rated lamp lifetime, and ANSI [11]/IESNA [12] RP–16–2010 [13] for the definition of integrated LED lamps. DOE reviewed several potential approaches to testing lamp lumen output, input power, CCT, and rated lifetime, and determined that these UL and IES standards are the best standards based on discussions with industry experts. These standards are adequately specified to generate reliable results and are generally used by industry for determining photometric characteristics of LED lamps.

DOE conducted literature research and determined that IES LM–79–2008 is the standard used by industry to determine the electrical and photometric characteristics of LED lamps. IES LM–79–2008 provides the test setup, test conditions including instrumentation and electrical settings, test method, and calculations for determining the input power, lumen output, and CCT of LED lamps. Section III.B details the relevant sections of IES LM–79–2008 that are incorporated by reference, and any proposed changes, if required.

To develop a Federal test procedure for determining the rated lifetime of LED lamps, DOE conducted literature research and interviewed several industry experts to understand the methods used by industry to determine the rated lifetime of LED lamps. Due to the infancy of the technology, there are no industry standards that describe a methodology for determining rated lifetime based on direct measurements of an LED lamp. Based on the information currently available, DOE determined that IES LM–80–2008 should be used to measure the lumen maintenance [14] of an LED source [15] at the in-situ temperature determined by performing an ISTMT. The test setup and conditions for conducting the ISTMT should be as specified in UL 1993–2009. Finally, the LED source rated lifetime should be projected using the method described in IES TM–21–2011. DOE is proposing that the lumen maintenance of the LED source be measured and projected rather than the lumen maintenance of the LED lamp because currently there are no well-specified and established methods for projecting LED lamp lumen maintenance data. The proposed method is based on industry accepted measurements and projection methods

[1] FTC uses the term 'bulb,' while DOE uses the term 'lamp.' Bulb and lamp refer to the same product.

[2] FTC defines general service LED lamps as a lamp that is a consumer product; has a medium screw base; has a lumen range not less than 310 lumens and not more than 2,600 lumen; and, is capable of being operated at a voltage range at least partially within 110 and 130 volts. This test procedure rulemaking could be applied to general service LED lamps as defined by FTC as well as all other integrated LED lamps as discussed in section III.A of this NOPR.

[3] FTC uses the term 'brightness' on the Lighting Facts label even though 'light output' is the technically correct term because FTC's research indicated that consumers prefer the term 'brightness' to 'light output.'

[4] FTC uses the term 'life' while DOE uses the term 'rated lifetime.' Life and rated lifetime have the same meaning.

[5] Illuminating Engineering Society of North America.

[6] ''Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products.'' Approved December 31, 2007.

[7] Underwriters Laboratories Inc.

[8] ''Standard for Safety, Self-Ballasted Lamps and Lamp Adapters.'' Published August 28, 2009.

[9] ''Approved Method: Measuring Lumen Maintenance of LED Sources.'' Approved September 22, 2008.

[10] ''Projecting Long Term Lumen Maintenance of LED Light Sources.'' Approved July 25, 2011.

[11] American National Standards Institute.

[12] Illuminating Engineering Society of North America (also abbreviated as IES).

[13] ''Nomenclature and Definitions for Illuminating Engineering.'' Approved by ANSI on October 16, 2009. Approved by IES on November 15, 2009.

[14] Lumen maintenance is the lumen output at a given point of time, expressed as a percentage of the initial lumen output. While the lumen output of the LED source is measured for use in the lumen maintenance calculation, the term lumen maintenance is used in this NOPR to indicate that lumen output is measured over a period of time.

[15] The term ''LED source'' refers to the assembly of components or dies, including the electrical connections, printed on a circuit board or substrate. The LED source does not include the power source or base, but could possibly incorporate optical elements and additional thermal, mechanical, and electrical interfaces that are intended to connect to the load side of a LED driver. The LED source is the component of the LED lamp that produces light.

and does not require operating the lamp until it reaches its rated lifetime. DOE discusses this determination in more detail in section III.C.1. DOE is proposing to define rated lifetime as the time when the lumen output of the LED sources within the LED lamp falls below 70 percent of the initial light output. Section III.C details the test method to determine the rated lifetime and the relevant sections of UL 1993–2009, IES LM–80–2008, and IES TM–21–2011 that are incorporated by reference, and any changes, if required.

III. Discussion

A. Scope of Applicability

This rulemaking is applicable to LED lamps that fall within DOE's proposed definition of an LED lamp in 10 CFR part 430.2, which is based on the term integrated LED lamps as defined by ANSI/IESNA RP–16–2010, ''Nomenclature and Definitions for Illuminating Engineering.'' These integrated lamps comprise the LED source (the LED packages (components) or LED arrays (modules)), LED driver, ANSI standard base, and other optical, thermal, mechanical and electrical components such as phosphor layers, insulating materials, fasteners to hold components within the lamp together, and electrical wiring. The LED lamp is intended to connect directly to a branch circuit through a corresponding ANSI standard socket. EPCA, as amended by EISA 2007 section 321(a)(1)(B), adds the definition for LED as a p-n junction [16] solid state device, the radiated output of which, either in the infrared region, the visible region, or the ultraviolet region, is a function of the physical construction, material used, and exciting current [17] of the device. (42 U.S.C. 6291(30)(CC)) DOE invites interested parties to comment on the scope of applicability of this test procedure and the incorporation of ANSI/IESNA RP–16–2010 to define LED lamps.

B. Proposed Approach for Determining Lumen Output, Input Power, and Correlated Color Temperature

1. Overview of Test Procedure

DOE reviewed industry standards and spoke with industry experts to determine the best method for measuring the lumen output, input power, and CCT of LED lamps. DOE reviewed the IEC [18]/PAS [19] pre-standard 62612 [20] for determining the performance of self-ballasted LED lamps [21], but this standard did not specify a test method for measuring the lumen output of LED lamps and is not yet a finalized document. Next, DOE reviewed the method specified by the ENERGY STAR® program and observed that it references IES LM–79–2008 for determining the lumen output, input power, and CCT of integrated LED lamps. In review of IES LM–79–2008, DOE found IES is the recognized technical authority on illumination, and the IES LM–79–2008 standard was prepared by the IES subcommittee on Solid State Light Sources of the IESNA Testing Procedures Committee. IES LM–79–2008 was also developed in collaboration with the ANSI Solid State Lighting Joint Working Group C78–09 and C82–04 comprising individuals from several organizations. DOE's view is that the committee members that worked on developing the IES LM–79–2008 standard represent applicable industry groups and interested parties. Based on an independent review by DOE and general acceptance by industry, DOE concluded that IES LM–79–2008 specifies all the information that is required for providing a complete test procedure for determining lumen output, input power, and CCT of LED lamps. However, DOE is proposing some modifications so that the test method better serves DOE's needs.

IES LM–79–2008 specifies the test setup and conditions at which the measurements and calculations must be performed. These include ambient conditions, power supply characteristics, lamp orientation, seasoning, and stabilization methods for LED lamps, and instrumentation and electrical settings. These requirements, and any modifications proposed by DOE, are further discussed in the sections III.B.2 through III.B.5. DOE requests comment on the proposed incorporation of IES LM–79–2008 for determining lumen output, input power, and CCT.

2. Test Conditions

DOE proposes that the ambient conditions for testing LED lamps be as specified in section 2.0 [22] of IES LM–79–2008. DOE recognizes that lumen output of LED lamps can vary with changes in ambient temperature and air movement around the LED lamp. The test conditions outlined in IES LM–79–2008 ensure reliable, repeatable, and consistent test results without significant test burden. These conditions are discussed in further detail below.

Section 2.2 of IES LM–79–2008 specifies that photometric measurements should be taken at an ambient temperature of 25 degrees Celsius (°C) ± 1 °C. DOE's view is that a tolerance of 1 °C for the ambient temperature is practical, limits the impact of ambient temperature on measurements, and would not be burdensome because the instruments used to measure the temperature provide for a greater accuracy allowing the test laboratories to maintain the temperature within the required tolerance for testing. Section 2.2 further specifies that the temperature should be measured at a point not more than one meter from the LED lamp and at the same height as the lamp. The standard also requires that the temperature sensor that is used for measurements be shielded from direct optical radiation from the lamp or any other source to reduce the impact of radiated heat on the ambient temperature measurement. This setup for measuring and controlling ambient temperature would result in appropriate testing conditions because it requires that the lamp be tested at room temperature and in an environment that is used most commonly for testing lamp technologies.

DOE proposes that the requirement for air movement around the LED lamp be as specified in section 2.4 of IES LM–79–2008, which requires that the air flow around the LED lamp should be such that it does not affect the lumen output measurements of the lamp being tested. DOE understands that this requirement would ensure consistent LED lamp measurements and is a requirement for the test setup of other lamp types such as GSFLs.

DOE also considered whether a specific method for determination of a draft-free environment should be specified. Section 4.3 of IES LM–9–

[16] P-n junction is the boundary between p-type and n-type material in a semiconductor device, such as LEDs. P-n junctions are active sites where current can flow readily in one direction but not in the other direction—in other words, a diode.

[17] Exciting current is the current passing through an LED chip during steady state operation.

[18] International Electrotechnical Commission.

[19] Publicly Available Specifications. An IEC PAS is a publication responding to an urgent market need.

[20] ''Publically Available Specification, Pre-standard: Self-ballasted LED-lamps for General Lighting Services—Performance Requirements.'' Published June 2009.

[21] A self-ballasted LED lamp as defined by the IEC refers to the same product as the term integrated LED lamp.

[22] IES standards use the reference 2.0, 3.0, etc. for each primary section heading. Sub-sections under each of these sections are referenced as 2.1, 2.2, 3.1, 3.2, etc. This NOPR refers to each IES section exactly as it is referenced in the standard.

2009 [23] requires that a single ply tissue paper be held in place of the lamp to allow for visual observation of any drafts. DOE requests comment on whether the specification from section 4.3 of IES LM–9–2009 should be required for specifying the air movement around LED lamps.

3. Test Setup

a. Power Supply

DOE proposes that section 3.1 of IES LM–79–2008 be incorporated by reference to specify requirements for both alternating current (AC) and direct current (DC) power supplies. This section specifies that an AC power supply should have a sinusoidal voltage waveshape at the input frequency required by the LED lamp such that the root mean square (RMS) [24] summation of the harmonic components does not exceed three percent of the fundamental frequency [25] while operating the LED lamp. Section 3.2 of IES LM–79–2008 also requires that the voltage of an AC power supply (RMS voltage) or DC power supply (instantaneous voltage) applied to the LED lamp should be within ± 0.2 percent. These requirements are achievable with minimal testing burden and provide reasonable stringency in terms of power quality based on their similarity to voltage tolerance requirements for testing of other lamp types. These requirements ensure that the power supplied to the LED lamps is consistent and, in combination with other specifications, would likely result in repeatable photometric measurements.

b. Lamp Mounting and Orientation

DOE proposes that the LED lamp be mounted as specified in section 2.3 of IES LM–79–2008 and be positioned in the base-up, base-down, and horizontal orientations for testing. Section 2.3 of IES LM–79–2008 requires that the LED lamp should be mounted to the measuring instrument (integrating sphere or goniophotometer as described in section III.B.4.c) in such a manner that the heat flow through supporting objects does not affect the measurement results. This is important because the lumen output of LED lamps is sensitive to thermal changes. DOE's view is that the examples specified in section 2.3 of IES LM–79–2008 (such as suspending a ceiling-mounted LED lamp in open air and using support materials such as Teflon that have low heat conductivity instead of mounting it in close thermal contact with the sphere wall) ensure negligible cooling effects through the supporting objects of the LED lamps and minimal disturbance of the air flow around the lamp. DOE proposes that these materials, or other materials with low heat conductivity, should be used to mount the LED lamp.

DOE understands that the orientation of the lamp could affect the thermal conditions within the lamp, which may affect the light output. DOE considered testing the LED lamps as specified in section 6.0 of IES LM–79–2008, which states that the LED lamp should be tested in the operating orientation recommended by the lamp manufacturer for the intended use of the LED lamp. However, manufacturers do not typically specify the operating orientation for the LED lamp in their product literature. Further, it is possible that manufacturers would recommend an orientation for testing that provides the highest lumen output rather than the orientation in which the lamp is most frequently operated in practice. Therefore, DOE proposes that the lamp units should be positioned such that an equal number of units are oriented in the base up, base down, and horizontal orientations each (see section III.D for the sampling requirements). This would ensure that testing is carried out in all possible [26] orientations potentially used in practice, instead of only the highest performance orientation. DOE also requires that the lamps be positioned in the same orientation throughout testing, which would include lamp seasoning (section III.B.4.a), lamp stabilization (section III.B.4.b), and input power (section III.B.3.c) and lumen output measurements (section III.B.4.c). DOE requests comment on the appropriateness of orienting lamps, in the base-up, base-down, and horizontal positions for testing, and requests data on the impact of lamp orientation on the thermal characteristics of the LED lamp, and hence, the light output.

c. Instrumentation

DOE proposes that the instrumentation requirements for the AC power meter and the AC and DC voltmeter and ammeter, as well as the acceptable tolerance for these instruments, be as specified in section 8.0 of IES LM–79–2008. Section 8.1 of IES LM–79–2008 specifies that for DC-input LED lamps, a DC voltmeter and DC ammeter should be connected between the DC power supply and the LED lamp under test. The DC voltmeter should be connected across the electrical power input of the LED lamp, and the input electrical power should be calculated as the product of the measured input voltage and current. Section 8.2 of IES LM–79–2008 specifies that the tolerance for the DC voltage and current measurement instruments should be ± 0.1 percent. For AC-input LED lamps, section 8.1 of IES LM–79–2008 further specifies that an AC power meter should be connected between the AC power supply and the LED lamp under test. The AC power, input voltage, and current should be measured. Section 8.2 of IES LM–79–2008 specifies that the tolerance of the AC voltage and current measurement instruments should be ± 0.2 percent and the tolerance of the AC power meter should be ± 0.5 percent. DOE's view is that the instrumentation requirements set forth in section 8.0 of IES LM–79–2008 are achievable and provide reasonable stringency in terms of measurement tolerance based on their similarity to instrument tolerance requirements for testing of other lamp types.

d. Electrical Settings

DOE proposes that the electrical settings for testing LED lamps be as specified in section 7.0 of IES LM–79–2008. Section 7.0 provides guidance on settings such as input voltage, level of light output for dimming capable LED lamps, and the modes for testing lamps with variable CCT. Section 7.0 states that the lamp should be operated at the specified rated voltage during testing. As stated in section 7.0, DOE agrees that any method, such as pulsed input electrical power and measurements synchronized with reduced duty cycle input power, intended to reduce the p-n junction temperature below that which is reached during operation with normal input power should not be used for testing the LED lamp. Further, for lamps with multiple voltages, DOE proposes that the LED lamp should be tested at 120 volts, unless it is not rated for 120 volts. DOE is proposing that lamps with multiple voltages should be tested at 120 volts because lamps rated at 120 volts are available most commonly in the market. If the LED lamp is not rated for 120 volts, DOE proposes that it should be tested at the highest rated voltage because the lamp is expected to have the best performance at the highest rated voltage. Further,

[23] "IES Approved Method for the Electrical and Photometric Measurement of Fluorescent Lamps." Approved January 31, 2009.

[24] Root mean square (RMS) voltage/current is a statistical measure of the magnitude of a voltage/current signal. RMS voltage/current is equal to the square root of the mean of all squared instantaneous voltages/currents over one complete cycle of the voltage/current signal.

[25] Fundamental frequency, often referred to as fundamental, is defined as the lowest frequency of a periodic waveform.

[26] An infinite number of orientations are possible, but base-up, base-down, and horizontal cover the three main possibilities.

section 7.0 of IES LM–79–2008 specifies that for LED lamps with dimming capabilities, the lamp should be operated at the maximum input power for testing. DOE invites interested parties to comment on the appropriateness of testing LED lamps at the rated voltage and testing lamps that are rated to operate at multiple voltages at either 120 volts or the highest rated voltage. DOE also requests comment on testing lamps with dimming capabilities at the maximum input power.

Lastly, section 7.0 of IES LM–79–2008 specifies that if an LED lamp has multiple modes of operation, including variable CCT, testing should be performed in each mode of operation for each unit. In its research, DOE did not come across any products that function at multiple modes of operation. DOE requests comment about whether LED lamps with variable CCT, or multiple modes of operation, are available in the market. If such lamps are available, DOE requests comment about whether such lamps should be tested at a particular CCT value rather than at each value.

4. Test Method

a. Lamp Seasoning

DOE proposes that the LED lamp under test be seasoned (energized and operated) for 1,000 hours before beginning photometric measurements, contrary to the requirements of section 4.0 of IES LM–79–2008 which indicates no seasoning is required. Though IES LM–79–2008 states that the increase in light output from zero to 1,000 hours of operation does not significantly affect light output or lifetime ratings, IES TM–21–2011 specifies that the data obtained from the first 1,000 hours of operating an LED source should not be used to project the lifetime of an LED source (and hence, LED lamp rated lifetime as discussed in section III.C). DOE is proposing a 1,000 hour seasoning time because it has been established by industry [27] [28] that light output of an LED source (and therefore, potentially the lamp) frequently increases during the first 1,000 hours of operation. If the lamp is not seasoned for 1,000 hours, then depending on the time required to stabilize the lamp (as specified in section III.B.4.b), the lumen output determined through testing may be much higher than the actual lumen output. This may create an incentive to increase the time required to stabilize the lamp such that the highest lumen output is achieved while taking lumen output measurements. Additionally, DOE understands that there may be some lamps that return to the initial lumen output (at zero hours) in less than 1,000 hours and others that may take longer, but proposes that 1,000 hours be used for seasoning all lamps to maintain uniformity. DOE invites interested parties to comment on the proposed seasoning time for the LED lamp under test and any increased testing burden due to seasoning the lamp for 1,000 hours. DOE also requests data on the degree to which the lumen output of the LED lamp changes during the first 1,000 hours of operation.

b. Lamp Stabilization

After the lamp has been seasoned, DOE proposes that the time required for lamp stabilization be as specified in section 5.0 of IES LM–79–2008. The ambient conditions and operating orientation of the LED lamp while stabilizing should continue to be as specified in sections III.B.2 and III.B.3.b. DOE further proposes that stability of the LED lamp is reached when the variation [(maximum − minimum)/minimum] of at least three readings of light output and electrical power over a period of 30 minutes, taken 15 minutes apart, is less than 0.5 percent. This calculation in included to add clarification to the method specified in section 5.0 of IES LM–79–2008. For stabilization of a number of products of the same model, section 5.0 of IES LM–79–2008 suggests that preburning [29] of the product may be used if it has been established that the method produces the same stabilized condition as when using the standard method described above. DOE invites interested parties to comment on adopting section 5.0 of IES LM–79–2008 for LED lamp stabilization prior to taking photometric measurements and whether its clarification on the variation calculation is appropriate.

c. Lumen Output Measurement

After the lamp has been seasoned and stabilized, DOE proposes that the test method for measuring the lumen output of the LED lamp under test be as specified in section 9.0 of IES LM–79–2008. This section requires that the lumen output of the LED lamp be measured with an integrating sphere system or a goniophotometer. An integrating sphere system is an optical device that is useful for measuring the lumen output and color measurement of LED lamps. The hollow sphere contains two or more openings for introducing the LED lamp under test as well as attaching a detector (an instrument that is used to measure light output or the spectral radiant flux), such as a photometer or spectroradiometer. A goniophotometer is another device that measures the luminous intensity distribution and the lumen output of the LED lamp under test. It does so by measuring the light intensity of the LED lamp when reflected from a surface at various angles. DOE invites interested parties to comment on the appropriateness of using either an integrating sphere system or a goniophotometer for testing LED lamps. DOE also requests feedback on how the lumen output measured using a sphere-photometer system, sphere-spectroradiometer system, or a goniophotometer compare with each other.

This notice proposes the same method of measurement of lumen output for all LED lamps, including directional [30] LED lamps. For directional LED lamps, DOE proposes that the total lumen output emanated from the lamp should be measured because other directional lamp technologies currently measure and report total lumen output on the FTC Lighting Facts label. DOE understands that the beam lumen output, which is present in the zone bounded by the beam angle, is the ''useful'' lumen output for directional lamps. However, at this time, DOE is not proposing that beam lumen output be measured because inconsistency and confusion could arise in the industry if LED lamps measure beam lumen output (a portion of the total lumen output) while other lamp technologies measure total lumen output. Additionally, a comparison of performance among the different directional lamp technologies could not be made. DOE understands that beam lumen output or center-beam candle power (CBCP) metrics are useful for comparing and describing directional lamps but does not propose these metrics because they are not required for the FTC Lighting Facts label. DOE requests comment on the appropriateness of measuring total lumen output for directional LED lamps.

[27] Cheong, Kuan Yew. ''LED Lighting Standards Update.'' CREE, August 5, 2011. Page 31. *www.nmc.a-star.edu.sg/LED_050811/Kuan_CREE.pdf.*

[28] Richman, Eric. ''Understanding LED Tests: IES LM–79, LM–80, and TM–21.'' DOE SSL Workshop, July 2011. Page 13. *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/richman_tests_sslmiw2011.pdf.*

[29] IES LM–79–2008 defines preburning as the operation of a light source prior to mounting on a measurement instrument, to shorten the required stabilization time on the instrument.

[30] Directional lamps are designed to provide more intense light to a particular region or solid angle. Light provided outside that region is less useful to the consumer, as directional lamps are typically used to provide contrasting illumination relative to the background or ambient light.

d. Determination of Correlated Color Temperature

DOE proposes that the CCT of the LED lamp under test should be calculated as specified in section 12.4 of IES LM–79–2008. The CCT is determined by measuring the relative spectral distribution, calculating the chromaticity coordinates, and then matching the chromaticity coordinates to a particular CCT of the Planckian radiator. The setup for measuring the relative spectral distribution, which is required to calculate the CCT of the LED lamp, should be as specified in section 12.0 of IES LM–79–2008. This section describes the test method to calculate CCT using a sphere-spectroradiometer system and a spectroradiometer or colorimeter system. Section 12.0 of IES LM–79–2008 also specifies the spectroradiometer parameters that affect CCT and the method to evaluate spatial non-uniformity of chromaticity.

5. Test Calculations and Rounding

DOE is proposing calculation and rounding requirements to be used for determining brightness, energy use, light appearance, and estimated annual energy cost, should a DOE test procedure be referenced by the FTC through a future rulemaking process in support of the FTC Lighting Facts label. DOE proposes that the input power of all test units be averaged and the average value be rounded to the nearest tenths digit (see section III.D for proposed sampling requirements). DOE found that LED lamp datasheets typically provide input power values to the ones digit or the tenths digit. DOE proposes that average input power be rounded to the tenths digit because for products with input power less than 10 watts, tenths digit would be useful for discerning differences in power consumption, and input power measurements can be made to this level of accuracy. DOE also proposes that the lumen output of all units be averaged and the value be rounded to the nearest tens digit because this level of resolution is necessary for differentiating the light output of lamps that frequently have lumen output of less than 1,000 lumens. DOE's view is that this level of accuracy is achievable because manufacturers typically report lumen output for LED lamps to the tens digit in catalogs. For CCT, DOE proposes that CCT of all units be averaged and the value be rounded to the tens digit. In the 2009 GSFL test procedure final rule, DOE determined that all laboratories are able to measure CCT to three significant digits. 74 FR 31829 (July 6, 2009). Because a typical CCT is in the thousands (such as 4200 Kelvin), maintaining three significant digits requires rounding to the tens digit. Finally, consistent with FTC's final rule establishing the Lighting Facts label, DOE proposes that the estimated annual energy cost for LED lamps, expressed in dollars per year, be calculated as the product of the average input power, in kilowatts, the electricity cost rate of 11 cents per kilowatt-hour, and the estimated average annual use at three hours per day, which is 1,095 hours per year. 75 FR 41702 (July 19, 2010) DOE proposes that the estimated annual energy cost should be rounded to the nearest cent because the cost of electricity is specified to the nearest cent. DOE invites interested parties to comment on the proposed calculation and rounding requirements for determining lumen output, input power, CCT, and estimated annual energy cost.

C. Proposed Approach for Rated Lifetime Measurements

1. Overview of Test Procedures

DOE reviewed several methods to measure the rated lifetime of LED lamps, such as those contained in industry standards and based on DOE and ENERGY STAR working groups. Of the methods researched, the first three methods mentioned in Table III.1 test the LED lamp to determine the rated lifetime and the final method in Table III.1 test the LED source to determine the rated lifetime of the lamp. While it would be preferred to project the rated lifetime of the LED lamp rather than the LED source, currently, a standardized method only exists for projecting the lumen maintenance of the LED source and not the LED lamp. The approaches researched, and listed in Table III.1, include: (1) Measuring the lumen output of the LED lamp until it reaches 70 percent of the initial lumen output (L_{70}) based on IES LM–79–2008; (2) measuring the lumen output of the LED lamp for 6,000 hours and projecting the L_{70} lifetime in number of hours based on the minimum lumen maintenance at 6,000 hours, as specified in the ENERGY STAR Specification for Integral LED Lamps Version 1.4; (3) measuring the lumen output of the LED lamp for a minimum of 6,000 hours based on IES LM–79–2008 and projecting the time at which the lumen output would reach 70 percent of the initial lumen output; and (4) measuring the lumen output of the LED sources at regular intervals for a minimum of 6,000 hours based on IES LM–80–2008 and projecting the time at which the lumen output would reach 70 percent of the initial lumen output based on IES TM–21–2011. These approaches, and the benefits and limitations of each approach, are listed in Table III.1 below.

TABLE III.1—APPROACHES TO DEFINE RATED LED LAMP LIFETIME

Approach	Description of method	Advantages	Disadvantages
1	Measure lamp lumen output as specified in IES LM–79–2008. Lifetime of LED lamp is time when half the product population is below 70 percent of initial lumen output (L_{70}).	• Not a projection; accounts for performance of entire LED lamp until it reaches L_{70}. • True representation of LED lamp L_{70} lifetime.	• Performing complete IES LM–79–2008 test is time consuming and expensive. • Product may be obsolete when testing is complete (up to six years).
2	Measure lamp lumen output for 6,000 hours as specified in IES LM–79–2008. Maximum L_{70} life claim is dependent on minimum lumen maintenance at 6,000 hours as specified in ENERGY STAR specification for integral LED lamps version 1.4. Perform rapid-cycle stress test to assess catastrophic lamp failure.	• Final lifetime claims are based on LED lamp (rather than just LED source) tests. • Lumen maintenance projection is based on 6,000 hours of IES LM–79–2008 and hence, is not as time consuming as performing full IES LM–79–2008 test to L_{70}.	• Method used to develop projection of lifetime is unverified. • Does not account for catastrophic LED lamp failure mechanisms beyond 6,000 hrs. • Cycling is not a proven source of catastrophic failure for LED lamps.

TABLE III.1—APPROACHES TO DEFINE RATED LED LAMP LIFETIME—Continued

Approach	Description of method	Advantages	Disadvantages
3	Measure LED lamp lumen output as specified in IES LM–79–2008 for 6,000 hours minimum. Lumen output data is projected to L_{70} life of the LED lamp and this value is the rated lifetime.	• Lifetime is determined based on LED lamp lumen maintenance data, rather than source data. • Lifetime projection based on 6,000 hours of data which is not as time consuming as performing a full IES LM–79–2008 test to L_{70}.	• Standard method not yet developed to project lumen output of LED lamp. • May not be feasible to develop a method for projecting IES LM–79–2008 lumen output data in a timely manner for the FTC Lighting Facts label.
4	Measure LED source lumen output as specified in IES LM–80–2008 and use IES TM–21–2011 to project number of hours at which the lumen output reaches 70 percent of initial lumen output (L_{70}). The life of LED lamp is the value projected by IES TM–21–2011 with a maximum limit of 25,000 hours.	• Uses latest industry standards IES TM–21–2011 and IES LM–80–2008 to determine lumen maintenance of source accounting for temperature effects. • Not as time consuming or expensive as IES LM–79–2008 testing—utilizes test data commonly provided by LED package manufacturers.	• Not a complete representation of LED lifetime. Determined value may underestimate or overestimate actual lifetime. • Does not account for other LED lamp lumen degradation methods.

For approach 1, measuring the lumen output of the LED lamp until it reaches 70 percent of the initial lumen output is not practical because it may require up to six years of testing, by which time the LED lamp may be obsolete. Approaches 2 and 3 specify measuring the lumen output of the LED lamp for 6,000 hours according to IES LM–79–2008 and projecting the rated lifetime of the lamp from this data. These methods have the advantage of projecting rated lifetime directly from LED lamp lumen maintenance data, but a standardized method for making this projection has not yet been developed. Approach 4 determines the rated lifetime of the LED lamp using projected life of the LED source contained in the lamp based on IES LM–80–2008 data and the IES TM–21–2011 projection method with a maximum limit of 25,000 hours. This method limits required testing time to 6,000 hours and is based on IES standards. It would be preferable to consider the performance of the entire LED lamp to determine rated lifetime, but the current methods for measurement and projection of the lamp are not practical or sufficiently specified. Therefore, based on currently available information, DOE preliminarily has determined that approach 4 is the best approach to determine rated LED lifetime. DOE invites comment on relative costs and benefits of the four approaches.

Regarding the proposed method, approach 4, using IES LM–80–2008 and IES TM–21–2011, DOE recognizes that the LED driver component degradation and failure rates, the interactions among the LED sources and between LED sources and other components within the lamp, as well as color shift, are known to affect the rated lifetime of the LED lamp. However, standardized test methods do not currently exist to determine the impact of each of these components on the overall rated lifetime of LED lamps. In the absence of this information, the rated lifetime of the LED lamp can be determined only through testing and projecting lumen maintenance of the LED source. As new standards to define the life of LED drivers and components are developed, this test procedure can be revised.

Further, DOE proposes that the maximum projection of rated lifetime not exceed 25,000 hours, expressed in number of years, based on three hours per day of use. This would ensure that exceedingly large rated lifetime projections are not made based only on IES LM–80–2008 data and IES TM–21–2011 projections. This method could lead to inaccurate projections if the driver installed in an LED lamp does not operate as long as the source is projected to survive. Another issue could arise if the operation of the driver compensates for degradation of the LED source in the first 6,000 hours of operation. In this situation, the LED source lumen maintenance data could decrease rapidly once the driver is unable to compensate for degradation of the LED source. However, an extrapolation of the first 6,000 hours of data would not be able to predict when the rapid degradation of the LED source would occur, and consequently would project a longer rated lifetime than is realistic. IES TM–21–2011 also sets an upper limit to the maximum allowable projection, such as 5.5 times the test duration for 10–19 units and six times the test duration for 20 units. However, these limits are defined with a 90 percent confidence on the projection of LED source lifetime, and the proposed upper limit of 25,000 hours is based on a conservative estimate of the overall LED lamp's lifetime.

Therefore, DOE proposes to incorporate IES standards LM–80–2008 and TM–21–2011 for projecting the rated lifetime of LED lamps. As discussed in section III.B, IES is the recognized technical authority on illumination and the standards that DOE proposes to incorporate are prepared by the IES subcommittee on Solid State Light Sources of the IESNA Testing Procedures Committee. DOE's view is that the committee members that worked on developing both of these IES standards represent applicable industry groups and interested parties. DOE reviewed IES LM–80–2008 and IES TM–21–2011 to determine whether any additional information would be required for providing a test procedure for determining the rated lifetime of LED sources, and thus, LED lamps. DOE concluded that IES LM–80–2008 and IES TM–21–2011 provide most of the information that is required for setting up the LED sources for testing, measuring the lumen output of the LED sources, and projecting the rated lifetime of the LED source. Additionally, DOE proposes to incorporate UL standard 1993–2009 to describe the test setup and conditions for an ISTMT to determine the temperature at which IES LM–80–2008 data should be used to project the rated lifetime of the LED lamp. These requirements, and any variations, are further discussed in sections III.C.3 through III.C.8. DOE

requests comment on the proposed incorporation of IES standards LM–80–2008 and TM–21–2011 and UL standard 1993–2009.

2. Definition of the Rated Lifetime of an LED Lamp

Based on the proposed approach to determine lifetime, DOE proposes that the rated lifetime of an LED lamp be defined as the time when the lumen output of the LED sources within the lamp falls below 70 percent of the initial light output (L_{70}). DOE understands that the L_{70} metric is the standard reference level to define rated LED lamp lifetime [31] and is widely accepted by industry as well. DOE invites interested parties to comment on the definition of the rated lifetime of an LED lamp.

3. Overview of the Proposed Test Method To Project Rated Lifetime

DOE proposes that the rated lifetime of an LED lamp should be obtained by following the three steps listed below. First, the in-situ temperature of the LED source when it operates within the lamp should be measured. Second, the lumen maintenance data at the in-situ temperature should be obtained. Finally, the lumen maintenance data should be projected to determine the rated lifetime.

DOE proposes that the in-situ temperature of the LED source should be obtained by performing an ISTMT. Section III.C.6.a discusses the test setup and conditions, as well as the method of measuring the in-situ temperature for the ISTMT. To obtain the lumen maintenance data at the in-situ temperature, DOE proposes that the data can be obtained through any one of the following three options: (1) Directly from the source manufacturer; (2) by interpolating the data provided by a source manufacturer from two case temperatures not at the in-situ temperature; or (3) by measuring the lumen maintenance of the LED source at the in-situ case temperature. DOE understands that LED source manufacturers typically test LED sources at three temperatures as required by IES LM–80–2008. These three temperatures are 55°C, 85°C, and a third temperature suggested by the source manufacturer. Further, DOE understands that source manufacturers can provide the lumen maintenance data at these three temperatures to LED lamp manufacturers as needed. If the lumen maintenance data is available at the in-situ temperature (option 1 above) or if the lumen maintenance data can be interpolated from the data provided by the LED source manufacturer (option 2 above), then the LED lamp manufacturer would not need to test the LED sources. However, if the lumen maintenance data is not available directly or through interpolation from the LED source manufacturer, LED lamp manufacturers would need to test the LED sources at the in-situ temperature to obtain the lumen maintenance data to project the rated lifetime (option 3 above). Section III.C.8 discusses the proposed approach to interpolate lumen maintenance data for option 2 above. Further, sections III.C.4 through III.C.6.b discuss the proposed approach to test the LED sources to obtain lumen maintenance data, which would only be required for option 3 above.

Finally, section III.C.7 discusses the method to project the lumen maintenance data (gathered from option 1, 2, or 3) and obtain the rated lifetime.

4. Test Conditions

DOE proposes that the vibration, temperature, drive current, humidity, and airflow requirements for testing the LED sources be as specified in section 4.4 of IES LM–80–2008. Section 4.4.1 of IES LM–80–08 requires that the LED source not be subjected to excessive vibration or shock during testing.

For the operation of the LED sources between photometric measurements, DOE does not propose to require the lamp manufacturer to test the LED sources at three case temperatures as specified in section 4.4.2 of IES LM–80–2008. Instead, DOE proposes that the LED source under test be operated at the same case temperature it reaches when assembled and operated within the LED lamp. This temperature can be determined by performing an ISTMT as described in section III.C.6.a. Further, DOE proposes that each of the LED sources must be operated at this in-situ temperature with the same drive current passing through each LED source (see section III.D for sampling requirements). DOE proposes that the drive current flowing through the LED source under test should be greater than or equal to the subcomponent drive current in the LED lamp. DOE invites comment on the appropriateness of operating the LED sources at the in-situ case temperature and drive current.

Section 4.4.2 of IES LM–80–2008 further specifies that the temperature should be maintained between the desired case temperature and 2 °C less than the desired case temperature during testing, and the temperature of the air surrounding the LED sources should be maintained between the desired case temperature and 5 °C less than the desired case temperature during testing. Section 6.3 of IES LM–80–2008 also specifies that the LED sources be allowed to cool to room temperature before each lumen output measurement and that the ambient temperature during this measurement be 25 °C ± 2 °C. Finally, section 4.4.2 of IES LM–80–2008 specifies that the relative humidity (RH) should be maintained to less than 65 RH during testing.

Further, DOE considered whether the measurement location for the air surrounding the LED sources and the measurement location for the ambient temperature while measuring lumen output should be specified. IES LM–79–2008 specifies that the ambient temperature must be measured at a point not more than one meter from the LED lamp. DOE requests comment on whether a similar requirement, one meter from the LED source, should be specified for measuring air and ambient temperature around the source.

Finally, DOE proposes that the airflow around the LED sources under test should be as specified in section 4.4.3 of IES LM–80–2008, which states that the airflow should be maintained to minimize air drafts but allow some movement of the air to avoid thermal stratification. DOE invites interested parties to comment on the appropriateness of adopting section 4.4.3 of IES LM–80–2008 for acceptable airflow around the LED sources under test. Further, DOE requests comment on whether testing with a single ply tissue paper, as specified in section 4.3 of IES LM–9–2009, should be used to ensure a draft free environment for testing LED sources.

5. Test Setup

a. Operating Orientation

DOE proposes that the LED sources be operated in accordance with section 4.4.4 of IES LM–80–2008, which states that the LED sources must be operated in the orientation specified by the source manufacturer. DOE understands that there may be effects from convection airflow due to heat-sinks and thermal management, and therefore also proposes that the LED sources should be spaced to allow airflow around each test unit as recommended in section 4.4.4 of IES LM–80–2008.

DOE notes that it is not specifying the orientation for testing LED sources but is specifying the orientation for testing LED lamps (as discussed in section III.B.3.b). Because the LED source case temperature is not controlled during an LED lamp test and LED lamp orientation

[31] ''LED Luminaire Lifetime: Recommendations for Testing and Reporting.'' Second Edition. June 2011. *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/led_luminaire-lifetime-guide_june2011.pdf.*

can change the LED source case temperature, specification of operating orientation is necessary for an LED lamp. By contrast, the case temperature of the LED source is controlled during testing, minimizing the effect of operating orientation on the light output of the LED source. DOE invites interested parties to comment on whether the operating orientation of LED sources during testing affects the lumen depreciation over time.

b. Electrical Setup

DOE proposes that the electrical setup including input voltage, input current, and driver used for testing LED sources be as specified in section 5.0 of IES LM–80–2008. Section 5.1 of IES LM–80–2008 specifies that the input voltage should conform to the rated input voltage (RMS) and frequency of the driver. For drivers that require DC, ripple voltage should not exceed two percent of the DC output voltage. Section 5.2 of IES LM–80–2008 further specifies that the power supply should have a voltage waveshape such that the total harmonic distortion does not exceed three percent of the fundamental frequency.

Section 5.3 of IES LM–80–2008 specifies that the input current should be within ± three percent of the rated RMS value during testing and within ± 0.5 percent of the rated RMS value during lumen output measurements. Section 5.3 of IES LM–80–2008 further specifies that the current can be de-rated as a function of temperature in accordance with the manufacturer's recommendation. This requirement ensures that the LED source is operated at the same current that it would be operated at within the LED lamp.

Section 5.4 of IES LM–80–2008 requires that the external driver used for testing LED sources be compliant with manufacturer's guidance. DOE believes that this requirement would ensure that the LED sources operate at the rated input current and would provide consistent lumen output measurements for rated lifetime projections. DOE invites comment on the appropriateness of adopting section 5.4 for the external driver specification to test LED sources. DOE understands that the driver used for testing LED sources per IES LM–80–2008 is a simple power supply that converts AC input power to DC output power and it is not similar to the drivers used in LED lamps. DOE requests comment on whether more specifications should be provided for the driver used to test LED sources.

c. Thermal Setup

DOE proposes that the thermal setup for testing LED sources be as specified in section 5.5 of IES LM–80–2008. It states that the case temperature should be measured directly on the LED source at the case temperature measurement point designated by the manufacturer using a thermocouple. A manufacturer-recommended heat sink should be used for temperature maintenance.

d. Instrumentation

DOE proposes that the instrumentation required for recording time and measuring the lumen output of LED sources should be as specified in section 6.1 of IES LM–80–2008 and section 9.0 of IES LM–79–2008 respectively. Section 6.1 of IES LM–80–2008 specifies that if an elapsed time meter is used, it should be connected to the particular test position and should accumulate time only when the LED sources are energized. Monitoring devices should not accumulate time if there is a power failure to a source. Additionally, section 6.1 of IES LM–80–2008 recommends using video monitoring, current monitoring, or other means to determine the elapsed operating time if they are designed to provide sufficient temporal accuracy. This section also requires that the total time uncertainty should be within ± 0.5 percent.

DOE further proposes that the lumen output measurement should be made as specified in section 9.0 of IES LM–79–2008. The lumen output should be measured at the drive current used throughout rated lifetime testing. DOE finds that consistently maintaining the drive current across all measurements would ensure an accurate representation of the rated LED lamp lifetime. DOE is not proposing section 6.2 of IES LM–80–2008 for measuring the lumen output of the LED sources because it recommends that the lumen output measurement should be determined from the total spectral radiant flux measurements using a spectroradiometer only. DOE understands that the sphere-photometer system and goniophotometer methods recommended in section 9.0 of IES LM–79–2008 could be used for measuring the lumen output of the LED sources in addition to the sphere-spectroradiometer system. DOE invites interested parties to comment on the appropriateness of adopting section 9.0 of IES LM–79–2008 for the instrumentation required for photometric measurements of the LED sources under test. In particular, DOE requests comment about whether the spectroradiometer should be the only instrument used for photometric measurements of LED sources or whether a sphere-photometer system and goniophotometer system could be used as well.

6. Test Method and Measurements

a. In-Situ Temperature Measurement Test

DOE proposes that an ISTMT be performed to determine the case temperature at which the lumen maintenance data should be used to project the rated lifetime of the LED source. DOE proposes that the test setup and conditions for the ISTMT be as specified in sections 8.5, 8.13, 8.14, 8.15, and 9 of UL 1993–2009. Section 9 of UL 1993–2009 specifies the test equipment, ambient temperature, relative humidity, instrumentation, test box material and construction, as well as the test setup for lamps that are intended to be operated in a wet environment. Section 8.5 of UL 1993–2009 provides specifications for the temperature test of the LED lamp including the ambient temperature and the temperature of the components within the lamp. Section 8.5.8 further specifies that the in-situ temperature of the LED lamp should be recorded after the test has been running for at least three hours, and three successive readings taken at 15 minute intervals are within 1 °C of one another and are still not rising. Sections 8.13, 8.14, and 8.15 specify the test setup for lamps that are intended to be operated in a damp environment, wet environment, and cold environment, respectively.

Further, DOE proposes that, as specified in Appendix D of the ENERGY STAR® Program Requirements for Integral LED Lamps, Eligibility Criteria—Version 1.4[32], the in-situ temperature should be measured at the temperature measurement point (TMP) that is defined by LED package, array, or module manufacturer on its product to act as surrogate points for measuring the junction temperature. To perform the ISTMT, a temporary thermocouple should be attached to the TMP of the highest temperature LED package, array, or module in the LED lamp, as specified by the LED source manufacturer. The temporary hole for inserting the thermocouple should be tightly resealed during testing with putty or other flexible sealant, as mentioned in the ENERGY STAR specification. Lastly, DOE proposes that the guidance

[32] ENERGY STAR® Program Requirements for Integral LED Lamps www.energystar.gov/ia/partners/product_specs/program_reqs/Integral_LED_Lamps_Program_Requirements.pdf.

specified in the ENERGY STAR specification for attaching the thermocouple in the LED lamp be followed.

DOE invites interested parties to comment on the appropriateness of adopting sections 8.5, 8.13, 8.14, 8.15, and 9 of UL 1993–2009 for performing the ISTMT to determine the LED source case temperature at which rated lifetime projections should be made using the temporary thermocouple attachment to the TMP as specified in Appendix D of the ENERGY STAR® Program Requirements for Integral LED Lamps, Eligibility Criteria—Version 1.4.

b. Lumen Maintenance Testing Duration and Interval

DOE proposes that the test method for determining the LED source lifetime be as specified in section 7.0 of IES LM–80–2008 and section 4.3 of IES TM–21–2011. Section 7.1 of IES LM–80–2008 specifies that the LED sources should be operated for at least 6,000 hours and data should be collected at a minimum of every 1,000 hours, at ambient temperature. Section 4.3 of IES TM–21–2011 further recommends that after the first 1,000 hours of operation of the LED source, data should be collected at an interval smaller than 1,000 hours. Additional measurements beyond 6,000 hours are encouraged and recommended for more accurate projections. Section 7.2 of IES LM–80–2008 further specifies that LED sources should be operated at a constant current throughout testing. Finally, as specified in section 7.3 of IES LM–80–2008, if an LED source fails during testing, it should be determined if the failure is due to the auxiliary equipment or if it is an actual LED source failure. DOE proposes that if the failure is due to the auxiliary equipment, the failed auxiliary equipment should be replaced and testing of the LED source should be continued from the time when the auxiliary equipment failed. It should be possible to determine the elapsed time by using a video monitor or other equipment as specified in section III.C.5.d. If it is an actual LED source failure, it should be included in the lifetime projection calculation as described in section III.C.7.

DOE further proposes that the relevant guidelines from the ENERGY STAR® guidance document for measuring the lumen maintenance of LED sources should be used for testing the LED sources.[33] This document specifies that all case temperature subsets of the sample used for testing should be of the same CCT. Secondly, the drive current flowing through the LED source under test should be greater than or equal to the subcomponent drive current in the LED lamp; the drive current in the LED lamp could be determined during ISTMT. The document further specifies that for an LED lamp that has both phosphor-converted white and single-color LED packages, the lumen maintenance should be measured for a sample of LED arrays that incorporate both types of LED packages. Additionally, for LED arrays constructed as an assembly of LED dies on a printed circuit board or substrate (a.k.a. chip-on-board) with one common phosphor layer overlaying all dies, or with phosphor layers overlaying individual dies with or without single-color dies incorporated, a single test could be used to represent the performance of a range of LED array sizes, if the following two conditions are satisfied: (1) Testing is conducted on the largest LED array that the manufacturer believes will be used in the LED lamp; and, (2) the average calculated current-per-die in the LED array under test is greater than or equal to the average calculated current-per-die employed in the LED lamp. Finally, for LED arrays constructed as an assembly of LED packages on a printed circuit board, each with their own phosphor layer, the in-situ TMP temperature of the hottest package in the array should be used for lumen maintenance projection purposes. DOE invites interested parties to comment on the appropriateness of adopting these guidelines from the ENERGY STAR guidance document for testing LED sources.

7. Method to Project Lumen Maintenance Data

DOE proposes that the lumen maintenance of the LED source should be projected as specified in section 5.0 of IES TM–21–2011. This section specifies that a curve-fit method should be used for projecting the lumen maintenance for each LED source at a given drive current and case temperature. Section 5.2 of IES TM–21–2011 further gives a detailed description of the procedure, including normalization of data, averaging of data, using the curve-fit method, adjusting the results based on the sample size, and whether the projected value is positive or negative. DOE proposes that L_{70}, the time it takes for the LED source to reach 70 percent of its initial light output, should be used for projecting the lifetime of the LED source with a maximum projection of 25,000 hours. That is, even if the method described in section 5.0 of IES TM–21–2011 projects a lifetime of 36,000 hours, the rated lifetime of the LED lamp cannot be more than 25,000 hours. If the projection method described in IES TM–21–2011 projects a lifetime that is less than 25,000 hours, then the projected value should be the rated lifetime of the LED lamp. As explained in section III.C.1 above, DOE is making this proposal to ensure that exceedingly large rated lifetime projections are not made based only on IES LM–80–2008 data and IES TM–21–2011 projections. Twenty-five thousand hours was selected as the maximum value because it is currently unknown if the LED driver will last beyond 25,000 hours. Furthermore, twenty-five thousand hours is also the lifetime estimate that several reputable manufacturers already use in their catalogs, and it is the maximum ENERGY STAR criteria for full qualification of LED lamp lifetime based on 6,000 hours of test data. Finally, DOE proposes that, the life of the LED lamp should be determined in number of years based on three hours per day of operation, which is consistent with the FTC Lighting Facts label requirements for other lamp technologies. DOE proposes that the resulting value should be rounded to the nearest tenth of a year. Rounding the rated lifetime to the nearest tenths place is necessary to have sufficient resolution for discerning differences in rated lifetime expressed in years. DOE invites interested parties to comment on the appropriateness of using the methodology specified in section 5.0 of IES TM–21–2011 for projecting the L_{70} lifetime of LED sources with a maximum projection of 25,000 hours. DOE also requests comment on the proposed rounding requirement for rated lifetime.

For LED sources that fail during lifetime testing due to LED source failure, DOE proposes that the data for these LED sources be included for projecting the lifetime. At the first measurement interval after the LED source fails, the recorded value should be zero lumens for the source. Values for the remaining tests between the time of failure and end of testing should be recorded as zero as well and these values should be included while averaging the normalized values as explained in section 5.2 of IES TM–21–2011.

[33] ENERGY STAR® Program Guidance Regarding LED Package, LED Array and LED Module Lumen Maintenance Performance Data Supporting Qualification of Lighting Products, September 9, 2011 *www.energystar.gov/ia/partners/prod_development/new_specs/downloads/luminaires/ENERGY_STAR_Final_Lumen_Maintenance_Guidance.pdf.*

8. Method to Interpolate Lumen Maintenance Data

For option 2 discussed in section III.C.3 above, DOE proposes that the method of interpolation should be as specified in section 6.0 of IES TM–21–2011. This section describes the case temperatures that should be used for interpolating the data and the methodology used for calculating the lumen output at the desired temperature, which includes converting the temperature to units of Kelvin, using the Arrhenius Equation [34] to calculate the lumen maintenance life, and the applicability and limitations of the method.

D. Sampling Plan

DOE is proposing a sampling plan for determining input power, lumen output, CCT, and rated lifetime of an LED lamp. DOE reviewed the sampling requirements of other lamp technologies to develop the sampling plan for LED lamps. For testing LED sources, DOE reviewed the requirements specified in IES TM–21–2011 and identified that those requirements are necessary to project the rated lifetime.

DOE proposes a minimum of 21 LED lamps should be tested for determining the input power, lumen output, and CCT as described in section III.B. A minimum of three lamps should be selected per month for seven months of production out of a 12 month period. If lamp production occurs in fewer than seven months of the year, three or more lamps should be selected for each month that production occurs as evenly as possible to meet the minimum 21 unit requirement. The seven months need not be consecutive and could be a combination of seven months out of the 12 months. Sample sizes greater than 21 should be multiples of three so that an equal number of lamps in each orientation are tested. This selection of a minimum of 21 lamps is consistent with DOE's regulation for GSFLs and GSILs, specified at 10 CFR 429.27, Subpart B, which specify a sampling size of a minimum of three lamps for each month of production for a minimum of seven months (not necessarily consecutive) out of the 12 month period, totaling a minimum of 21 lamps.

DOE further proposes that the input power, lumen output, and CCT of the units should be averaged and the value of each of these parameters should be rounded as specified in section III.B.5. The average value of each parameter should be calculated using the following equation:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

where, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the ith unit. DOE invites interested parties to comment on the proposed sample size for determining input power, lumen output, and CCT.

DOE proposes that the sample size for testing LED sources for determining the rated lifetime of LED lamps be as specified in section 4.2 of IES TM–21–2011. This section recommends that all data from a sample set at a given case temperature and drive current from the LM–80–2008 test should be used for projecting the lifetime of the LED source. The recommended sample set is 20 units for projecting the lifetime of the LED sources. If at least 20 units are used, the lifetime could be projected up to six times the test duration, with a maximum limit of 25,000 hours as described in section III.C.7. If the number of units tested is between 10 and 19 units, the lifetime could be projected up to 5.5 times the test duration, with a maximum of 25,000 hours. Less than 10 units cannot be used for the IES TM–21–2011 projection method. This requirement is different from the sample size proposed above for testing the LED lamp to determine input power, lumen output, and CCT. The differences are primarily because the rated lifetime is determined by testing a different device (the LED source) and the proposed method for projecting lifetime provides specific projection calculations based on sample sizes outlined in that IES TM–21–2011. DOE requires that the same number of units should be tested at each case temperature for projecting the rated lifetime. DOE invites interested parties to comment on the appropriateness of adopting section 4.2 of IES TM–21–2011 for the required sample size for rated lifetime testing.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *www.gc.doe.gov*.

[34] Arrhenius Equation is an equation that accounts for the temperature dependence of a reaction. It is useful for determining the temperature dependent lumen maintenance of LED sources.

DOE reviewed the test procedures considered in today's NOPR under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003. As discussed in more detail below, DOE found that because the proposed test procedures have not previously been required of manufacturers, all manufacturers, including small manufacturers, may potentially experience a financial burden associate with new testing requirement. While examining this issue, DOE determined that it could not certify that the proposed rule, if promulgated, would not have a significant impact on a substantial number of small entities. Therefore, DOE has prepared an IRFA for this rulemaking. The IRFA describes the potential impacts on small businesses associated with LED lamp testing and labeling requirements.

DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review.

1. Reasons, Objectives of, and Legal Basis for, the Proposed Rule

EISA 2007 section 321(b) amended EPCA (42 U.S.C. 6294(a)(2)(C)) to direct FTC to consider the effectiveness of lamp labeling for power levels or watts, light output or lumens, and lamp lifetime. This test procedure rulemaking for LED lamps is being conducted to support FTC's determination that LED lamps, which had previously not been labeled, require labels under EISA section 321(b) and 42 U.S.C. 6294(a)(6) in order to assist consumers in making purchasing decisions. 75 FR 41696 (July 19, 2010)

2. Description and Estimated Number of Small Entities Regulated

SBA has set a size threshold for electric lamp manufacturers to describe those entities that are classified as ''small businesses'' for the purposes of the RFA. DOE used the SBA's small business size standards to determine whether any small manufacturers of LED lamps would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/sites/default/files/Size_Standards_Table.pdf.* LED lamp manufacturing is classified under NAICS 335110, ''Electric Lamp Bulb and Part Manufacturing.'' The SBA sets a threshold of 1,000 employees or less for an entity to be considered as a small business for this category.

DOE estimated that the test procedure requirements proposed in this NOPR will apply to about 32 manufacturers of LED lamps. Of these manufacturers, DOE compiled a preliminary list of potential small businesses by searching the SBA databases, ENERGY STAR's list of qualified products [35], as well as performing a general search for LED manufacturers. DOE determined which companies manufacture LED lamps by reviewing company Web sites, the SBA Web site when applicable, and/or calling companies directly. Through this process, DOE identified 17 potential small businesses that manufacture LED lamps. DOE requests comment on the estimated number of entities that would be impacted by the proposed rulemaking and the number of these companies that are ''small businesses''.

3. Description and Estimate of Burden on Small Businesses

The proposed test procedures for LED lamps, if adopted by FTC, would potentially require re-testing of any previously tested product. Further, if adopted by FTC, the proposed test procedures would require manufacturers to update their existing package and product labeling and online and hardcopy retailers to update their catalogs. The estimated cost of testing, packaging and labeling, and revising catalogs are discussed below.

Testing

To estimate the cost of testing, DOE determined the initial cost for setup and the costs to perform tests for determining the input power, lumen output, CCT, and rated lifetime of LED lamps. The initial setup for testing input power, lumen output, and CCT would require a custom-built rack for mounting lamps for testing. DOE estimated that up to 120 hours of labor may be required for building a rack that can hold up to 100 lamps. DOE estimated that the cost to build a rack by an electrical engineer whose rate is $39.79 per hour [36] would be approximately $4,770. DOE estimated that the material cost to build a custom-built rack holding 100 sockets would be $3,000 and the power supply and regulator costs would be $3,300 and $1,250 respectively. DOE estimated the total cost to build a rack to be approximately $12,000. DOE expects that manufacturers of LED lamps would already have other instrumentation necessary for testing, because IES LM–79–2008 is the recommended standard for testing LED lamps for the FTC Lighting Facts label.

In addition to setup, the labor cost associated with carrying out the testing contributes to the overall testing burden. As discussed in section III.D, for testing lumen output, input power, and CCT, manufacturers would be required to test a total of 21 LED lamps. DOE estimated that this testing would require approximately four hours per lamp by an electrical engineer whose rate is $39.79 per hour. DOE estimated about 19 small business manufacturers of LEDs would be impacted, each typically manufacturing about 17 basic models. In total, the use of this test method for determining light output, input power, and CCT would result in testing related labor costs of $57,000 for each manufacturer.

For lifetime testing, as discussed in section III.D, LED source manufacturers would be required to test at least 10 units of the LED source, though 20 units are recommended and allow for projection of a longer lifetime. DOE's understanding is that LED source manufacturers already perform this test during the normal course of business; therefore, adoption of this test method should not present an incremental burden. However, LED lamp manufacturers must perform the ISTMT on one lamp for each basic model to determine the case temperature of the LED source and perform the lifetime extrapolation calculations described in section III.C.7. DOE estimated these tests and calculations would require approximately 16 hours per basic model by an electrical engineer whose rate is $39.79 per hour. DOE understands that LED lamp manufacturers would already have the materials required for the ISTMT. DOE estimated about 19 manufacturers of LED lamps would be impacted, each typically manufacturing about 17 basic models. In total, the use of this test method for determining rated lifetime would result in related labor costs of $11,000 for each manufacturer. Finally, DOE expects that the incremental burden to develop a model for projecting rated lifetime per IES TM–21–2011 should be insignificant and that most companies would already have this calculation method in place.

For each manufacturer producing 17 basic models, assuming testing instrumentation is already available, DOE estimates the initial setup cost

[35] ENERGY STAR Qualified Lamps Product List *http://downloads.energystar.gov/bi/qplist/Lamps%20Qualified%20Product%20List.pdf?fd91-d291.*

[36] Obtained from the Bureau of Labor Statistics (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor (August 2009), Bulletin 2720, Table 3 (''Full-time civilian workers,'' mean and median hourly wages) *http://bls.gov/ncs/ocs/sp/nctb0717.pdf.*

would be $12,000 and the labor costs to carry out testing would be approximately $68,000. DOE expects the setup cost to be a onetime cost to manufacturers. Further, DOE expects that the labor costs to perform testing would be smaller than $68,000 after the first year because only new products or redesigned products would need to be tested. DOE requests comments on its analysis of initial setup and labor costs as well as the average annual burden for conducting testing of LED lamps.

Packaging, Labeling, Catalogs

In addition to testing costs, LED lamp manufacturers may potentially incur the cost to update existing package and product labeling and online and hardcopy retailers may be required to update catalogs. In the final rule establishing FTC's Lighting Facts label, FTC determined the cost for changing package and product labeling as well as retail catalogs would not impose a significant burden on small entities. 75 FR 41696, 41712 (July 19, 2010). The required updates for labeling and catalogs, if FTC adopts this proposed test procedure, would involve revisions of values, not a full redesign of packaging or catalog format. Therefore, the burden imposed by the adoption of this proposed test procedure by the FTC would have an even smaller impact on small entities than the original rulemaking establishing that label. DOE requests comment on its estimated burden to small LED lamp manufacturers and retailers to change product packaging and labeling and retail catalogs.

In summary, DOE cannot certify that the impact on small businesses associated with FTC adopting the proposed LED lamp test procedure would not be significant. DOE requests comment on the potential burden and its impact on small businesses.

4. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. DOE invites comment and information on this issue.

5. Significant Alternatives to the Rule

DOE considered a number of alternatives to the proposed test procedure as discussed in sections III.B.1 and III.C.1. DOE seeks comment and information on the need, if any, for alternative test methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. DOE will consider any comments received regarding alternative methods of testing that would reduce economic impact of the rule on small entities. DOE will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

C. Review Under the Paperwork Reduction Act of 1995

There is currently no information collection requirement related to the test procedure for LED lamps. In the event that DOE proposes to require the collection of information derived from the testing of LED lamps according to this test procedure, DOE will seek OMB approval of such information collection requirement.

DOE established regulations for the certification and recordkeeping requirements for certain covered consumer products and commercial equipment. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping was subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was approved by OMB under OMB Control Number 1910–1400. Public reporting burden for the certification was estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As stated above, in the event DOE proposes to require the collection of information derived from the testing of LED lamps according to this test procedure, DOE will seek OMB approval of the associated information collection requirement. DOE will seek approval either through a proposed amendment to the information collection requirement approved under OMB control number 1910–1400 or as a separate proposed information collection requirement.

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

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE is proposing a test procedure for LED lamps that it expects will be used to support the FTC's Lighting Facts labeling program. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would adopt existing industry test procedures for LED lamps, so it would not affect the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting

errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause 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 (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.gc.doe.gov*. DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to establish a test procedure for measuring the lumen output, input power, CCT, and rated lifetime of LED lamps is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The proposed rule incorporates testing methods contained in the following commercial standards: ANSI/IESNA RP–16–2010, ''Nomenclature and Definitions for Illuminating Engineering;'' IES LM–79–2008, ''Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products;'' UL 1993–2009, ''Standard for Safety, Self-Ballasted Lamps and Lamp Adapters;'' IES LM–80–2008, ''Approved Method: Measuring Lumen Maintenance of LED Light Sources;'' and IES TM–21–2011, ''Projecting Long Term Lumen Maintenance of LED Light Sources''.

The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (*i.e.,* that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants is available on the public meeting registration Web site *www1.gotomeeting.com/register/952826176.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements For Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting Comments Via regulations.gov.

The regulations.gov web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the proposed scope and incorporation of ANSI/IESNA RP–16–2010 for the definition of LED lamps. See section III.A for further detail.

2. DOE requests comment on the proposed incorporation of IES LM–79–2008 for determining lumen output, input power, and CCT. See section III.B for further detail.

3. DOE requests comment on whether air movement should be specified in more detail than that provided by IES LM–79–2008. See section III.B.2 for further detail.

4. DOE requests comment on operating an equal number of lamps in the base up, base down, and horizontal orientations throughout testing. See section III.B.3.b for further detail.

5. DOE requests comment on testing LED lamps at the rated voltage for single voltage lamps and testing lamps with dimming capability at the maximum input power. Further, DOE requests comment about testing LED lamps that are rated to operate at multiple voltages at 120 volts or the highest rated voltage. Finally, DOE requests comment on whether LED lamps with multiple modes of operation are available and the CCT value at which these lamps should be tested. See section III.B.3.d for further detail.

6. DOE requests comment on seasoning the LED lamp for 1,000 hours before collecting lumen output data. See section III.B.4.a for further detail.

7. DOE requests comment on stabilizing the lamp until the variation of at least three readings of the lumen output and electrical power, taken 15 minutes apart, is less than 0.5 percent. DOE also requests comment on its clarification of the variation calculation to be the difference of the maximum and minimum values divided by the minimum value. See section III.B.4.b for further detail.

8. DOE requests comment on measuring the lumen output of the LED lamp using a sphere-spectroradiometer system, sphere-photometer system, and goniophotometer system. In particular, DOE requests comment on whether the measurements from each method are similar and consistent. See section III.B.4.c for further detail.

9. DOE requests comment on measuring total lumens for directional LED lamps instead of beam lumens. See section III.B.4.c for further detail.

10. DOE requests comment on the proposed calculation and rounding requirement for lumen output, input power, CCT, and estimated annual energy cost. See section III.B.5 for further detail.

11. DOE requests comment on the relative costs and benefits of the four approaches described in Table III.1 to determine rated lifetime of an LED lamp. See section III.C.1 for further detail.

DOE requests comment on the proposed incorporation of IES standards LM–80–2008 and TM–21–2011 and UL standard 1993–2009 for determining the rated lifetime of LED lamps. See section III.C.1 for further detail.

12. DOE requests comment on the proposed definition of the rated lifetime of an LED lamp. See section III.C.2 for further detail.

13. DOE requests comment on operating the LED sources at the in-situ case temperature and drive current as well as the ambient conditions for testing. DOE also requests comment on whether the measurement location for air temperature near the LED source and airflow around the LED source should be further specified. See section III.C.4 for further detail.

14. DOE requests comment on whether the operating orientation of LED sources affects the lumen depreciation over time. See section III.C.5.a for further detail.

15. DOE requests comment on whether the requirement that the external driver used for testing LED sources be as specified by the manufacturer needs further clarification. See section III.C.5.b for further detail.

16. DOE requests comment on using a sphere-photometer system or a goniophotometer for measuring the lumen output of LED sources in addition to the sphere-spectroradiometer system specified in section 6.2 of IES LM–80–2008. See section III.C.5.d for further detail.

17. DOE requests comment on adopting sections 8.5, 8.13, 8.14, 8.15, and 9 of UL 1993–2009 and the practicality of the thermocouple attachment requirements for performing the ISTMT. See section III.C.6.a for further detail.

18. DOE requests comment on adopting relevant guidelines from the ENERGY STAR® guidance document for measuring lumen maintenance. See section III.C.6.b for further detail.

19. DOE requests comment on adopting section 5.0 of IES TM–21–2011

for projecting the lifetime of the LED sources with a maximum projection of 25,000 hours. See section III.C.7 for further detail.

20. DOE requests comment on the proposed rounding requirement for rated lifetime. See section III.C.7 for further detail.

21. DOE requests comment on the proposed sample size requirements for testing LED lamps and LED sources. See section III.D for further detail.

22. DOE requests comment on its estimated number of small businesses impacted by this rulemaking as well as its estimated cost and associated burden to small businesses. See section IV.B for further detail.

23. DOE requests comment on its estimate of costs and associated burden under the Paperwork Reduction Act. See section IV.C for further detail.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC on April 3, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II of Title 10, Subchapter D of the Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

2. Section 429.55 is added to read as follows:

§ 429.55 Light-emitting diode lamps.

(a) *Sampling plan for selection of units for testing.* (1) The requirements of § 429.11 are applicable to light-emitting diode lamps; and

(2)(i) For determining input power, lumen output, and correlated color temperature, for each basic model of light-emitting diode lamp, units shall be obtained from a 12-month period, tested, and the results averaged. A minimum sample size of 21 lamps shall be tested. The manufacturer shall randomly select a minimum of three lamps from each month of production for a minimum of seven out of the 12 month period. In the instance where production occurs during fewer than seven of such 12 months, the manufacturer shall randomly select three or more lamps from each month of production, where the number of lamps selected for each month shall be distributed as evenly as practicable among the months of production to attain a minimum sample size of 21 lamps. Sample sizes greater than 21 shall be a multiple of three. The value of input power, lumen output, and correlated color temperature shall be based on the sample and shall be equal to the mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of units; and x_i is the ith unit;

(ii) For measurements of rated lifetime, for each basic model of light-emitting diode lamp, the sample size of the light-emitting diode source packaged in the LED lamp shall be as specified in section 4.2 of IES TM–21 (incorporated by reference; see § 430.3).

(b) *Reserved.*

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

4. Section 430.2 is amended by adding in alphabetical order the definition of ''light-emitting diode lamp'' to read as follows:

§ 430.2 Definitions.

* * * * *

Light-emitting diode lamp means an integrated LED lamp as defined in ANSI/IESNA RP–16 (incorporated by reference; see § 430.3).

* * * * *

5. Section 430.3 is amended by:

a. Adding paragraphs (k)(8) through (k)(11).

b. Redesignating paragraph (o) as paragraph (p) and adding a new paragraph (o).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(k) *IESNA.* * * *

(8) ANSI/IESNA RP–16–10, Nomenclature and Definitions for Illuminating Engineering, approved October 15, 2005; IBR approved for Appendix AA to Subpart B.

(9) IES LM–79–08 (''IES LM–79''), Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products, approved December 31, 2007; IBR approved for Appendix AA to Subpart B.

(10) IES LM–80–08 (''IES LM–80''), Approved Method: Measuring Lumen Maintenance of LED Light Sources, approved September 22, 2008; IBR approved for Appendix AA to Subpart B.

(11) IES TM–21–11 (''IES TM–21''), Projecting Long Term Lumen Maintenance of LED Light Sources, approved on July 25, 2011; IBR approved for Appendix AA to Subpart B.

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(o) *UL.* Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062–2096, 847–272–8800, or go to *http://www.ul.com/.*

(1) UL 1993–2009 (''UL 1993''), Standard for Safety, Self-Ballasted Lamps and Lamp Adapters, approved August 28, 2009; IBR approved for Appendix AA to Subpart B.

(2) Reserved.

* * * * *

6. Section 430.23 is amended by adding paragraph (cc) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(cc) *Light-emitting diode lamp.* (1) The input power and lumen output for a light-emitting diode lamp shall be tested and determined in accordance

with section 3 of appendix AA of this subpart. The average measured input power shall be rounded to the nearest tenths of a watt. The average lumen output shall be rounded to the nearest 10 lumens.

(2) The correlated color temperature of a light-emitting diode lamp shall be tested and determined in accordance with section 3 of appendix AA of this subpart. The resulting correlated color temperature shall be averaged over all units tested and rounded to the nearest 10 Kelvin.

(3) The rated lifetime of a light-emitting diode lamp shall be equal to the time at which the lumen output of the light-emitting diode sources within the lamp has fallen below 70 percent of the average initial lumen output with a maximum limit of 25,000 hours as determined in section 4 of appendix AA of this subpart. The rated lifetime shall be determined in number of years based on an estimated three hours of use per day of the light-emitting diode lamp. The resulting rated lifetime shall be rounded to the nearest tenth of a year.

(4) The estimated annual energy cost for a light-emitting diode lamp, expressed in dollars per year, shall be the product of the average input power in kilowatts as determined in accordance with appendix AA to this subpart, an electricity cost rate of 11 cents per kilo-watt hour, and an estimated average annual use of three hours per day (that is, 1,095 hours per year). The resulting estimated annual energy cost shall be rounded to the nearest cent per year.

7. Appendix AA to subpart B of part 430 is added to read as follows:

Appendix AA to Subpart B of Part 430—Uniform Test Method for Measuring the Input Power, Lumen Output, Correlated Color Temperature (CCT), and Rated Lifetime of Light-Emitting Diode (LED) Lamps

1. *Scope:* This appendix applies to the measurement of lumen output, input power, and CCT for LED lamps, and to the measurement of lumen maintenance of LED sources for the projection of rated LED lamp lifetime.

2. *Definitions*

2.1. To the extent that definitions in the referenced IES standards do not conflict with the DOE definitions, the definitions specified in section 1.3 of IES LM–79 except section 1.3(f) (incorporated by reference; see § 430.3), section 3.0 of IES LM–80 except section 3.5 (incorporated by reference; see § 430.3), and section 3.0 of IES TM–21 (incorporated by reference; see § 430.3) shall be included.

2.2. *IES* means the Illuminating Engineering Society of North America.

2.3. *Lamp lumen output* means the total luminous flux produced by the lamp, in units of lumens.

2.4. *LED source* means within an LED lamp, the assembly of components or dies, including the electrical connections, printed on a circuit board or substrate. The LED source does not include the power source or base, but possibly incorporates optical elements and additional thermal, mechanical, and electrical interfaces that are intended to connect to the load side of an LED driver.

2.5. *Rated lifetime* means the time when the lumen output of the LED source has fallen below 70 percent of the average initial lumen output.

3. *Test Method for Determining Lumen Output, Input Power, and CCT*

3.1. *Test Conditions and Setup*

3.1.1. The ambient conditions, power supply, electrical settings, and instruments required shall be as described in sections 2.0, 3.0, 7.0, and 8.0 of IES LM–79 (incorporated by reference; see § 430.3) respectively.

3.1.2. An equal number of LED lamps shall be set up in the base up, base down, and horizontal orientations throughout testing.

3.1.3. For an LED lamp with multiple operating voltages, the lamp shall be operated at 120 volts throughout testing. If the lamp is not rated for 120 volts, it shall be operated at the highest rated voltage.

3.2. *Test Method and Measurements*

3.2.1. The LED lamp shall be seasoned for 1,000 hours prior to stabilizing the lamp and collecting photometric data.

3.2.2. The LED lamp shall be stabilized as described in section 5.0 of IES LM–79 (incorporated by reference; see § 430.3). The lamp reaches stabilization when the variation [(maximum—minimum)/minimum] of at least three readings of input power and lumen output over a period of 30 minutes, taken 15 minutes apart, is less than 0.5 percent.

3.2.3. The input power in watts shall be measured and recorded as specified in section 8.0 of IES LM–79 (incorporated by reference; see § 430.3).

3.2.4. The measurement of lumen output of the LED lamp shall conform to section 9.0 of IES LM–79 (incorporated by reference; see § 430.3).

3.2.5. CCT shall be determined according to the method specified in section 12.0 of IES LM–79 (incorporated by reference; see § 430.3).

4. *Test Method for Projecting Rated Lifetime*

4.1. *Overview of the Method to Project Rated Lifetime*

4.1.1. Determine the in-situ case temperature of the LED source when it is operated within the lamp by performing the in-situ temperature measurement test (ISTMT) as described in section 4.3.1 below.

4.1.2. Obtain LED source lumen maintenance data per IES LM–80 (incorporated by reference; see § 430.3) from the LED source manufacturer.

4.1.2.1. If lumen maintenance data for the LED source is available from the LED source manufacturer at the in-situ temperature, use this data to project the rated lifetime as described in section 4.1.3.

4.1.2.2. If the in-situ temperature of the LED source falls between the case temperatures associated with the lumen maintenance data available from the LED source manufacturer, lumen maintenance data for the LED source can be interpolated as described in section 6.0 of IES TM–21 (incorporated by reference; see § 430.3).

4.1.2.3. If lumen maintenance data for the LED source cannot be obtained through the methods outlined in section 4.1.2.1 or section 4.1.2.2, it must be obtained by testing the LED source directly. The test conditions, test setup, and test measurements for measuring lumen maintenance are described in section 4.2 through section 4.3.

4.1.3. The time required to reach 70 percent lumen maintenance (70 percent of light output after 1,000 hours of testing) of the LED source shall be projected as specified in section 5.0 of IES TM–21 (incorporated by reference; see § 430.3) using the sample size specified in section 4.2 of IES TM–21. This duration shall be the rated lifetime of the LED lamp. However, the maximum projection of rated lifetime shall be limited to 25,000 hours. If the projection of rated lifetime as calculated by IES TM–21 is less than 25,000 hours, the rated lifetime shall be the projected rated lifetime. If the projection of rated lifetime as calculated by IES TM–21 is more than 25,000 hours, the rated lifetime shall be 25,000 hours.

4.1.3.1. If an LED source itself fails during lifetime testing for reasons other than auxiliary equipment failure or human error, the data of such an LED source shall be included while averaging the normalized values as explained in section 5.2 of IES TM–21 (incorporated by reference; see § 430.3) for projecting the rated lifetime of the lamp.

4.2. *Test Conditions and Setup*

4.2.1. The acceptable vibration, humidity, and airflow around the LED source shall be as described in section 4.4 of IES LM–80 (incorporated by reference; see § 430.3).

4.2.2. The case temperature and drive current at which the LED source must be operated shall be the in-situ temperature (as defined in section 4.3.1) of the LED source when it is operated within the LED lamp. Lumen maintenance data shall be measured at the in-situ temperature of the LED source as described in section 4.3.

4.2.3. The operating orientation, electrical setup, thermal setup, and instrumentation required for recording the time elapsed for measuring the lumen maintenance of LED sources shall be as described in sections 4.4.4, 5.0, 5.5, and 6.1 of IES LM–80 (incorporated by reference; see § 430.3) respectively.

4.2.4. The instrumentation required for measuring the lumen output of the LED sources shall be as described in section 9.0 of IES LM–79 (incorporated by reference; see § 430.3).

4.3. *Test Method and Measurements*

4.3.1. The ISTMT shall be performed to determine the case temperature of the hottest LED source within the LED lamp. The test setup and conditions for the ISTMT shall be as specified in sections 8.5, 8.13, 8.14, 8.15, and 9 of UL 1993 (incorporated by reference; see § 430.3). The test is performed by attaching a thermocouple to specific locations designated by the LED source manufacturer that act as surrogate points for measuring junction temperature (T_j). The

temperature measurement point (TMP) on the LED source shall be such that it has the highest temperature in the LED lamp. In general, the individual LED in the middle of symmetric arrays is the hottest. For square, rectangular, or circular arrays, the LED closest to the center is typically the hottest. For other configurations, manufacturers shall sample several LEDs within the lamp to identify the source with highest temperature. The temporary hole for inserting the thermocouple shall be tightly resealed during testing with putty or other flexible sealant. The temperature probes shall be in contact with the TMP and permanently adhered. The steady-state temperature shall be recorded after the test has been running for at least three hours, and three successive readings taken at 15 minute intervals are within 1 °C of one another and are still not rising. The temperature measured during the ISTMT should be the temperature at which lumen maintenance data of the LED source is obtained.

4.3.2. The lumen maintenance of the LED sources shall be determined as specified in section 7.0 of IES LM–80 (incorporated by reference; see § 430.3) and section 4.3 of IES TM–21 (incorporated by reference; see § 430.3). Additionally, the following conditions shall be adhered to:

4.3.2.1. All case temperature (T_s) subsets of the sample used for IES LM–80 (incorporated by reference; see § 430.3) testing shall be of the same CCT.

4.3.2.2. The drive current flowing through the LED source during IES LM–80 (incorporated by reference; see § 430.3) testing shall be greater than or equal to the subcomponent drive current employed in the LED lamp.

4.3.2.3. For an LED lamp employing both phosphor-converted white and single-color LED packages, the lumen maintenance shall be measured for a sample of LED arrays incorporating both types of LED packages.

4.3.2.4. For LED arrays constructed as an assembly of LED dies on a printed circuit board or substrate (a.k.a. chip-on-board) with one common phosphor layer overlaying all dies, or with phosphor layers overlaying individual dies with or without single-color dies incorporated, a single IES LM–80 (incorporated by reference; see § 430.3) test shall represent the performance of a range of LED array sizes, if all of the following are satisfied:

4.3.2.4.1. IES LM–80 (incorporated by reference; see § 430.3) testing has been conducted on the largest LED array that the manufacturer believes will be used in a qualified product; and,

4.3.2.4.2. The average calculated current-per-die in the tested LED array is greater than or equal to the average calculated current-per-die employed in the LED lamp.

4.3.2.5. For LED arrays constructed as an assembly of LED packages on a printed circuit board, each with their own phosphor layer, the TMP temperature of the hottest package in the array shall be used for lumen maintenance projection purposes.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket No. OCC–2011–0023]

RIN 1557–AD37

Short-Term Investment Funds

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC is requesting comment on a proposal that would revise the requirements imposed on banks pursuant to 12 CFR 9.18(b)(4)(ii)(B), the short-term investment fund (STIF) rule (STIF Rule). The proposal would add safeguards designed to address the risk of loss to a STIF's principal, including measures governing the nature of a STIF's investments, ongoing monitoring of its mark-to-market value and forecasting of potential changes in its mark-to-market value under adverse market conditions, greater transparency and regulatory reporting about a STIF's holdings, and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable net asset value (NAV).

DATES: Comments should be received on or before June 8, 2012.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Short-Term Investment Funds'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov*. Click ''Advanced Search''. Select ''Document Type'' of ''Proposed Rule'', and in ''By Keyword or ID'' box, enter Docket ID ''OCC–2011–0023'', and click ''Search''. If proposed rules for more than one agency are listed, in the ''Agency'' column, locate the notice of proposed rulemaking for the OCC. Comments can be filtered by Agency using the filtering tools on the left side of the screen. In the ''Actions'' column, click on ''Submit a Comment'' or ''Open Docket Folder'' to submit or view public comments and to view supporting and related materials for this rulemaking action.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2011–0023'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov*. Click ''Advanced Search''. Select ''Document Type'' of ''Public Submission'', and in ''By Keyword or ID'' box enter Docket ID ''OCC–2011–0023'', and click ''Search''. If comments from more than one agency are listed, the ''Agency'' column will indicate which comments were received by the OCC. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: *OCC:* Joel Miller, Group Leader, Asset Management (202) 874–4493, David

Barfield, NBE, Market Risk (202) 874–1829, Patrick T. Tierney, Counsel, Legislative and Regulatory Activities Division (202) 874–5090, or Adam Trost, Senior Attorney, Securities and Corporate Practices Division (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

A. Short-Term Investment Funds (STIFs)

A Collective Investment Fund (CIF) is a bank-managed fund that holds pooled fiduciary assets that meet specific criteria established by the OCC fiduciary activities regulation at 12 CFR 9.18. Each CIF is established under a ''Plan'' that details the terms under which the bank manages and administers the fund's assets. The bank acts as a fiduciary for the CIF and holds legal title to the fund's assets. Participants in a CIF are the beneficial owners of the fund's assets. Each participant owns an undivided interest in the aggregate assets of a CIF; a participant does not directly own any specific asset held by a CIF.[1]

CIFs are designed to enhance investment management capabilities by combining assets from different accounts into a single fund with a specific investment strategy. By pooling fiduciary assets, a bank may lower the operational and administrative expenses associated with investing fiduciary assets and enhance risk management and investment performance for the participating accounts.

A fiduciary account's investment in a CIF is called a ''participating interest.'' Participating interests in a CIF are not FDIC-insured and are not subject to potential claims by a bank's creditors. In addition, a participating interest in a CIF cannot be pledged or otherwise encumbered in favor of a third party.

The general rule for valuation of a CIF's assets specifies that a CIF admitting a fiduciary account (that is, allowing the fiduciary account, in effect, to purchase its proportionate interest in the assets of the CIF) or withdrawing the fiduciary account (that is, allowing the fiduciary account, in effect, to redeem the value of its proportionate interest in the CIF) may only do so on the basis of a valuation of the CIF's assets, as of the admission or withdrawal date, based on the mark-to-market value of the CIF's assets.[2] This general valuation rule is designed to protect all fiduciary accounts participating in the CIF from the risk that other accounts will be admitted or withdrawn at valuations that dilute the value of existing participating interests in the CIF.

A STIF is a type of CIF that permits a bank to value the STIF's assets on an amortized cost basis, rather than at mark-to-market value, for purposes of admissions and withdrawals. This is an exception to the general rule of market valuation. In order to qualify for this exception, a STIF's Plan must require the bank to: (1) Maintain a dollar-weighted average portfolio maturity of 90 days or less; (2) accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity; and (3) hold the fund's assets until maturity under usual circumstances.[3] These conditions are designed to protect fiduciary accounts from the risk of dilution of the value of their participating interests. In particular, by limiting the STIF's investments to shorter-term assets and generally requiring those assets to be held to maturity, realized differences between the amortized cost and mark-to-market value of the assets will be rare, absent atypical market conditions or an impaired asset. As further discussed in this **SUPPLEMENTARY INFORMATION** section, the amortized cost approach is beneficial for many fiduciary accounts, because some participants require that a certain percentage of the assets held in these accounts be in a liquid, low risk investment.

The OCC's STIF Rule governs STIFs managed by national banks. In addition, regulations adopted by the Office of Thrift Supervision, now recodified as OCC rules pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[4] have long required federal savings associations (FSAs) to comply with the requirements of the OCC's STIF Rule.[5] Thus, the proposed revisions to the national bank STIFs Rule would apply to a federal savings association that establishes and administers a STIF fund. As of December 31, 2011, there was approximately $112 billion invested in STIFs administered by national banks and there were no STIFs administered by FSAs reported.[6]

The OCC is proposing to revise the requirements of the STIF Rule. While fiduciary accounts participating in a STIF have an interest in the fund maintaining a stable net asset value (NAV), ultimately the participating interests remain subject to the risk of loss to a STIF's principal. The OCC is proposing additional safeguards designed to address this risk in several ways. These include measures governing the nature of a STIF's investments, ongoing monitoring of the STIF's mark-to-market value and assessment of potential changes in its mark-to-market value under adverse market conditions, greater transparency and regulatory reporting about the STIF's holdings, and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event that the STIF loses the ability to maintain a stable NAV.

B. Comparison to Other Products That Seek To Maintain a Stable NAV

There are other types of funds that seek to maintain a stable NAV. By far, the most significant of these from a financial market presence standpoint are ''money market mutual funds'' (MMMFs). These funds are organized as open-ended management investment companies and are regulated by the U.S. Securities and Exchange Commission (''SEC'') pursuant to the Investment Company Act of 1940, particularly pursuant to the provisions of SEC Rule 2a–7 thereunder (''Rule 2a–7'').[7]

[1] 12 CFR 9.18.

[2] 12 CFR 9.18(b)(5)(i). If the bank cannot readily ascertain market value as of the valuation date, the bank generally must use a fair value for the asset, determined in good faith. 12 CFR 9.18(b)(4)(ii)(A).

[3] 12 CFR 9.18(b)(4)(ii)(B).

[4] 76 FR 48950 (2011).

[5] 12 CFR 150.260.

[6] Fifteen national banks collectively reported STIF investments that they administer. Based on thrift financial report data, federal savings associations administered no STIFs as of December 31, 2011. Other types of institutions managing certain types of CIFs may also observe the requirements of the OCC's STIF Rule. For example, New York state law provides that all investments in short-term investment common trust funds may be valued at cost, if the plan of operation requires that: (i) The type or category of investments of the fund shall comply with the rules and regulations of the Comptroller of the Currency pertaining to short-term investment funds and (ii) in computing income, the difference between cost of investment and anticipated receipt on maturity of investment shall be accrued on a straight-line basis. *See* N.Y. Comp. Codes R. & Regs. Tit. 3, § 22.23 (2010). Additionally, in order to retain their tax-exempt status, common trust funds must operate in compliance with § 9.18 as well as the federal tax laws. *See* 26 U.S.C. 584. The OCC does not have access to comprehensive data quantifying investments held by STIF funds administered by other types of institutions pursuant to legal requirements incorporating the OCC's STIF Rule. Although the direct scope of the STIF Rule provisions in section 9.18 of the OCC's regulations is national banks and Federal branches and agencies of foreign banks acting in a fiduciary capacity (12 CFR 9.1(c)), the nomenclature of the STIF Rule refers simply to ''banks.'' For the sake of convenience, the OCC proposes to continue this approach and also applies the same convention to the discussion of the STIF Rule in this Notice of Proposed Rulemaking.

[7] 15 U.S.C. 80a; 17 CFR 270.2a–7. Because STIFs are a form of collective investment fund, they are generally exempt from the SEC's rules under the Investment Company Act. STIFs used exclusively for (1) the collective investment of money by a bank in its fiduciary capacity as trustee, executor,

MMMFs seek to maintain a stable share price, typically $1.00 a share. In this regard, they are similar to STIFs.

However, there are a number of important differences between MMMFs and STIFs; most significantly, MMMFs are open to retail investors, whereas, STIFs only are available to authorized fiduciary accounts. MMMFs may be offered to the investing public and have become a popular product with retail investors, corporate money managers, and institutional investors seeking returns equivalent to current short-term interest rates in exchange for high liquidity and the prospect of protection against the loss of principal. In contrast to the approximately $112 billion currently held in STIFs administered by national banks, MMMFs, as of December 2011, held approximately $2.7 trillion dollars of investor assets.[8]

During the recent period of financial market stress, beginning in 2007 and stretching into 2009, certain types of short-term debt securities frequently held by MMMFs experienced unusually high volatility. Concerns by investors that their MMMFs could not maintain a stable NAV eventually led to investor redemptions out of those funds, and some funds needed to liquidate sizeable portions of their securities to meet investor redemption requests. This flood of redemption requests depressed market prices for short-term debt instruments, exacerbating the problem for all types of stable NAV funds.

The President's Working Group on Financial Markets (''PWG''),[9] after reviewing the market turmoil during the period 2007 through 2009, recommended that the SEC strengthen the regulation and monitoring of MMMFs and also recommended that bank regulators consider strengthening the regulation and monitoring of other types of products that seek to maintain a stable NAV. The October 2010 report from the PWG states: ''[b]anking and state insurance regulators might consider additional restrictions to mitigate systemic risk for bank common and collective funds and other investment pools that seek a stable NAV but that are exempt from registration under sections 3(c)(3) and 3(c)(11) of the ICA.'' [10]

Based on the market turmoil from 2007 through 2009 and the work done by the PWG, among others, the SEC adopted amendments to Rule 2a–7 to strengthen the resilience of MMMFs.[11] The OCC's proposed changes to the STIF Rule are informed by the SEC's revisions to Rule 2a–7, but differ in certain respects in light of the differences between the money market mutual fund as an investment product and the STIF, *e.g.,* a bank's fiduciary responsibility to a STIF and requirements limiting STIF participation to eligible accounts under the OCC's fiduciary account regulation at 12 CFR part 9.

II. Description of Proposed Changes to the STIF Rule

The proposed changes to the STIF Rule would enhance protections provided to STIF participants and reduce risks to banks that administer STIFs. The proposed changes add new requirements or amend existing requirements that a CIF must meet to be considered a STIF and value assets on an amortized cost basis. The OCC believes many banks that offer STIFs are already engaged in the risk mitigation efforts set forth in this proposed rule.

The proposed changes do not affect the obligation that STIFs meet the CIF requirements described in 12 CFR part 9, which allows national banks to maintain and invest fiduciary assets, consistent with applicable law. Applicable law is defined as the law of a state or other jurisdiction governing a national bank's fiduciary relationships, any applicable Federal law governing those relationships (*e.g.,* ERISA, federal tax, and securities laws), the terms of the instrument governing a fiduciary relationship, or any court order pertaining to the relationship.[12] Also, national banks managing CIFs are required to adopt and follow written policies and procedures that are adequate to maintain their fiduciary activities in compliance with applicable law.[13] Additionally, the STIF Rule requires a STIF's bank manager, at least once during each calendar year, to conduct a review of all assets of each fiduciary account for which the bank has investment discretion to evaluate whether they are appropriate, individually and collectively, for the account.[14] These examples of CIF requirements applicable to STIFs are not exclusive. Other requirements apply, and a bank must comply will all applicable requirements of 12 CFR part 9 when acting as a fiduciary for a CIF.

Banks administering a STIF would need to revise the written plan required by 12 CFR 9.18(b)(1) if this proposal is adopted as a final rule.

A. Section 9.18(b)(4)(iii)(A)

STIFs typically maintain stable NAVs in order to meet the expectations of the fund's bank managers and participating fiduciary accounts.[15] To the extent a bank fiduciary offers a STIF with a fund objective of maintaining a stable NAV, participating accounts and the OCC expect those STIFs to maintain a stable NAV using amortized cost. The proposal would require a Plan to have as a primary objective that the STIF operate with a stable NAV of $1.00 per participating interest.[16]

B. Section 9.18(b)(4)(iii)(B)

The current STIF Rule requires the bank managing the STIF [17] to maintain a dollar-weighted average portfolio maturity of 90 days or less. The current STIF Rule restricts the weighted average maturity of the STIF's portfolio in order to limit the exposure of participating fiduciary accounts to certain risks, including interest rate risk. The proposed rule would change the maturity limits to further reduce such risks. First, the proposal would reduce the maximum weighted average portfolio maturity permitted by the rule from 90 days or less to 60 days or less. Second, it would establish a new

administrator, or guardian and (2) the collective investment of assets of certain employee benefit plans are exempt from the Investment Company Act under 15 U.S.C. 80a–3(c)(3) and (c)(11), respectively. MMMFs are not subject to comparable restrictions as to the type of participant who may invest in the fund or the purpose of such investment.

[8] *See http://www.ici.org/info/mm_data_2011.xls.*

[9] The PWG is comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission.

[10] Report of the President's Working Group on Financial Markets, Money Market Fund Reform Options, p. 35 (Oct. 2010), *see http://www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf. See also* Financial Stability Oversight Council 2011 Annual Report, p. 13 (July 2011) *available at http://www.treasury.gov/initiatives/fsoc/Documents/FSOCAR2011.pdf.*

[11] *See* Money Market Fund Reform, 75 FR 10060 (Mar. 4, 2010).

[12] 12 CFR 9.2(b).

[13] 12 CFR 9.5.

[14] 12 CFR 9.6(c).

[15] For example, many STIF plan participants (*e.g.,* pensions) have policies, procedures, and operational systems that presume a stable NAV.

[16] The OCC would expect banks to normalize and treat stable NAVs operating at a multiple of a $1.00 (*e.g.,* $10 NAV) or fraction of $1.00 (*e.g.,* $0.5) as operating with a NAV of $1.00 per participating interest.

[17] The current STIF Rule incorporates this and other measures through requirements that the Plan include provisions requiring the bank administering the STIF to effectuate the measures with respect to the STIF. The revisions proposed herein incorporate additional measures through requirements that the Plan include provisions requiring the STIF to observe certain restrictions and adopt certain procedures. In either case, it is effectively the bank administering the STIF that generally performs these measures, and for convenience purposes, the Supplementary Information section herein will describe it that way.

maturity test that would limit the portion of a STIF's portfolio that could be held in longer term variable- or floating-rate securities.

1. Dollar-Weighted Average Portfolio Maturity

The proposal would amend the ''dollar-weighted average portfolio maturity'' [18] requirement of the STIF Rule to 60 days or less. Currently, banks managing STIFs must maintain a dollar-weighted average portfolio maturity of 90 days or less.[19] Securities that have shorter periods remaining until maturity generally exhibit a lower level of price volatility in response to interest rate and credit spread fluctuations and, thus, provide a greater assurance that the STIF will continue to maintain a stable value.

Having a portfolio weighted towards securities with longer maturities poses greater risks to participating accounts in a STIF. For example, a longer dollar-weighted average maturity period increases a STIF's exposure to interest rate risk. Additionally, longer maturity periods amplify the effect of widening credit spreads on a STIF. Finally, a STIF holding securities with longer maturity periods generally is exposed to greater liquidity risk because: (1) Fewer securities mature and return principal on a daily or weekly basis to be available for possible fiduciary account withdrawals, and (2) the fund may experience greater difficulty in liquidating these securities in a short period of time at a reasonable price.

STIFs with a shorter portfolio maturity period would be better able to withstand increases in interest rates and credit spreads without material deviation from amortized cost. Furthermore, in the event distress in the short-term instrument market triggers increasing rates of withdrawals from STIFs, the STIFs would be better positioned to withstand such withdrawals as a greater portion of their portfolios mature and return principal on a daily or weekly basis and would have greater ability to liquidate a portion of their portfolio at a reasonable price.

Question 1: What are the estimates of the effects, if any, on STIF portfolios and participating accounts from reducing the maximum dollar-weighted average portfolio maturity permitted by the rule from 90 to 60 days? The OCC seeks commenters' specific information about the risk sensitivities associated with current STIF portfolios, including the current and month-end dollar-weighted average maturity of these funds since 2008.

2. Weighted Average Portfolio Life Maturity

The proposal would add a new maturity requirement for STIFs, which would limit the dollar-weighted average portfolio life maturity to 120 days or less. The dollar-weighted average portfolio life maturity would be measured without regard to a security's interest rate reset dates and, thus, would limit the extent to which a STIF could invest in longer term securities that may expose it to increased liquidity and credit risk.

To determine compliance with the dollar-weighted average portfolio maturity requirement of the current STIF Rule, banks generally treat the maturity of a portfolio security as the period remaining until the date on which the principal must unconditionally be repaid according to its terms (its final ''legal'' maturity) or, in the case of a security called for redemption, the date on which the redemption payment must be made. However, banks treat certain types of securities, such as certain floating or adjustable-rate securities, as having shorter maturities equal to the time remaining to the next interest rate reset date.[20] As a result, STIFs may treat longer term adjustable-rate securities as short-term securities. While adjustable-rate securities held in these funds do tend to protect a STIF against changes in interest rates, they do not fully protect against credit and liquidity risk to the portfolio.

The traditional dollar-weighted average portfolio maturity measurement in the current STIF Rule does not require a STIF to limit these risks. For this reason, the proposal would impose a new dollar-weighted average portfolio life maturity limitation on the structure of a STIF to capture credit and liquidity risk not encompassed by the dollar-weighted average portfolio maturity restriction. The proposal would require that STIFs maintain a dollar-weighted average portfolio life maturity of 120 days or less, which would provide a reasonable balance between strengthening the resilience of STIFs to credit and liquidity risk while not unduly restricting the bank's ability to invest the STIF's fiduciary assets in a diversified portfolio of short-term, high quality debt securities.

The impact of a limit on the dollar-weighted average life of a portfolio would be on those STIFs that hold certain longer term floating-rate securities. For example, under the current STIF Rule, a STIF with a portfolio comprising 50 percent of overnight repurchase agreements and 50 percent of two-year government agency floating-rate obligations that reset daily based on the federal funds rate would have a dollar-weighted average portfolio maturity of one day. In contrast, by applying a measurement that does not recognize resets, the portfolio would have a dollar-weighted average portfolio life maturity of 365.5 days (*i.e.,* half of the portfolio has a one day maturity and half has a two-year maturity), which would be considerably longer than the 120-day limit of the proposal. Thus, the dollar-weighted average portfolio life maturity limitation would provide an extra layer of protection for qualified account participants against credit and liquidity risk, particularly in volatile markets.

Question 2: What are the effects, if any, on STIF portfolios and participating accounts of limiting the portion of a fund's portfolio that may be held in longer term variable- or floating-rate securities? The OCC seeks commenters' specific information about the risk sensitivities associated with the current dollar-weighted average life maturity of these funds.

3. Determination of Maturity Limits

In determining the dollar-weighted average portfolio maturity of STIFs under the current rule, national banks generally apply the same methodology as required by the SEC for MMMFs pursuant to Rule 2a–7. Dollar-weighted average maturity under Rule 2a–7 is calculated, as a general rule, by treating each security's maturity as the period remaining until the date on which, in accordance with the terms of the security, the principal amount must be unconditionally paid or, in the case of a security called for redemption, the date on which the redemption payment must be made. Rule 2a–7 also provides eight exceptions to this general rule. For example, for certain types of variable-rate securities, the date of maturity may be the earlier of the date of the next interest rate reset or the period remaining until the principal can be recovered through demand. For repurchase agreements, the maturity is the date on which the repurchase is scheduled to occur, unless the repo is subject to demand for repurchase, in which case the maturity is the notice

[18] Generally, ''dollar-weighted average portfolio maturity'' means the average time it takes for securities in a portfolio to mature, weighted in proportion to the dollar amount that is invested in the portfolio. Dollar-weighted average portfolio maturity measures the price sensitivity of fixed-income portfolios to interest rate changes.

[19] 12 CFR 9.18(b)(4)(ii)(B)(*1*).

[20] *See infra* note 22 and accompanying text.

period applicable to demand.[21] The proposal would include this approach in the rule text for dollar-weighted average portfolio maturity and dollar-weighted average portfolio life maturity[22] for ease of administration and implementation of the proposed rule's requirements.

Question 3: Is this approach for the determination of maturity limits appropriate, and if not, what alternative approach should be used?

C. Section 9.18(b)(4)(iii)(E)

To ensure that banks managing STIFs include practices designed to limit the amount of credit and liquidity risk to which participating accounts in STIFs are exposed, the proposal would require adoption of portfolio and issuer qualitative standards and concentration restrictions. The OCC would expect bank fiduciaries to identify, monitor, and manage issuer and lower quality investment concentrations and implement procedures to perform appropriate due diligence on all concentration exposures as part of the bank's risk management policies and procedures for each STIF. In addition to standards imposed by applicable law, the portfolio and issuer qualitative standards and concentration restrictions should take into consideration market events and deterioration in an issuer's financial condition.

Question 4: Are defined portfolio concentration limits necessary in order for STIF managers and STIF participants to ensure that a fund has reduced its credit exposure to a specific issuer? Commenters who assert that portfolio concentration limits are necessary should provide details regarding the percent limits for specific issuers or classes of issuers.

D. Section 9.18(b)(4)(iii)(F)

Many banks process STIF withdrawal requests within a short time frame, often on the same day that the withdrawal request is received, which necessitates sufficient liquidity to meet such requests. By holding illiquid securities, a STIF exposes itself to the risk that it will be unable to satisfy withdrawal requests promptly without selling illiquid securities at a loss that, in turn, could impair its ability to maintain a stable NAV. Moreover, illiquid securities are generally subject to greater price volatility, exposing the STIF to greater risk that its mark-to-market value will deviate from its amortized cost value. To address this concern, the proposal would require adoption of standards that include provisions to address contingency funding needs.

E. Section 9.18(b)(4)(iii)(G)

The proposal would require a bank managing a STIF to adopt shadow pricing procedures.[23] These procedures require the bank to calculate the extent of the difference, if any, between the mark-to-market NAV per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost value per participating interest. In the event the difference exceeds $0.005 per participating interest,[24] the bank must take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF, such as ceasing fiduciary account withdrawals. The shadow pricing procedures must occur at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant.

Question 5: Does the proposal differ from banks' current pricing practices? If so, how? Question 6: Is the proposed weekly shadow pricing frequency appropriate? Question 7: Would another reporting frequency be more appropriate and, if so, what frequency and why?

F. Section 9.18(b)(4)(iii)(H)

The proposal would require a bank managing a STIF to adopt procedures for stress testing the fund's ability to maintain a stable NAV for participating interests. The proposal would require the stress tests be conducted at such intervals as an independent risk manager or a committee responsible for the STIF's oversight determines to be appropriate and reasonable in light of current market conditions, but in no case shall the interval be longer than a calendar month-end basis. The independent risk manager or committee members must be independent from the STIF's investment management. The stress testing would be based upon hypothetical events (specified by the bank) that include, but are not limited to, a change in short-term interest rates; an increase in participating account withdrawals; a downgrade of or default on portfolio securities; and the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund.

The proposal provides a bank with flexibility to specify the scenarios or assumptions on which the stress tests are based, as appropriate to the risk exposures of each STIF. Banks managing STIFs should, for example, consider procedures that require the fund to test for the concurrence of multiple hypothetical events, *e.g.,* where there is a simultaneous increase in interest rates and substantial withdrawals.[25]

The proposal also would require a stress test report be provided to the independent risk manager or the committee responsible for the STIF's oversight. The report would include: (1) The date(s) on which the testing was performed; (2) the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market NAV calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its NAV per participating interest calculated using amortized cost to exceed $0.005; and (3) an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.

In addition, the proposal would require that adverse stress testing results are reported to the bank's senior risk management that is independent from the STIF's investment management.

The proposed stress testing procedures would provide banks with a better understanding of the risks to which STIFs are exposed and would give banks additional information that can be used for managing those risks.

Question 8: Is the proposed requirement that a STIF adopt procedures for stress testing the fund's

[21] *See* 17 CFR 270.2a–7(d)(1)–(8).

[22] The SEC's Rule 2a–7 adopting release describes the new weighted average life maturity calculation as being based on the same methodology as the weighted average maturity determination, but made without reference to the set of maturity exceptions the rule permits for certain interest rate readjustments for specified types of assets under the rule. 17 CFR 270.2a–7(c)(2)(iii). The OCC is proposing the same maturity calculation, referring to it as the dollar-weighted average portfolio life maturity. The calculation bases a security's maturity on its stated final maturity date or, when relevant, the date of the next demand feature when the fund may receive payment of principal and interest (such as a put feature). *See* 75 FR 10072 (Mar. 4, 2010) at footnote 154 and accompanying text.

[23] Shadow pricing is the process of maintaining two sets of valuation records—one that reflects the value of a fund's assets at amortized cost and the other that reflects the market value of the fund's assets.

[24] The proposal contemplates a stable NAV of $1.00. If a STIF has a stable NAV that is different than $1.00 it must adjust the reference value accordingly.

[25] Where stress testing models are relied upon, a bank should validate the models consistent with the Supervisory Guidance on Model Risk Management issued by the OCC and the Board of Governors of the Federal Reserve System. *See* OCC Bulletin 2011–12 (Apr. 4, 2011).

ability to maintain a stable NAV for participating interests appropriate? Why so or why not? Question 9: In particular, is the proposed monthly stress testing frequency appropriate? Commenters who assert that another frequency would be more appropriate should identify the alternative and provide a supporting rationale.

G. Section 9.18(b)(4)(iii)(I)

The proposal would require banks managing STIFs to disclose information about fund level portfolio holdings to STIF participants and to the OCC within five business days after each calendar month-end. Specifically, the bank would be required to disclose the STIF's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost NAVs, both with and without capital support agreements; the dollar-weighted average portfolio maturity; and dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month. The current STIF Rule does not contain a similar disclosure requirement.

Also, for each security held by the STIF, as of the last business day of the prior calendar month, the bank would be required to disclose to STIF participants and to the OCC within five business days after each calendar month-end at a security level: (1) The name of the issuer; (2) the category of investment; (3) the Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier; (4) the principal amount; (5) the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (6) the final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (7) the coupon or yield; and (8) the amortized cost value.

Question 10: What is the estimate of the burden, if any, associated with the proposed security level disclosures to STIF participants, specifically, whether details about every security in the fund should be disclosed? Question 11: What disclosure formats could accomplish the disclosure objective efficiently? Question 12: What would be the impacts on tax-qualified STIF participants of monthly, detailed security-level disclosures from the STIF, including how STIF participants might use the disclosed information?

H. Section 9.18(b)(4)(iii)(J)

The proposal would require a bank that manages a STIF to notify the OCC prior to or within one business day after certain events. Those events are: (1) Any difference exceeding $0.0025 between the NAV and the mark-to-market value of a STIF participating interest based on current market factors; (2) when a STIF has re-priced its NAV below $0.995 per participating interest; (3) any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants; (4) any delays or suspensions in honoring STIF participating interest withdrawal requests; (5) any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; and (6) when a national bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable NAV per participating interest.[26] This proposed requirement to notify the OCC prior to or within one business day after these limited specific events would permit the OCC to more effectively supervise STIFs that are experiencing liquidity or valuation stress.

To comply with this proposed requirement, a bank would have to calculate the mark-to-market value of a STIF participating interest on a daily basis.

Question 13: Is daily calculation of mark-to-market value of a STIF participating interest a feasible or appropriate frequency to permit effective monitoring and risk management by, and supervision of, STIFs experiencing liquidity or valuation stress?

I. Section 9.18(b)(4)(iii)(K)

The proposal would require banks managing a STIF to adopt procedures that in the event a STIF has re-priced its NAV below $0.995 per participating interest, the bank managing the STIF shall calculate, redeem, and sell the STIF's participating interests at a price based on the mark-to-market NAV. Currently, the rule creates an incentive for withdrawal of participating interests if the mark-to-market NAV falls below the stable NAV because the earlier withdrawals are more likely to receive the full stable NAV payment. The proposal removes this incentive, as once the NAV is priced below $0.995, all withdrawals of participating interests will receive the mark-to-market NAV instead of the stable NAV.

J. Section 9.18(b)(4)(iii)(L)

The proposal would require a bank managing a STIF to adopt procedures for suspending redemptions and initiating liquidation of a STIF as a result of redemptions. The intent of the proposal is to reduce the vulnerability of participating accounts to the harmful effects of extraordinary levels of withdrawals, which can be accomplished to some degree by suspending withdrawals. These suspensions only would be permitted in limited circumstances when, as a result of redemption, the bank has: (1) Determined that the extent of the difference between the STIF's amortized cost per participating interest and its current mark-to-market NAV per participating interest may result in material dilution of participating interests or other unfair results to participating accounts; (2) formally approved the liquidation of the STIF; and (3) facilitated the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

The OCC understands that suspending withdrawals may impose hardships on fiduciary accounts for which the ability to redeem participations is an important consideration. Accordingly, the proposed requirement is limited to permitting suspension in extraordinary circumstances when there is significant risk of extraordinary withdrawal activity to the detriment of other participating accounts.

III. General Request for Comments

In addition to the specific requests for comment outlined in this **SUPPLEMENTARY INFORMATION** *section, the OCC is interested in receiving comments on all aspects of this proposed rule.*

IV. Community Bank Comment Request

The OCC also invites comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Question 14: How would the proposal impact community banks' current resources and available personnel with the requisite expertise? Question 15: How could the goals of the proposal be achieved for community banks through an alternative approach?

[26] *See* Interagency Policy on Banks/Thrifts Providing Financial Support to Funds Advised by the Banking Organization or its Affiliates, OCC Bulletin 2004–2 Attachment (Jan. 5, 2004) (instructing banks that to avoid engaging in unsafe and unsound banking practices, banks should adopt appropriate policies and procedures governing routine or emergency transactions with bank advised investment funds).

V. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites your comments on how to make this proposal easier to understand. For example:

- *Question 16: Have we organized the material to suit your needs? If not, how could this material be better organized?*
- *Question 17: Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?*
- *Question 18: Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?*
- *Question 19: Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?*
- *Question 20: What else could we do to make the regulation easier to understand?*

VI. Regulatory Analysis

A. Paperwork Reduction Act Analysis

Request for Comment on Proposed Information Collection

In accordance with section 3512 of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under section 3506 of the PRA and § 1320.11 of OMB's implementing regulations (5 CFR part 1320) as an amendment to the OCC's existing collection for Fiduciary Activities (OMB Control No. 1557–0140). The information collection requirements are found in §§ 9.18(b)(4)(iii)(E)–(L).

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the estimate 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments should be addressed to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0140, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to 202–874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling 202–874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–140, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

Proposed Information Collection

Title of Information Collection: Fiduciary Activities.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit.

Respondents: National banks and federal branches and agencies of foreign banks.

OMB Control No.: 1557–0140.

Abstract: The rule would allow an institution to value a STIF's assets on a cost basis, rather than mark-to-market value for admissions and withdrawals if the written plan requires the STIF to adopt certain procedures and standards. These procedures and standards include: Portfolio and issuer qualitative standards and restrictions; liquidity standards; shadow pricing procedures; procedures for stress testing the ability to maintain a stable NAV and the testing itself; procedures to make certain disclosures for each security held and issuance of the disclosures; procedures to require notification to OCC regarding certain events; procedures regarding re-pricing events; and procedures for suspending redemptions and initiating liquidation of a STIF.

Estimated Burden for the Amendment to the Collection:

Estimated Number of Respondents: 15 respondents administering 34 funds.

Estimated Burden per Fund: 846 hours.

Estimated Total Annual Burden: 28,764 hours.

B. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 603 of the RFA is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks and federal branches and agencies with assets less than or equal to $175 million and trust companies with assets less than or equal to $ 7 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its proposed rule.

The Proposed Rule would have no impact on any small national banks or federal branches and agencies or trust companies, as defined by the RFA. No small national banks or federal branches and agencies report management of STIFs on their required regulatory reports as of December 31, 2011. Therefore, the OCC certifies that the Proposed Rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.

C. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires the OCC to prepare a budgetary impact statement before promulgating a rule that includes 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 (adjusted annually for inflation). The OCC has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement.

List of Subjects in 12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

1. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 12 U.S.C. 78q, 78q–1, and 78w.

2. Section 9.18 is amended by revising paragraph (b)(4)(ii) and by adding paragraph (b)(4)(iii) to read as follows:

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(4) * * *

(ii) *General Method of Valuation.* Except as provided in paragraph (b)(4)(iii) of this section, a bank shall value each fund asset at mark-to-market value as of the date set for valuation, unless the bank cannot readily ascertain mark-to-market value, in which case the bank shall use a fair value determined in good faith.

(iii) *Short-term investment funds (STIFs) Method of Valuation.* A bank may value a STIF's assets on a cost basis, rather than mark-to-market value as provided in paragraph (b)(4)(ii) of this section, for purposes of admissions and withdrawals, if the Plan includes appropriate provisions, consistent with this part, requiring the STIF to:

(A) Operate with a stable net asset value of $1.00 per participating interest as a primary fund objective;

(B) Maintain a dollar-weighted average portfolio maturity of 60 days or less and a dollar-weighted average portfolio life maturity of 120 days or less as determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a–7 for money market mutual funds (17 CFR 270.2a–7);

(C) Accrue on a straight-line or amortized basis the difference between the cost and anticipated principal receipt on maturity;

(D) Hold the STIF's assets until maturity under usual circumstances;

(E) Adopt portfolio and issuer qualitative standards and concentration restrictions;

(F) Adopt liquidity standards that include provisions to address contingency funding needs;

(G) Adopt shadow pricing procedures that:

(*1*) Require the bank to calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost price per participating interest, at least on a calendar week basis and more frequently as determined by the bank when market conditions warrant; and

(*2*) Require the bank, in the event the difference calculated pursuant to this subparagraph exceeds $0.005 per participating interest, to take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF;

(H) Adopt procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest that shall provide for:

(*1*) The periodic stress testing, at least on a calendar month basis and at such intervals as an independent risk manager or a committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management determines appropriate and reasonable in light of current market conditions;

(*2*) Stress testing based upon hypothetical events that include, but are not limited to, a change in short-term interest rates, an increase in participant account withdrawals, a downgrade of or default on portfolio securities, and the widening or narrowing of spreads between yields on an appropriate benchmark the STIF has selected for overnight interest rates and commercial paper and other types of securities held by the STIF;

(*3*) A stress testing report on the results of such testing to be provided to the independent risk manager or the committee responsible for the STIF's oversight that consists of members independent from the STIF's investment management that shall include: the date(s) on which the testing was performed; the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market net asset value calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its net asset value per participating interest calculated using amortized cost to exceed $0.005; and an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year; and

(*4*) Reporting adverse stress testing results to the bank's senior risk management that is independent from the STIF's investment management.

(I) Adopt procedures that require a bank to disclose to STIF participants and to the OCC's Asset Management Group, Credit & Market Risk Division, Comptroller of the Currency, 250 E St. SW., Washington, DC 20219–0001, within five business days after each calendar month-end, the fund's total assets under management (securities and other assets including cash, minus liabilities); the fund's mark-to-market and amortized cost net asset values both with and without capital support agreements; the dollar-weighted average portfolio maturity; the dollar-weighted average portfolio life maturity of the STIF as of the last business day of the prior calendar month; and for each security held by the STIF as of the last business day of the prior calendar month:

(*1*) The name of the issuer;

(*2*) The category of investment;

(*3*) The Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier;

(*4*) The principal amount;

(*5*) The maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(*6*) The final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity;

(*7*) The coupon or yield; and

(*8*) The amortized cost value;

(J) Adopt procedures that require a bank that administers a STIF to notify the Asset Management Group, Credit & Market Risk Division, Comptroller of the Currency, 250 E St. SW., Washington, DC 20219–0001 prior to or within one business day thereafter of the following:

(*1*) Any difference exceeding $0.0025 between the net asset value and the mark-to-market value of a STIF participating interest as calculated using the method set forth in paragraph (b)(4)(iii)(G)(1) of this section;

(*2*) When a STIF has re-priced its net asset value below $0.995 per participating interest;

(*3*) Any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants;

(*4*) Any delays or suspensions in honoring STIF participating interest withdrawal requests;

(*5*) Any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; or

(*6*) In those situations when a bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in

order to maintain a stable net asset value per participating interest;

(K) Adopt procedures that in the event a STIF has re-priced its net asset value below $0.995 per participating interest, the bank administering the STIF shall calculate, redeem, and sell the STIF's participating interests at a price based on the mark-to-market net asset value; and

(L) Adopt procedures that, in the event a bank suspends or limits withdrawals and initiates liquidation of the STIF as a result of redemptions, require the bank to:

(*1*) Determine that the extent of the difference between the STIF's amortized cost per participating interest and its mark-to-market net asset value per participating interest may result in material dilution of participating interests or other unfair results to participating accounts;

(*2*) Formally approve the liquidation of the STIF; and

(*3*) Facilitate the fair and orderly liquidation of the STIF to the benefit of all STIF participants.

* * * * *

Dated: April 2, 2012.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2012–8467 Filed 4–6–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 721 and 799

[EPA–HQ–OPPT–2010–0520; FRL–9343–9]

RIN 2070–AJ66

Certain High Production Volume Chemicals; Test Rule and Significant New Use Rule; Fourth Group of Chemicals; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; public meeting.

SUMMARY: EPA will hold a public meeting on May 16, 2012, to give the public an opportunity to comment on a proposed test rule for 23 high production volume (HPV) chemical substances and a significant new use rule (SNUR) for another 22 HPV chemical substances under the Toxic Substances Control Act (TSCA). The test rule would require manufacturers and processors to develop screening-level health, environmental, and fate data based on the potential for substantial exposures of workers and consumers to the 23 HPV chemical substances, and the SNUR would require persons to file a significant new use notice (SNUN) with EPA prior to manufacturing, importing, or processing any of the 22 HPV chemical substances for use in a consumer product or for any use, or combination of uses, that would be reasonably likely to expose 1,000 or more workers at a single-corporate entity to the chemical substances. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs. The opportunity to present oral comment was offered in the proposed rule and, in response to that offer, a request to present oral comments was received.

DATES: The meeting will be held on Wednesday, May 16, 2012, from 1:30 p.m. to 5 p.m. Requests to participate in the meeting must be received on or before May 15, 2012.

To request accommodation of a disability, please contact either technical person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, EPA East Rm. 1153, 1201 Constitution Ave. NW., Washington DC 20460–0001.

Requests to participate in the meeting, identified by docket identification (ID) number EPA–HQ–OPPT–2010–0520, may be submitted to either technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Robert Jones or Paul Campanella, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone numbers: (202) 564–8161 and (202) 564–8091; email addresses: *jones.robert@epa.gov* and *campanella.paul@epa.gov*.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process any of the chemical substances that are listed in 40 CFR 799.5090(j) or 40 CFR 721.10228(a) of the proposed rule's regulatory text published in the **Federal Register** issue of October 21, 2011 (76 FR 65580) (FRL–8876–6). Potentially affected entities may include, but are not limited to:

- Manufacturers (defined by statute to include importers) of one or more of the subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.
- Processors of one or more of the subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult either technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. See Unit VI. of the October 21, 2011 proposed rule for export notification requirements.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPPT–2010–0520. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification,

pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. Background

In the **Federal Register** issue of October 21, 2011, EPA published a proposed test rule and SNUR to regulate 45 HPV chemical substances. EPA is proposing a test rule under TSCA section 4(a)(1)(B) for 23 of these 45 HPV chemical substances to require manufacturers, importers, and processors to conduct testing to obtain screening level data for health and environmental effects and chemical fate. EPA has preliminarily determined that: Each of the 23 HPV chemical substances included in that proposed rule is produced in substantial quantities and that there is or may be substantial human exposure to each of them; there are insufficient data to reasonably determine or predict the effects on health or the environment of the manufacture, distribution in commerce, processing, use, or disposal of the chemical substances or of any combination of these activities; and the testing program proposed is necessary to develop such data. Data developed under the proposed rule, when finalized, will provide critical information about the environmental fate and potential hazards associated with the subject chemical substances. When combined with information about exposure and uses, these data will allow the Agency and others to evaluate potential health and environmental risks and to take appropriate follow-up actions.

EPA is also proposing to establish significant new use reporting and recordkeeping under TSCA section 5(a)(2) for the other 22 HPV chemical substances that would require EPA notification prior to worker or consumer exposures rising to substantial levels. The SNUN allows EPA to evaluate the use according to the specific parameters and circumstances for that intended use and, if warranted, be able to regulate prospective manufacturers or processors of the chemical substance before the designated significant new uses of the chemical substance occur.

In response to the proposed rule, EPA received a request to present oral comment from the People for the Ethical Treatment of Animals (PETA). Written comments provided during the comment period for the proposed rule, including those requesting an opportunity for oral comment, are available and can be reviewed in the docket under docket ID number EPA–HQ–OPPT–2010–0520.

III. How can I request to participate in this meeting?

You may submit a request to participate in this meeting to either technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI.

Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2010–0520, must be received on or before May 15, 2012.

List of Subjects

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Reporting and recordkeeping requirements.

Dated: April 3, 2012.

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–8473 Filed 4–6–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 68

Monday, April 9, 2012

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–NOP–12–0017; NOP–12–06]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) is announcing a forthcoming meeting of the National Organic Standards Board (NOSB). Written public comments are invited in advance of the meeting, and the meeting will include scheduled time for oral comments from the public.

DATES: The meeting will be held May 22–25, 2012, from 8 a.m. to 6 p.m. each day except Friday, May 25, 2012, when the meeting will close at 12 p.m. (Noon). The deadline for public comments in advance of the meeting is Thursday, May 3, 2012.

ADDRESSES: The meeting will take place at the Hotel Albuquerque at Old Town, 800 Rio Grande Boulevard, Albuquerque, NM 87104. Information and instructions pertaining to the meeting are posted at the following Web site address: *http://www.ams.usda.gov/NOSBMeetings.* For printed materials, write to Ms. Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648–So., Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648–So., Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the NOSB is to make recommendations about whether a substance should be allowed or prohibited in organic production or handling, to assist in the development of standards for organic production, and to advise the Secretary on other aspects of the implementation of the Organic Foods Production Act. The NOSB currently has seven subcommittees working on various aspects of the organic program. The committees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; Policy Development; and Genetically Modified Organism (GMO) Issues.

The primary purpose of NOSB meetings is to provide an opportunity for the organic community to weigh in on proposed NOSB recommendations and discussion items. These meetings also allow the NOSB to receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture.

The meeting will be open to the public. The meeting agenda, NOSB proposals, instructions for submitting and viewing public comments, and instructions for requesting a time slot for oral comments are available on the NOP Web site at *http://www.ams.usda.gov/NOSBMeetings.* Topics covered at this meeting will include proposals that address petitions pertaining to the National List of Allowed and Prohibited Substances (National List), proposals that address substances on the National List that are due to sunset in 2013, proposals that address issues on materials and excluded methods, and proposals to amend the NOSB Policies and Procedures Manual.

Written public comments will be accepted through May 3, 2012. Comments received after that date may not be reviewed by the NOSB before the meeting. The NOP strongly prefers comments to be submitted electronically, however, written comments may also be submitted before April 30, 2012 via mail to Ms. Ann Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648–S, Mail Stop 0268, Washington, DC 20250–0268. It is our intention to have instructions for viewing all comments at *http://www.ams.usda.gov/NOSBMeetings.*

The NOSB has scheduled meeting time for oral comments from the public, and will accommodate as many individuals and organizations as possible during these sessions. Individuals and organizations wishing to make oral presentations at the meeting must pre-register to request one time slot by visiting *http://www.ams.usda.gov/NOSBMeetings* or by calling (202) 720–3252. All persons making oral presentations are requested to also provide their comments in writing at the meeting. Written submissions may contain supplemental information other than that presented in the oral presentation. Persons submitting written comments at the meeting are asked to provide sixteen copies.

Dated: April 3, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8394 Filed 4–6–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Risk Management Education and Outreach Partnerships Program

Announcement Type: Announcement of Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements.

Catalog of Federal Domestic Assistance Number (CFDA): 10.460.

DATES: All applications, which must be submitted electronically through Grants.gov, must be received by close of business (COB) on *May 24, 2012.* Hard copy applications will NOT be accepted.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces its intent to award approximately $3,000,000 (subject to availability of funds) to fund the Risk Management Education and Outreach Partnerships Program.

Purpose: The purpose of this competitive cooperative partnership agreement program is to deliver crop

insurance education and risk management training to U.S. agricultural producers to assist them in identifying and managing production, marketing, legal, financial and human risk. The program gives priority to: (1) Educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage; and (2) providing collaborative outreach and assistance programs for limited resource, socially disadvantaged and other traditionally under-served farmers and ranchers. Education activities developed under the Risk Management Education and Outreach Partnerships Program shall provide U.S. farmers and ranchers with training and information opportunities to be able to understand:

1. The kinds of risks addressed by existing and emerging risk management tools;

2. The features and appropriate use of existing and emerging risk management tools; and

3. How to make sound risk management decisions.

The minimum award for any cooperative partnership agreement is $20,000. The maximum award for any cooperative partnership agreement is $99,999. The cooperative partnership agreements will be awarded on a competitive basis up to one year from the date of the award. Awardees must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—CFDA No. 10.458 (Crop Insurance Education in Targeted States). Prospective applicants should carefully examine and compare the notices of each announcement. The collections of information in this Announcement have been approved by OMB under control numbers 0563–0066 and 0563–0067.

This announcement consists of eight sections:

Section I—Funding Opportunity Description
A. Legislative Authority
B. Background
C. Definition of Priority Commodities
D. Project Goal
Section II—Award Information
A. Type of Application
B. Funding Availability
C. Location and Target Audience
D. Minimum and Maximum Award
E. Project Period
F. Description of Agreement Award—Awardee Tasks
G. RMA Activities
H. Other Tasks
Section III—Eligibility Information
A. Eligible Applicants
B. Cost Sharing or Matching Funding
C. Other—Non-Financial Benefits
Section IV—Application and Submission Information
A. Electronic Application Package
B. Content and Form of Application Submission
C. Funding Restrictions
D. Limitation on Use of Project Funds for Salaries and Benefits
E. Indirect Cost Rates
F. Other Submission Requirements
G. Acknowledgement of Applications
Section V—Application Review Information
A. Criteria
B. Review and Selection Process
Section VI—Award Administration Information
A. Award Notices
B. Administrative and National Policy Requirements
1. Requirement To Use USDA Logo
2. Requirement To Provide Project Information to an RMA-selected Representative
3. Access to Panel Review Information
4. Confidential Aspects of Applications and Awards
5. Audit Requirements
6. Prohibitions and Requirements Regarding Lobbying
7. Applicable OMB Circulars
8. Requirement To Assure Compliance With Federal Civil Rights Laws
9. Requirement To Participate in a Post Award Teleconference
10. Requirement To Participate in a Post Award Civil Rights Training Teleconference
11. Requirement To Submit Educational Materials to the National AgRisk Education Library
12. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak
C. Reporting Requirements
Section VII—Agency Contact
Section VIII—Additional Information
A. The Restriction of the Expenditure of Funds To Enter Into Financial Transactions
B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Risk Management Education and Outreach Partnership Program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F)).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1522(d)(3)(F), which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, priority is to be given to reaching producers of Priority Commodities, as defined below. A project is considered as giving priority to Priority Commodities if 75 percent of the educational and training activities of the project are directed to producers of any one of the three classes of commodities listed in the definition of Priority Commodities or any combination of the three classes.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

1. *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

2. *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

3. *Underserved commodities.* This group includes: (a) Commodities, including livestock and forage, that are covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

D. Project Goal

The goal of this program is to ensure that "* * * producers will be better

able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools.''

For the 2012 fiscal year, the FCIC Board of Directors and the FCIC Manager are seeking projects that address one or more of the Priority Commodities. In addition, the application must clearly designate that education or training shall be provided on at least one (1) of the Special Emphasis Topics listed below. Applications that do not include at least one (1) Special Emphasis Topic will not be considered for funding.

Special Emphasis Topics

Production: AGR and AGR-Lite; Livestock Gross Margin Dairy; Pasture, Rangeland, Forage Rainfall and/or Vegetative Index; Common Crop Insurance Policy Basic Provisions (''COMBO''); Enterprise Units; Specialty Crops; Prevented Planting; or Other Existing Crop Insurance Programs; Irrigation; Erosion Control Measures; Good Farming Practices; Wildfire Management; Forest Management; and Range Management or other similar topics.

Legal: Legal and Succession Planning or other similar topics;

Marketing: Marketing Strategies; Farm Products Branding; Farmers Markets or other similar topics;

Financial: Financial Tools and Planning; Farm Management Strategies; Farm Financial Benchmarking or other similar topics; or

Human: Farm Labor; Farm Safety; Food Safety, Risk Management Education to Students; or other similar topics.

In addition, the application must clearly demonstrate that the education or training shall be provided to at least one (1) of the Producer Types listed below. Applications that do not include at least one (1) of the Producer Types will not be considered for funding.

Producer Types

Producers and Ranchers;
New and Beginning Farmers;
Women Producers and Ranchers;
Hispanic Producers and Ranchers;
African American Producers and Ranchers;
Native American Producers and Ranchers;
Limited Resource Producers and Ranchers;
Asian American and Pacific Islander Producers and Ranchers;
Transitional Farmers and Ranchers;
Senior Farmers and Ranchers;
Small Acreage Producers;
Specialty Crop Producers; or
Military Veteran Producers and Ranchers.

II. Award Information

A. Type of Application

Only electronic applications will be accepted and they must be submitted through Grants.gov. Hard copy applications will NOT be accepted. Applications submitted to the Risk Management Education and Outreach Partnerships Program are new applications: there are no renewals. All applications will be reviewed competitively using the selection process and evaluation criteria described in Section V—Application Review Process. Each award will be designated as a Cooperative Partnership Agreement, which will require substantial involvement by RMA.

B. Funding Availability

There is no commitment by USDA to fund any particular application. Approximately $3,000,000 is expected to be available in fiscal year 2012 but it is possible that this amount may be reduced or not funded. In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to awardees for use in broadening the size or scope of awarded projects, if agreed to by the awardee. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. All awards will be made and agreements finalized no later than September 30, 2012.

C. Location and Target Audience

RMA Regional Offices and the States serviced within each RMA Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within the Region.

Billings, Montana Regional Office: (MT, ND, SD, and WY)
Davis, California Regional Office: (AZ, CA, HI, NV, and UT)
Jackson, Mississippi Regional Office: (AR, KY, LA, MS, and TN)
Oklahoma City, Oklahoma Regional Office: (NM, OK, and TX)
Raleigh, North Carolina Regional Office: (CT, DE, ME, MD, MA, NH, NJ, NY, NC, PA, RI, VT, VA, and WV)
Spokane, Washington Regional Office: (AK, ID, OR, and WA)
Springfield, Illinois Regional Office: (IL, IN, MI, and OH)
St. Paul, Minnesota Regional Office: (IA, MN, and WI)
Topeka, Kansas Regional Office: (CO, KS, MO, and NE)
Valdosta, Georgia Regional Office: (AL, FL, GA, PR, and SC)

Each application must clearly designate the RMA Region where educational activities will be conducted in the application narrative in block 12 of the SF–424 form. Applications without this designation will be rejected. Applications may designate more than one state but cannot designate more than one RMA Region. Applications with proposed activities in more than one state all serviced by the same RMA Region are acceptable. Single applications proposing to conduct educational activities in states served by more than one RMA Region will be rejected. Applications serving Tribal Nations will be accepted and managed from the RMA Regional office serving the designated Tribal Office.

D. Minimum and Maximum Award

Any application that requests Federal funding of less than $20,000 or more than $99,999 for a project will be rejected. RMA also reserves the right to fund successful applications at an amount less than requested if it is judged that the application can be implemented at a lower funding level.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award—Awardee Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the awardee shall be responsible for performing the following tasks:

1. Develop and conduct a promotional program in English or a non-English language to producers as appropriate to the audience. This program shall include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance and risk management; (b) inform producers of the availability of crop insurance and risk management tools; and (c) inform producers and agribusiness leaders in

the designated RMA Region of training and informational opportunities.

2. Deliver crop insurance and risk management training in English or non-English language as appropriate to the audience as well as informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using the instructional materials assembled by the awardee to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.

3. Document all educational activities conducted under the cooperative partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee shall also be required to provide information to RMA as requested for evaluation purposes.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten (10) Regional Offices. Potential types of substantial involvement may include, but are not limited to, the following activities.

1. Collaborate with the awardee in assembling, reviewing, and approving crop insurance and risk management materials for producers in the designated RMA Region.

2. Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for crop insurance and risk management and for informing producers of training and informational opportunities in the RMA Region.

3. Collaborate with the awardee on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.

4. Conduct an evaluation of the performance of the awardee in meeting the tasks and subtasks of the project.

Applications that do not address substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of the applicant and any entities working with the applicant in the development or delivery of the project. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include: State Departments of Agriculture, State Cooperative Extension Services; Federal, State, or tribal agencies; groups representing producers, community based organizations or a coalition of community-based organization that has demonstrated experience in providing agricultural or other agricultural-related services to producers; nongovernmental organizations; junior and four-year colleges or universities or foundations maintained by a college or university; private for-profit organizations; faith-based organizations and other appropriate partners with the capacity to lead a local program of crop insurance and risk management education for producers in an RMA Region.

1. Individuals are not eligible applicants.

2. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative partnership agreement, or grant; or a determination of a violation of applicable ethical standards.) Applications in which the applicant or any of the partners are ineligible or excluded persons will be rejected in their entirety.

3. Private organizations that are involved in the sale of Federal crop insurance, or that have financial ties to such organizations, are eligible to apply for funding under this Announcement. However, such entities and their partners, affiliates, and collaborators for this Announcement will not receive funding to conduct activities that are already required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC/RMA and the entity, or between FCIC/RMA and any of the partners, affiliates, or collaborators for awards under this Announcement. In addition, such entities and their partners, affiliates, and collaborators for this Announcement will not be allowed to receive funding to conduct activities that could be perceived by producers as promoting the services or products of one company over the services or products of another company that provides the same or similar services or products. If applying for funding, such organizations must be aware of potential conflicts of interest and must describe in their application the specific actions they shall take to avoid actual and perceived conflicts of interest.

B. Cost Sharing or Matching Funding

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

C. Other—Non-financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a cooperative partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the cooperative partnership agreement shall further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

IV. Application and Submission Information

A. Electronic Application Package

Only electronic applications will be accepted and they must be submitted via Grants.gov to the Risk Management Agency in response to this Announcement. Prior to preparing an application, it is suggested that the Project Director (PD) first contact an Authorized Representative (AR) (also referred to as Authorized Organizational Representative or AOR) to determine if the organization is prepared to submit electronic applications through Grants.gov. If the organization is not prepared, the AR should see, *http://www.grants.gov/applicants/*

get_registered.jsp, for steps for preparing to submit applications through Grants.gov.

Grants.gov assistance is available as follows:

- Grants.gov customer support, Toll Free: 1–800–518–4726, Business Hours: 24 hours a day, Email: *support@grants.gov.*

B. Content and Form of Application Submission

The title of the application must include the (1) RMA Region, (2) the State or States within the RMA Region where the educational activities will be conducted, (3) the Special Emphasis Topic(s); and (4) the Producer Type 2 (For example only: Billings RO, Montana, Crop Insurance for Military Veterans).

A complete and valid application must include the following:

1. A completed OMB Standard Form 424, ''Application for Federal Assistance.''

2. A completed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.'' Federal funding requested (the total of direct and indirect costs) must not exceed $99,999.

3. A completed OMB Standard Form 424–B, ''Assurances, Non-constructive Programs.''

4. An Executive Summary (One page) of the Project.

5. A Proposal Narrative (Not to Exceed 15 single-sided pages in Microsoft Word), which shall also include a Statement of Work. The Statement of Work (SOW) must include each task and subtask associated with the work, the objective of each task and subtask, specific time lines for performing the tasks and subtasks, and the responsible party for completing the activities listed under each task and subtask including the specific responsibilities of partners and/or RMA. The SOW must be very clear on who does what, where, and when, as well as, the objective for each task and subtask. Letters of support for the applicant should be an appendix to the application and should not be included as part of the Proposal Narrative.

6. Budget Narrative (in Microsoft Excel) describing how the categorical costs listed on the SF 424–A are derived. The budget narrative must provide enough detail for reviewers to easily understand how costs were determined and how they relate to the goals and objectives of the project.

7. Partnering Plan that includes how each partner of the applicant (who will be working on this project) shall aid in carrying out the specific tasks and subtasks. The Partnering Plan must also include ''Letters of Commitment'' from each partner who shall do the specific task or subtask as identified in the SOW. The Letters must (1) be dated within 45 days of the submission and (2) list the specific tasks or subtasks the committed partner has agreed to do with the applicant on this project.

8. Project Plan of Operation in the Event of a Human Pandemic Outbreak (Pandemic Plan). RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan must address the concept of continuing operations as they relate to the project. This plan must include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

9. Current and Pending Report. The application package from Grants.gov contains a document called the Current and Pending Report. On the Current and Pending Report you must state for this fiscal year if this application is a duplicate application or overlaps substantially with another application already submitted to or funded by another USDA Agency, including RMA, or other private organization. The percentage of each person's time associated with the work to be done under this project must be identified in the application. The total percentage of time for both ''Current'' and ''Pending'' projects must not exceed 100% of each person's time. Applicants must list all current public or private employment arrangements or financial support associated with the project or any of the personnel that are part of the project, regardless of whether such arrangements or funding constitute part of the project under this Announcement (supporting agency, amount of award, effective date, expiration date, expiration date of award, etc.). If the applicant has no projects to list, ''N/A'' should be shown on the form. An application submitted under this RFA that duplicates or overlaps substantially with any application already reviewed and funded (or to be funded) by any other organization or agency, including but not limited to other RMA, USDA, and Federal government programs, will not be funded under this program. RMA reserves the right to reject your application based on the review of this information.

10. A completed and signed OMB Standard Form LLL, Disclosure of Lobbying Activities.

11. A completed and signed AD–1049, Certification Regarding Drug-Free Workplace.

Applications that do not include the items listed above will be considered incomplete, will not receive further consideration, and will be rejected.

C. Funding Restrictions

Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Purchase portable equipment (such as laptops, projectors, etc.)

d. Repair or maintain privately owned vehicles;

e. Pay for the preparation of the cooperative agreement application;

f. Fund political activities;

g. Purchase alcohol, food, beverage, give-away promotional items, or entertainment;

h. Lend money to support farming or agricultural business operation or expansion;

i. Pay costs incurred prior to receiving a cooperative agreement;

j. Provide scholarships to meetings, seminars or similar events;

k. Pay entrance fees or other expenses to conferences or similar activities;

l. Pay costs associated 501(c) applications;

m. Purchase electronic devices (such as I-pads, cell phones, computers or similar items) for consultants or Board Members; or

n. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

D. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this Announcement will be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative partnership agreement. The reasonableness of the total costs for salary and benefits allowed for projects under this Announcement will be reviewed and considered by RMA as part of the application review process. Applications for which RMA does not consider the salary and benefits reasonable for the proposed application will be rejected, or will only be offered a cooperative agreement upon the condition of changing the salary and benefits structure to one deemed appropriate by RMA for that. The goal of the Risk Management Education and Outreach Partnerships Program is to maximize the use of the limited funding available for crop insurance risk management education for producers of Priority Commodities and Special Emphasis Topics.

E. Indirect Cost Rates

1. Indirect costs allowed for projects submitted under this Announcement will be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

2. RMA reserves the right to negotiate final budgets with successful applicants.

F. Other Submission Requirements

Applicants are entirely responsible for ensuring that RMA receives a complete application package by the closing date and time. RMA strongly encourages applicants to submit applications well before the deadline to allow time for correction of technical errors identified by Grants.gov. Application packages submitted after the deadline will be rejected.

G. Acknowledgement of Applications

Receipt of applications may be acknowledged by email, whenever possible; however it is the responsibility of the applicant to check Grants.gov for successful submission. Therefore, applicants are encouraged to provide email addresses in their applications. There will be no notification of incomplete, unqualified or unfunded applications until the award decisions have been made. When received by RMA, applications will be assigned an identification number.

This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number must be referenced in all correspondence submitted by any party regarding the application. If the applicant does not receive an acknowledgement of application receipt by 15 days following the submission deadline, the applicant must notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Risk Management Education and Outreach Partnerships Program will be evaluated within each RMA Region according to the following criteria:

Project Impacts—Maximum 20 Points Available

Each application must demonstrate that the project benefits to producers warrant the funding requested. Applications will be scored according to the extent they can: (a) Identify the specific actions producers will likely be able to take as a result of the educational activities described in the Proposal Narrative's Statement of Work (SOW); (b) identify the specific measures for evaluating results that will be employed in the project; (c) reasonably estimate the total number of producers that will be reached through the various methods and educational activities described in the Statement of Work; (d) identify the number of meetings that will be held; (e) provide an estimate of the number of training hours that will be held; (f) provide an estimated cost per producer, and (e) justify such estimates with specific information. Estimates for reaching agribusiness professionals may also be provided but such estimates must be provided separately from the estimates of producers. Reviewers' scoring will be based on the scope and reasonableness of the application's clear descriptions of specific expected actions producers will accomplish, and well-designed methods for measuring the project's results and effectiveness. Applications using direct contact methods with producers will be scored higher.

Applications must identify the type and number of producer actions expected as a result of the projects, and how results will be measured, in the following categories:

- Understanding risk management tools;
- Evaluating the feasibility of implementing various risk management options;
- Developing risk management plans and strategies;
- Deciding on and implementing a specific course of action (e.g., participation in crop insurance programs or implementation of other risk management actions).

Statement of Work (SOW)—Maximum 20 Points Available

Each application must include a clear and specific Statement of Work for the project as part of the Proposal Narrative. For each of the tasks contained in the Description of Agreement Award (see Section II, Award Information), the application must identify and describe specific subtasks, responsible entities including partners, expected completion dates, RMA substantial involvement, and deliverables that shall further the purpose of this program. Applications will obtain a higher score to the extent that the Statement of Work is specific, measurable and reasonable, has specific deadlines for the completion of tasks and subtasks, and relates directly to the required activities and the program purpose described in this Announcement.

Partnering—Maximum 20 Points Available

Each application must demonstrate experience and capacity to partner with and gain the support of producer organizations, agribusiness professionals, subject matter experts, and agricultural leaders to carry out a local program of education and information in a designated State. Each application must establish a written Partnering Plan that describes how each partner shall aid in carrying out the project goal and purpose stated in this announcement and should include letters of commitment dated no more than 45 days prior to submission of the relevant application stating that the partner has agreed to do this work. Each application must ensure this Plan includes a list of all partners working on the project, their titles, and how they will contribute to the deliverables listed in the application. The Partnering Plan will not count towards the maximum length of the application narrative. Applications will receive higher scores to the extent that the application demonstrates: (a) That partnership commitments are in place for the express purpose of delivering the program in this announcement; (b) that a broad group of producers will be reached within the State; (c) that partners are contributing to the project and involved in recruiting producers to attend the training; (d) that a substantial effort has been made to partner with organizations that can meet the needs of producers in the designated State; and (e) statements from each partner regarding the number of producers that partner is committed to recruit for the project that would support the estimates specified under the Project Impacts criterion.

Project Management—Maximum 20 Points Available

Each application must demonstrate an ability to implement sound and effective project management practices. Higher scores in this category will be awarded to applications that demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the designated State. Each application must demonstrate that the Project Director has the capability to accomplish the project goal and purpose stated in this announcement by (a) having a previous or existing working relationship with the agricultural community in the designated State of

the application, including being able to recruit approximately the number of producers to be reached in the application and/or (b) having established the capacity to partner with and gain the support of producer organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applications must designate an alternate individual to assume responsibility as Project Director in the event the original Project Director is unable to finish the project. Applications that will employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective State will receive higher rankings in this category.

Budget Appropriateness and Efficiency—Maximum 20 Points Available

Applications must provide a detailed budget summary, both in narrative and in Microsoft Excel, that clearly explains and justifies costs associated with the project's tasks and subtasks. Applications will receive higher scores in this category to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the *estimated cost of reaching each individual producer.*

Bonus Points for Minority Partnering—Maximum 20 Bonus Points Available

RMA is focused on adding diversity to this program. RMA may add up to an additional 20 points to the final paneled score of any submission demonstrating a *partnership with* another producer group or community based group that represent minority producers. The application must state in the Partnering Plan that a Minority Partnership is in place as validated by a current Letter of Commitment that identifies the producer group or community based group partner that will represent minority producers.

''Minority'' producers are defined as:

- African American producers
- Asian American, Pacific Islander producers
- Hispanic producers
- Native American producers

Bonus Points for StrikeForce Partnering—Maximum Bonus 20 Points Available

RMA is focused on providing crop insurance education and other risk management training and outreach to the States and counties identified in the USDA StrikeForce initiative (*www.fsa.usda.gov/Internet/FSA_File/usda_strike_force.pdf*).

RMA may add up to an additional 20 points to the final paneled score of any submission demonstrating that the activities describe in the proposal will be directed to the producers in the StrikeForce areas. The application must state in the Partnering Plan that a StrikeForce Partnership is in place as validated by a current Letter of Commitment that identifies the producer group or community based group that represent producers farming in the areas identified in the StrikeForce areas noted below:

Arkansas
StrikeForce Counties: Arkansas, Bradley, Chicot, Clark, Columbia, Dallas, Desha, Drew, Hempstead, Howard, Jackson, Lafayette, Lawrence, Lee, Mississippi, Monroe, Nevada, Newton, Ouachita, Phillips, Randolph, Searcy, Sevier, St. Francis, and Woodruff

Colorado
StrikeForce Counties: Adams, Alamosa, Arapahoe, Baca, Bent, Cheyenne, Costilla, Conejos, Crowley, Denver, Elbert, El Paso, Huerfano, Jefferson, Kiowa, Lake, Las Animas, Lincoln, Logan, Morgan, Montezuma, Otero, Pueblo, Prowers, Rio Grande, San Juan, Saquache, Sedgwick, and Weld

Georgia
StrikeForce Counties: Appling, Atkinson, Baker, Baldwin, Ben Hill, Berrien, Bulloch, Calhoun, Candler, Charlton, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dodge, Dooley, Early, Emanuel, Evans, Grady, Hancock, Irwin, Jefferson, Jenkins, Johnson, Laurens, Macon, Miller, Mitchell, Montgomery, Peach, Pulaski, Quitman, Randolph, Screven, Seminole, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Terrell, Thomas, Tift, Toombs, Treutlen, Turner, Ware, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, and Wilkes

Mississippi
StrikeForce Counties: Adams, Amite, Attala, Benton, Bolivar, Calhoun, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Covington, Franklin, Greene, Grenada, Holmes, Humphreys, Issaquena, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lauderdale, Lawrence, Leake, Leflore, Lincoln, Lowndes, Marion, Monroe, Montgomery, Noxubee, Oktibbeha, Panola, Pike, Quitman, Scott, Sharkey, Sunflower, Tallahatchie, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo

Nevada
StrikeForce Counties: Clark, Carson City, Churchill, Douglas, Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, Washoe, and White Pine

New Mexico
StrikeForce Counties: Lincoln, Rio Arriba, San Juan, San Miguel, Santa Fe, and Taos.

B. Review and Selection Process

Applications will be evaluated using a two-part process. First, each application will be screened by USDA and RMA personnel to ensure that it meets the requirements in this Announcement. Applications that do not meet the requirements of this Announcement or that are incomplete will not receive further consideration during the next process. Applications that meet Announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and will be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers will be drawn from USDA, other Federal agencies, and public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members will score each application according to the criteria and point values listed above. The panel will then rank each application against others within the RMA Region according to the scores received. The review panel will report the results of the evaluation to the Manager of FCIC. The panel's report will include the recommended applicants to receive cooperative partnership agreements for each RMA Region.

Funding will not be provided for an application receiving a score less than 60. Funding will not be provided for an application that is ''highly similar'' to a higher-scoring application in the same RMA Region. ''Highly similar'' is defined as one that proposes to reach the same producers, farmers and ranchers who are likely to be reached by another applicant that scored higher by the panel and provides the same general educational material. An organization, or group of organizations in partnership,

may apply for funding under other FCIC or RMA programs, in addition to the program described in this Announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect not to fund that application in whole or in part. The Manager of FCIC will make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

The award document will provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to which the Manager of FCIC has issued an award under the terms of this request for applications;

(2) Title of project;

(3) Name(s) and employing institution(s) of Project Directors chosen to direct and control approved activities;

(4) Identifying award number assigned by RMA;

(5) Project period, specifying the amount of time RMA intends to support the project without requiring recompeting for funds;

(6) Total amount of RMA financial assistance approved by the Manager of FCIC during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) numbers;

(9) Applicable award terms and conditions (see *http://www.rma.usda.gov/business/awards/awardterms.html* to view RMA award terms and conditions);

(10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(11) Other information or provisions deemed necessary by RMA to carry out its respective awarding activities or to accomplish the purpose of a particular award.

Following approval by the Manager of FCIC of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the Manager of FCIC will enter into cooperative partnership agreements with those selected applicants.

After a cooperative partnership agreement has been signed, RMA will extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved cooperative partnership agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding will be sent to applicants after final funding decisions have been made and the awardees announced publicly. Unsuccessful applicants will be provided a debriefing upon request to the Director, Risk Management Education.

B. Administrative and National Policy Requirements

1. Requirement To Use USDA Logo

Applicants awarded cooperative partnership agreements will be required to use a USDA logo provided by RMA for all instructional and promotional materials, when deemed appropriate.

2. Requirement To Provide Project Information to an RMA-selected Representative

Applicants awarded cooperative partnership agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by notifying RMA of upcoming training meeting and by providing documentation of educational activities, materials, and related information to any representative selected by RMA for program evaluation purposes.

3. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation panel, not including the identity of reviewers, will be sent to the applicant after the review and awards process has been completed.

4. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications will all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members will remain confidential throughout the entire review process and will not be released to applicants. At the end of the fiscal year, names of panel members will be made available. However, panelists will not be identified with the review of any particular application. When an application results in a cooperative partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request.

Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award will be retained by RMA for a period of one year. Other copies will be destroyed. Copies of applications not receiving awards will be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

5. Audit Requirements

Applicants awarded cooperative partnership agreements are subject to audit.

6. Prohibitions and Requirements Regarding Lobbying

All cooperative agreements will be subject to the requirements of 7 CFR part 3015, ''Uniform Federal Assistance Regulations.'' A signed copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII, Agency Contact.

Departmental regulations published at 7 CFR part 3018 imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative partnership agreements and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative partnership agreement or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires awardees and any subcontractors to complete a certification in accordance with Appendix A to Part 3018 and a disclosure of lobbying activities in

accordance with Appendix B to Part 3018.: The law establishes civil penalties for non-compliance.

7. Applicable OMB Circulars

All cooperative partnership agreements funded as a result of this notice will be subject to the requirements contained in all applicable OMB circulars at *http://www.whitehouse.gov/omg/grants_circulars*

8. Requirement To Assure Compliance With Federal Civil Rights Laws

Awardees and all partners/collaborators of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws, which include, but are not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and 7 CFR part 15. RMA requires that awardees submit an Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

9. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference, if conducted, to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that will be followed in administering the agreement and will afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

10. Requirement To Participate in a Post Award Civil Rights Training Teleconference

RMA requires that project leaders participate in a post award Civil Rights and EEO training teleconference to become fully aware of Civil Rights and EEO law and requirements.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that project leaders upload digital copies of all risk management educational materials developed because of the project to the National AgRisk Education Library at *http://www.agrisk.umn.edu/* for posting. RMA will be clearly identified as having provided funding for the materials.

12. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan should address the concept of continuing operations as they relate to the project. This should include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

C. Reporting Requirements

Awardees will be required to submit quarterly progress reports using the Performance Progress Report (SF–PPR) as the cover sheet, and quarterly financial reports (OMB Standard Form 425) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period. The quarterly progress reports and final program reports MUST be submitted through the Results Verification System. The Web site address is *www.agrisk.umn.edu/RMA/Reporting*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: USDA–RMA–RME, phone: 202–720–0779, email: *RMA.Risk-Ed@rma.usda.gov.* You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements.*

VIII. Additional Information

A. The Restriction of the Expenditure of Funds To Enter Into Financial Transactions

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2012 (Pub. L. 112–55) contains the restriction of the expenditure of funds to enter into financial transactions Corporations that have been convicted of felonies within the past 24 months or that have federal tax delinquencies where the agency is aware of the felonies and/or tax delinquencies.

Section 738 (Felony Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation that was convicted (or had an officer or agency of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation, or such officer or agent, and made a determination that this further action is not necessary to protect the interest of the Government.

Section 739 (Tax Delinquency Provision)

None of the funds made available by this Act may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that [has] any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

B. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

Under the Federal Funding Accountability and Transparency Act of 2006, the applicant must comply with the additional requirements set forth in Attachment A regarding the Dun and Bradstreet Universal Numbering System (DUNS) Requirements and the CCR Requirements found at 2 CFR part 25. For the purposes of this RFA, the term ''you'' in Attachment A will mean ''applicant''. The applicant shall comply with the additional requirements set forth in Attachment B regarding Subawards and Executive Compensation. For the purpose of this RFA, the term ''you'' in Attachment B will mean ''applicant''. The Central Contract Registry CCR is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit ''Get Registered'' at the Web site, *http://www.grants.gov.* Allow a minimum of 5 business days to complete the CCR registration.

C. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Attachment A

I. Central Contractor Registration and Universal Identifier Requirements

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential sub recipients that no entity (see definition in paragraph C of this award) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions for Purposes of This Award Term

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at *http://www.ccr.gov*).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866–705–5711) or the Internet (currently at *ttp://fedgov.dnb.comlwebform*).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian Tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 10 of the attachment to OMB Circular A–I33, ''Audits of States, Local Governments, and Non-Profit Organizations'').

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

Attachment B

I. Reporting Sub Awards and Executive Compensation

a. Reporting of First-Tier Subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.I. of this award term to *http://www.fsrs.gov*.

ii. For sub award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2012, the obligation must be reported by no later than December 31, 2012.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov* specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this award is $25,000 or more;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at *http://www.ccr.gov.*

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Sub Recipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier sub recipient under this award, you shall report the names and total compensation of each of the sub recipient's five most highly compensated executives for the sub recipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at ~ CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm*.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any sub recipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec._.210 of the attachment to OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'').

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a sub award from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

Signed in Washington, DC, on April 2, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–8410 Filed 4–6–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2012–0018]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Labeling

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), are sponsoring a public meeting on April 18, 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 40th Session of the Codex Committee on Food Labeling (CCFL) of the Codex Alimentarius Commission (Codex), which will be held in Ottawa, Ontario, Canada from May 15–18, 2012. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 40th Session of the CCFL, and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, April 18, 2012, from 1:00–3 p.m.

ADDRESSES: The public meeting will be held at the Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250.

Documents related to the 40th Session of the CCFL will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/*.

Barbara Schneeman, U.S. Delegate to the 40th Session of the CCFL, invites U.S. interested parties to submit their comments electronically to the following email address: *Daniel.Reese@fda.hhs.gov*.

Call-In Number:

If you wish to participate in the public meeting for the 40th Session of the CCFL by conference call, please use the call-in number and participant code listed below:

Call-in Number:
1–888–858–2144.
Participant code: 6208658.

For Further Information About the 40th Session of the CCFL Contact: Barbara Schneeman, Ph.D., Director, Office of Nutrition, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway (HFS–800), College Park, MD 20740, Telephone: (240) 402–2373, Fax: (301) 436–2636, Email: *Barbara.Schneeman@fda.hhs.gov*.

For Further Information About the Public Meeting Contact: Doreen Chen-Moulec, USCODEX Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250, Telephone: (202) 205–7760, Fax: (202) 720–3157, Email: *uscodex@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCFL is responsible for:

(a) Drafting provisions on labeling applicable to all foods;

(b) considering, amending if necessary, and endorsing draft specific provisions on labeling prepared by the Codex Committees drafting standards, codes of practice and guidelines;

(c) studying specific labeling problems assigned to it by Codex; and

(d) studying problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

The Committee is hosted by Canada.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 40th Session of the CCFL will be discussed during the public meeting:

- Matters Referred to the Committee.
- Consideration of Labeling Provisions in Draft Codex Standards.
- Implementation of the WHO Global Strategy on Diet, Physical Activity and Health.

(a) Proposed Draft Revision of the *Guidelines for Use of Nutrition and*

Health Claims: Additional Conditions for Nutrient Content Claims and Comparative Claims.

(b) Draft Definition for Nutrient Reference Values for Inclusion in the *Guidelines for Nutrition Labeling.*

(c) Requirements for Mandatory Nutrition Labeling.

• *Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods.*

(a) Inclusion of Ethylene for Other Products at Step 7; Use of Ethylene for the Ripening of Fruit.

(b) Inclusion of Spinosad, Copper Octanoate, and Potassium Bicarbonate.

(c) Use of Ethylene for Degreening of Citrus for Fruit Fly Prevention, as a Flowering Agent for Pineapples and as a Sprouting Inhibitor for Onions and Potatoes.

(d) Organic Aquaculture.

(e) Structured Approach and Template.

• Modified Standardized Common Names.

• Other Business and Future Work.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents (see **ADDRESSES**).

Public Meeting

At the April 18, 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 40th session of the CCFL, Barbara Schneeman (see **ADDRESSES**). Written comments should state that they relate to activities of the 40th session of the CCFL.

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.

USDA Nondiscrimination Statement

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC on: April 3, 2012.

Karen Stuck,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2012–8505 Filed 4–6–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Media Outlets for Publication of Legal and Action Notices in the Southern Region

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 219 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. The Southern Region consists of Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico.

As provided in 36 CFR 215.5 and Appendix A to 36 CFR 219.35 the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. Responsible Officials in the Southern Region will also publish notice of proposed actions under 36 CFR 215.5 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215.5, the public shall be advised, through **Federal Register** notice, of the newspaper of record to be utilized for publishing notices on proposed actions. Additionally, the Deciding Officers in the Southern Region will publish notice of the opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR 218.4 or developing, amending or revising land management plans under 36 CFR part 219 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR part 215 and Appendix A to 36 CFR 219.35, notices of proposed actions under 36 CFR part 215, and notices of the opportunity to object under 36 CFR part 218 and 36 CFR part 219 shall begin the first day after the date of this publication.

FOR FURTHER INFORMATION CONTACT: James W. Bennett, Regional Appeal Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: 404/347–2788.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under Appendix A to 36 CFR 219.35, the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR part 215 and opportunity to object to a proposed authorized hazardous fuel reduction project under 36 CFR part 218 or developing, amending or revising land management plans under 36 CFR part 219 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR 215.5 in the following newspapers of record which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the

date of publication of the notice of the proposed action in the newspaper of record. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record for 36 CFR part 215 and Appendix A to 36 CFR 219.35. The timeframe for an objection shall be based on the date of publication of the legal notice of the opportunity to object for projects subject to 36 CFR part 218 or 36 CFR part 219.

Where more than one newspaper is listed for any unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer/Responsible Official expects to use for purposes of providing additional notice.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution,* published daily in Atlanta, GA. Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National Grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Affecting National Forest System lands in more than one Ranger District of the 6 in the National Forests in Alabama, *Montgomery Advertiser,* published daily in Montgomery, AL. Affecting National Forest System lands in only one Ranger District will appear in the newspaper of record elected by the Ranger District as listed below.

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published bi-weekly (Wednesday & Saturday) in Haleyville, AL.
Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL.
Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL.
Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL.
Talladega Ranger District: The Daily Home, published daily in Talladega, AL.
Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times, published daily in Gainesville, GA.

District Ranger Decisions

Blue Ridge Ranger District: The News Observer (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.
North Georgia News, (newspaper of record) published weekly (Wednesday) in Blairsville, GA.
The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.
Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA.
Conasauga Ranger District: Daily Citizen, published daily in Dalton, GA.
Chattooga River Ranger District: TheNortheast Georgian, (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.
Clayton Tribune, (newspaper of record) published weekly (Thursday) in Clayton, GA.
The Toccoa Record, (secondary) published weekly (Thursday) in Toccoa, GA.
White County News, (secondary) published weekly (Thursday) in Cleveland, GA.
Oconee Ranger District: Eatonton Messenger, published weekly (Thursday) in Eatonton, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN.

District Ranger Decisions

Unaka Ranger District: Greeneville Sun, published daily (except Sunday) in Greeneville, TN.
Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN.
Tellico Ranger District: Monroe County Advocate & Democrat, published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.
Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions

Cumberland Ranger District: Lexington Herald-Leader, published daily in Lexington, KY.
London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY.
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY.
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY.

El Yunque National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR.
Puerto Rico Daily Sun, published daily in English in San Juan, PR.

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions

Apalachicola Ranger District: Calhoun-Liberty Journal, published weekly (Wednesday) in Bristol, FL.
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL.
Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL.
Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL.
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL.

Francis Marion & Sumter National Forests, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Ranger Decisions

Andrew Pickens Ranger District: The Daily Journal, published daily (Tuesday through Saturday) in Seneca, SC.
Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.
Long Cane Ranger District: Index-Journal, published daily in Greenwood, SC.
Wambaw Ranger District: Post and Courier, published daily in Charleston, SC.
Witherbee Ranger District: Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions

Clinch Ranger District: Coalfield Progress, published bi-weekly (Tuesday and Friday) in Norton, VA.
North River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA.
Glenwood-Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA.
James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA.
Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA.
Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA.
Eastern Divide Ranger District: Roanoke Times, published daily in Roanoke, VA.
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk, published daily in Alexandria, LA.

District Ranger Decisions

Calcasieu Ranger District: The Town Talk, (newspaper of record) published daily in Alexandria, LA.
The Leesville Daily Leader, (secondary) published daily in Leesville, LA.
Caney Ranger District: Minden Press Herald, (newspaper of record) published daily in Minden, LA.
Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.
Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA.
Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA.
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA.

Land Between The Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions

The Paducah Sun, published daily in Paducah, KY.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS.
De Soto Ranger District: Clarion Ledger, published daily in Jackson, MS.
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS.
Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published Wednesday thru Sunday, in Asheville, NC.

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times, published Wednesday thru Sunday, in Asheville, NC.
Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC.
Croatan Ranger District: The Sun Journal, published daily in New Bern, NC.
Grandfather Ranger District: McDowell News, published daily in Marion, NC.
Nantahala Ranger District: The Franklin Press, published bi-weekly (Tuesday and Friday) in Franklin, NC.
Pisgah Ranger District: The Asheville Citizen-Times, published Wednesday thru Sunday, in Asheville, NC.
Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC.
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions

Caddo-Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Jessieville-Winona-Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Mena-Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.
Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) Tulsa World, published daily in Tulsa, OK.
Poteau-Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

District Ranger Decisions

Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR.
Buffalo Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR.
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR.
St. Francis National Forest: The Daily World, published daily (Sunday through Friday) in Helena, AR.
Sylamore Ranger District: Stone County Leader, published weekly (Wednesday) in Mountain View, AR.

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX.

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX.
Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX.
Sam Houston National Forest: The Courier, published daily in Conroe, TX.

Dated: April 2, 2012.

Ken S. Arney,

Deputy Regional Forester.

[FR Doc. 2012–8444 Filed 4–6–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409, Pub. L. 96–523, Pub. L. 97–375 and Pub. L. 105–153), we are announcing a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address ways in which the national economic accounts can be presented more effectively for current economic analysis and recent statistical developments in national accounting.

DATES: Friday, May 11, 2012 the meeting will begin at 9 a.m. and adjourn at 3:30 p.m.

ADDRESSES: The meeting will take place at the Bureau of Economic Analysis at 1441 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gianna Marrone, Program Analyst, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9633.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Gianna Marrone of BEA at (202) 606–9633 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (202) 606–9633.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, especially in areas of new and rapidly growing economic activities arising from innovative and advancing technologies, and provides recommendations from the perspectives of the economics profession, business, and government. This will be the Committee's twenty-third meeting.

Dated: March 5, 2012.

Brian C. Moyer,

Deputy Director, Bureau of Economic Analysis.

[FR Doc. 2012–8470 Filed 4–6–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–2012]

Foreign-Trade Zone 149—Freeport, TX, Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by Port Freeport, grantee of FTZ 149, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 2, 2012.

FTZ 149 was approved by the Board on June 28, 1988 (Board Order 385, 53 FR 26096, 7/11/88), and expanded on August 7, 2001 (Board Order 1185, 66 FR 42994, 8/16/01), and on February 23, 2010 (Board Order 1666, 75 FR 12726, 3/17/10).

The current zone project includes the following sites: *Site 1* (280 acres)—Port Freeport Primary Facility, 1001 Navigation Boulevard, Freeport; *Site 2* (153.6 acres)—Freeport LNG Terminal, 1500 Lamar Street, Quintana; *Site 3* (1,063.1 acres)—Port Freeport (Parcels 13, 14 & 19), State Highway 288, Freeport; *Site 4* (242.2 acres)—Port Freeport (Parcels 27, 35, 39 & TEPPCO), located on Farm Market Road 1495, Freeport; *Site 5* (212.9 acres)—Port Freeport (Parcel 30), located on County Road 723, Quintana; *Site 6* (146 acres)—Texas Gulf Coast Regional Airport, located on County Road 220, Angleton; *Site 7* (506 acres)—Pearland Northern Industrial Park, located on State Highway 35, Pearland; *Site 8* (832 acres)—Pearland Southern Industrial Park, located on State Highway 35, Pearland; *Site 9* (146 acres)—Pearland Bybee-Sterling Complex, located at the intersection of Hooper Road and Sam Houston Parkway, Pearland; *Site 10* (8 acres)—Alvin Santa Fe Industrial Park, 200 Avenue I, Alvin; *Site 11* (340 acres, sunset 2/28/2017)—International Industrial Park, located on State Highway 59 between Beasley and Kendleton; and, *Site 12* (636 acres, sunset 2/28/2017)—KCS/CenterPoint Intermodal Center, located on State Highway 59 between Beasley and Kendleton.

The grantee's proposed service area under the ASF would be the Counties of Brazoria and Fort Bend, Texas. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Freeport Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its zone project to include existing Sites 1, 3 and 10 as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting that Sites 2, 4, 5, 6, 7, 8, 9, 11 and 12 be removed from the zone project. No new magnet or usage-driven sites are being requested at this time. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 149's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 8, 2012. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 25, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact

Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: April 2, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–8486 Filed 4–6–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Dockets 60, 61 and 62–2011]

Foreign-Trade Zones 140 and 78, Applications for Subzone Authority Dow Corning Corporation, Hemlock Semiconductor Corporation, and Hemlock Semiconductor, L.L.C.; Reopening of Rebuttal Periods

The rebuttal periods for the applications for subzone authority at the Dow Corning Corporation facility in Midland, Michigan (76 FR 63282–63283, 10/12/2011), at the Hemlock Semiconductor Corporation facility in Hemlock, Michigan (76 FR 63282, 10/12/2011) and at the Hemlock Semiconductor, L.L.C. facility in Clarksville, Tennessee (76 FR 63281–63282, 10/12/2011) are being reopened. The rebuttal comments submitted on March 13, 2012 on behalf of the companies cited above contained new factual information on which there has not been a chance for public comment. The rebuttal period for the cases referenced above is being reopened to April 24, 2012, to allow interested parties to comment on the applicants' rebuttal submission. Submissions shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230.

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: April 3, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–8490 Filed 4–6–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2012]

Epson Portland, Inc.—Expansion of Manufacturing Authority; Reopening of Comment Period

The comment period on the application by the Port of Portland, grantee of FTZ 45 to expand the scope of manufacturing authority approved within Subzone 45F, on behalf of Epson Portland, Inc. (EPI), Hillsboro, Oregon (77 FR 4006–4007, 1/26/2012), has been reopened based on a request from an interested party. The comment period for the case referenced above is being reopened to May 9, 2012, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15-day period, until May 24, 2012. Submissions shall be addressed to the Board's Executive Secretary at: Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue NW., Washington, DC 20230.

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–0473.

Dated: April 3, 2012.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2012–8488 Filed 4–6–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review

Correction

In notice document 2012–7723 appearing on pages 19179–19190 in the issue of Friday, March 30, 2012, make the following correction:

On page 19181, in the table, in the first column, in the last row under the heading ''INDIA:'',

Ambica Steels Limited Mukand Ltd.

should read:

Ambica Steels Limited

Mukand Ltd.

[FR Doc. C1–2012–7723 Filed 4–6–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper From Germany: Notice of Final Results of the 2009–2010 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 7, 2011, the Department published the preliminary results of the 2009–2010 administrative review for the antidumping duty order on lightweight thermal paper from Germany.[1] The review covers one manufacturer/exporter: Koehler. The period of review (''POR'') is November 1, 2009, through October 31, 2010. As a result of our analysis of the comments received, the final results do not differ from the preliminary results. The final weighted-average dumping margin for this company is listed below in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* April 9, 2012.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3692 and (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Comments From Interested Parties

We invited parties to comment on our *Preliminary Results.* Koehler and petitioner submitted case briefs on January 6, 2012, and rebuttal briefs on January 20, 2012.

On February 14, 2012, the Department published a final rule in the **Federal Register**,[2] modifying its methodology for calculating the weighted-average dumping margins and antidumping duty assessment rate in administrative reviews in order to eliminate ''zeroing.'' On February 15, 2012, Koehler submitted comments regarding calculation of its final dumping margin, requesting that the Department apply the *Final Rule* in the instant review and also making an additional zeroing

[1] *See Lightweight Thermal Paper From Germany: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76360 (December 7, 2011) (''*Preliminary Results*'').

[2] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Rule*'').

argument that it had not raised in its case brief. On February 17, 2012, pursuant to 19 CFR 351.302(d), petitioner requested that the Department reject Koehler's February 15, 2012, submission. On February 21, 2012, pursuant to 19 CFR 351.302(d)(1)(i), the Department rejected Koehler's February 15, 2012, submission in its entirety because it contained an untimely filed written argument, but stated that Koehler could resubmit comments without the untimely filed zeroing argument. On February 24, 2012, Koehler refiled its comments, and on February 27, 2012, petitioner requested that the Department again reject Koehler's refiled comments. The Department determined that Koehler's February 24, 2012, submission did not contain untimely filed comments, and accepted the submission. The Department will not apply the *Final Rule* in the instant segment of the proceeding because the methodology outlined in the *Final Rule* applies to pending reviews when the preliminary determination is issued after April 16, 2012. The preliminary determination in the instant review was issued well before April 16, 2012.

Scope of the Order

The scope of this order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of ± 4.0 g/m^2) or less; irrespective of dimensions; [3] with or without a base coat [4] on one or both sides; with thermal active coating(s) [5] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat; [6] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the *Harmonized Tariff Schedule of the United States* (''*HTSUS*'') under subheadings 3703.10.60, 4811.59.20, 4811.90.8020, 4811.90.8030, 4811.90.8040, 4811.90.8050, 4811.90.9010, 4811.90.9030, 4811.90.9035, 4811.90.9050, 4811.90.9080, 4811.90.9090, 4820.1020, and 4823.4000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The POR is November 1, 2009, through October 31, 2010.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum for the Final Results of the 2009–2010 Administrative Review of the Antidumping Duty Order on Lightweight Thermal Paper from Germany,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, (''Issues and Decision Memorandum''), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available in the Central Records Unit, main Commerce Building, Room 7046. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/.* The signed Issues and Decision Memorandum and electronic version of the Issues and Decision Memorandum are identical in content.

Final Results of Review

We determine that the following weighted-average margin exists for the period November 1, 2009, through October 31, 2010:

Manufacturer/ Exporter	Weighted-average margin (percent) final rate
Papierfabrik August Koehler AG	3.99

Duty Assessment

We have been enjoined from liquidating entries of the subject merchandise produced and exported by Koehler.[7] Therefore, we do not intend to issue liquidation instructions to U.S. Customs and Border Protection (''CBP'') for such entries covered by this administrative review, until the preliminary injunction issued on February 5, 2009, is lifted.

Upon lifting of the injunction, the Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. If any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR § 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period. Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis* and we do not have reliable entered values, we calculate a per-unit assessment rate by aggregating the dumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by

[3] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[4] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[5] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[6] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[7] On February 5, 2009, the U.S. Court of International Trade (''ITC'') issued a preliminary injunction enjoining liquidation of certain entries which are subject to the antidumping duty order on lightweight thermal paper from Germany for entries entered or withdrawn from warehouse for consumption on or after November 20, 2008. Koehler was granted the injunction against liquidation as part of its suit against the ITC's injury determination in the investigation.

the total quantity sold to that importer (or customer).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of the final results of this administrative review for all shipments of lightweight thermal paper from Germany entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) If the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (''LTFV'') investigation, the cash deposit rate will continue to be the company-specific rate established for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate will be 6.50 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Orders: Lightweight Thermal Paper from Germany and the People's Republic of China,* 73 FR 70959 (November 24, 2008). These cash deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(5). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 2, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum

Comment 1: Whether the Language of the Statute and Governing Regulation Allows the Department's Disallowance of Certain Post-Sale Price Adjustments

Comment 2: Whether the Monatsbonus Rebate is Legitimate

Comment 3: Whether the Department's Decision Suggest That All Strategies Intended to Reduce Dumping Are ''Ipso Facto Illegitimate''

Comment 4: Whether to Recalculate Koehler's CEP Profit

[FR Doc. 2012–8477 Filed 4–6–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB156

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of application for renewal of a scientific research and enhancement permit.

SUMMARY: Notice is hereby given that NMFS has received a scientific research and enhancement permit application request relating to salmonids listed under the Endangered Species Act (ESA). The proposed research program is intended to increase knowledge of the species and to help guide management and conservation efforts. The applications and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (707) 575–6097 or fax (707) 578–3435.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time May 9, 2012.

ADDRESSES: Written comments on either application should be submitted to the Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404. Comments may also be submitted via fax to (707) 578–3435 or by email to *FRNpermits.SR@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn, Santa Rosa, CA (ph.: 707–575–6097, email.: *Jeffrey.Jahn@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened Central California Coast steelhead (*Oncorhynchus mykiss*), endangered Central California Coast coho salmon (*O. kisutch*), and threatened California Coastal Chinook salmon (*O. tshawytscha*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the application listed in this notice should set out the specific reasons why a hearing on the application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the

Assistant Administrator for Fisheries, NMFS.

Application Received

Permit 15169

The National Park Service (NPS) is requesting a 5-year scientific research and enhancement permit to take juvenile, smolts and adult Central California Coast (CCC) steelhead, juvenile, smolts and adult CCC coho salmon, and juvenile, smolts and adult California Coastal (CC) Chinook salmon (ESA-listed salmonids) and adult carcasses of each species associated with eight research studies within NPS lands in Marin, San Mateo, and Contra Costa counties in California. This permit is a renewal of Permit 1046 Modification 2 previously issued to the NPS. In the studies described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

This project is part of an ongoing effort to monitor population status and trends of ESA-listed salmonids within park boundaries. The objectives are to: (1) Monitor salmonid smolt outmigration, (2) determine juvenile salmonid diet composition, (3) monitor spawning salmonids, (4) determine juvenile salmonid distribution and population abundance, (5) determine juvenile salmonid winter habitat utilization, (6) document adult salmonid spawner escapement; (7) conduct juvenile salmonid rescue and relocation, and (8) conduct biotelemetry. In these projects, ESA-listed salmonids will be observed (snorkel surveys), captured (dip-net, electrofishing, fyke-net trap, rotary screw trap, pipe-trap, weir, or seine), anesthetized, handled (identified, measured, weighed), sampled (fin clips, opercle, scales, gastric lavage, otoliths), marked (fin clips, fin dye), tagged (Passive Integrated Transponder (PIT), visible elastomer implant tags (VIE), acoustic), and released. All data and information will be shared with county, state, and federal entities for use in conservation and restoration planning efforts related to ESA-listed salmonids.

Study 1 is a salmonid smolt outmigration monitoring study in Lagunitas, Olema, Pine Gulch, and Redwood creeks in Marin County. Traps (screw traps, pipe-traps, and/or fyke-net traps) will be operated annually from February through June. A subset of CCC coho salmon, CC steelhead, and CC Chinook smolts, parr, and young-of-the-year (YOY) will be anesthetized, identified to species and life stage, measured, and weighed. Each day of sampling, a limited number of smolts will be marked (PIT tag, fin clip, fin dye, or VIE tags) and sampled (fin clips, scales) prior to release. A small portion of marked smolts will be released in an open trap box at a site above the site trap to determine trap efficiency. All other captured fish will be released downstream of the trap.

Study 2 is a juvenile salmonid diet composition study in the following watersheds within or proximate to NPS lands: Olema, Lagunitas, Pine Gulch, Redwood, and Easkoot creeks in Marin County. Diet composition data will be collected from smolts that are captured by pipe-trap or fyke-net trap (during study 1) or by seine or electrofishing (during study 4). Captured ESA-listed salmonids that are not subjected to the procedures associated with study 1 will be anesthetized, stomach sampled, and released.

Study 3 is an adult salmonid spawner monitoring study in the following watersheds on or proximate to NPS lands: Olema Creek, Lagunitas Creek, Pine Gulch, Redwood Creek, and Easkoot Creek in Marin County, West Union Creek, Martini Creek, San Vicente Creek, and Denniston Creek in San Mateo County, and Alhambra Creek and Franklin Creek in Contra Costa County. Streams will be visually surveyed annually from December through March. Researchers will observe the number, species, sex, size, condition, location, and behavior of spawning adult ESA-listed salmonids. Carcasses will be marked to avoid double counting and returned to the location where they were found. Redds will be located, marked, and mapped.

Study 4 is a summer/fall juvenile salmonid distribution, population abundance, and habitat monitoring study in the creeks listed in study 3. Sampling will occur from June through December. Snorkel surveys will be conducted whenever possible to estimate the number, species, and age class of ESA-listed salmonids present. In addition, juvenile CCC coho salmon and CCC steelhead will be captured by seine or electrofishing. After capture, fish will be anesthetized, measured and weighed, sampled, marked, and allowed to recover before being released back into the habitat from which they were taken. A subset of salmonids will be marked with PIT tags.

Study 5 is a juvenile salmonid winter habitat utilization study within or proximate to NPS lands in the Olema Creek and Redwood Creek watersheds in Marin County. Snorkel surveys will be conducted whenever possible to estimate the number, species, and age class of ESA-listed salmonids present. Annually, during October, juvenile salmonids will be captured (by seine or electrofishing), anesthetized, and handled. A subset of these captured fish will be tagged (PIT tags). During March, juvenile ESA-listed salmonids may be recaptured by seine or electrofishing. Fin dye may also be applied to the fins of a limited number of fish using a syringe or needleless jet injector.

Study 6 is an adult spawner escapement monitoring study. Floating resistance-board weir-traps will be operated annually from November through March at the lower reaches of Olema Creek, Pine Gulch, and Redwood Creek in Marin County, California. Upstream migrating salmonids will be captured in the weir-trap, handled, tagged to avoid recounting, and released upstream of the weir-trap. In addition, carcasses of ESA-listed salmonids may be handled, sampled, marked to avoid double counting, and returned to a location downstream of the weir-trap. Otoliths may be collected from select carcasses.

Study 7 is a juvenile salmonid rescue and relocation study in the same creeks as listed in study 3. Juvenile ESA-listed salmonids that are under imminent risk of stranding and mortality will be captured (by electrofishing or seining), handled, and transferred to buckets or insulated coolers filled with aerated stream water. Fish will be transported and released into either a flowing downstream section of the tributary from which they were taken or the mainstem at or below the confluence where they would have passed had they not become stranded. All fish will be kept within the same watershed as they were originally found.

Study 8 is a biotelemetry study. A subset of fish captured at the Olema and Lagunitas Creek smolt traps (during study 1) or during juvenile summer sampling (during study 4) will be implanted with acoustic tags to monitor their subsequent movements in Tomales Bay. This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final actions in the **Federal Register**.

Dated: April 4, 2012.

Lisa Manning,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–8483 Filed 4–6–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB134

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Golden King Crab Price Formula Committee is meeting in Seattle, WA.

DATES: The meeting will be held April 26–27, 2012, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Pacific Seafood Processing Association, 1900 W. Emerson Place, Suite 205, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Mark Fina, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Committee is meeting concerning the arbitration system that is part of the Bering Sea and Aleutian Islands crab rationalization program. The Committee will give specific attention to the development of the price formula for golden king crab under the arbitration system. Additional information is posted on the Council Web site: *http://www.alaskafisheries.noaa.gov/npfmc/.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 4, 2012.

William D. Chappell

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

[FR Doc. 2012–8479 Filed 4–6–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Patents External Quality Survey (formerly Customer Panel Quality Survey)

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this extension of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 8, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0057 Patents External Quality Survey comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Martin Rater, Management Analyst, Office of Patent Quality Assurance, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–5966; or by email to *Martin.Rater@uspto.gov* with ''Paperwork'' in the subject line.

Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

For over the past 10 years, the USPTO has used surveys to obtain customer feedback regarding the products, services, and related service standards of the USPTO. The USPTO used the data to measure how well the agency is meeting established customer service standards, to identify any disjoints between customer expectations and USPTO performance, and to develop improvement strategies. Typically, these surveys ask customers to express their satisfaction with the USPTO's products and services based upon their interactions with the agency as a whole over a 12-month period.

In order to obtain further data concerning customer ratings of the USPTO's services, service standards, and performance, the USPTO developed the Patents External Quality Survey. This survey narrows the focus of customer satisfaction to examination quality and uses a longitudinal, rotating panel design to assess changes in customer perceptions and to identify key areas for examiner training and opportunities for improvement. The USPTO plans to survey patent agents, attorneys, and other individuals from large domestic corporations (including those with 500+ employees), small and medium-size businesses, and universities and other non-profit research organizations. In addition, the USPTO also plans to survey independent inventors. The USPTO does not plan to survey foreign entities.

The USPTO will draw a random sample of these customers from their database. Due to the rotating panel design, some sample members will be surveyed twice in order to measure change over a period of time. Each year of the survey will include two waves of data collection.

The Patents External Quality Survey is a mail survey, although respondents can also complete the survey electronically on the Web. The content of both versions will be identical. A survey packet containing the questionnaire, a separate cover letter prepared by the Commissioner of Patents, a postage-paid, pre-addressed return envelope, and instructions for completing the survey electronically will be mailed to all sample members. A pre-notification letter, reminder/thank you postcards, and telephone calls will be used to encourage response from sample members.

This is a voluntary survey and all responses will remain confidential. The

collected data will not be linked to the respondent and contact information that is used for sampling purposes will be maintained in a separate file from the quantitative data. Respondents are not required to provide any identifying information such as their name, address, or Social Security Number. In order to access and complete the online survey, respondents will need to use the username, password, and survey ID number provided by the USPTO.

II. Method of Collection

By mail or electronically over the Internet if respondents choose to complete the survey online.

III. Data

OMB Number: 0651–0057.

Form Number(s): No form numbers.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; and non-profit institutions.

Estimated Number of Respondents: 2,500 responses per year, with an estimated 75 submitted by small entities. Out of a sample size of 2,750 for each wave of data collection, the USPTO estimates that 1,250 completed surveys will be received, for a response rate of 45%. This estimate was based on the response rates of the previous survey waves that the USPTO has conducted. Each year of the survey will include two waves of data collection with an estimated 2,500 completed surveys received annually (1,250 completed surveys x 2 waves of the survey). Of this total, the USPTO estimates that 20% (500) of the surveys will be returned by mail and that 80% (2,000) of the surveys will be completed using the online option.

Estimated Time Per Response: The USPTO estimates that it takes the public approximately 10 minutes (0.17 hours) to complete either the paper or online version of this survey. This estimated time includes gathering the necessary information, completing the survey, and submitting it to the USPTO.

Estimated Total Annual Respondent Burden Hours: 425 hours.

Estimated Total Annual Respondent Cost Burden: $144,500. The USPTO estimates that attorneys will be completing these surveys. Using the professional hourly rate of $340 for attorneys in private firms, the USPTO estimates $144,500 per year for the respondent cost burden for this collection.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Customer Panel Quality Survey	10	500	85
Electronic Customer Panel Quality Survey	10	2,000	340
Totals		2,500	425

Estimated Total Annual Non-hour Respondent Cost Burden: $0. There are no annual (non-hour) costs for this information collection. The USPTO covers the costs of all survey materials and provides postage-paid, pre-addressed return envelopes for the completed mail surveys.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 4, 2012.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2012–8485 Filed 4–6–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense (DoD) gives notice that it is renewing the charter for the Defense Science Board (hereafter referred to as ''the Board'').

The Board shall provide the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology and Logistics, the Chairman of the Joint Chiefs of Staff, and as requested, other Office of the Secretary of Defense Principal Staff Assistants, the Secretaries of the Military Departments, and the Commanders of the Combatant Commands, independent advice and recommendations on science, technology, manufacturing, acquisition process, and other matters of special interest to the DoD. Tasks assigned to the Board or its authorized subcommittees shall be determined by the Secretary of Defense, the Deputy Secretary of Defense, or the Under Secretary of Defense for Acquisition, Technology and Logistics.

The Board is not established to advise on individual DoD procurements, but instead shall be concerned with the pressing and complex technology problems facing the Department in such areas as research, engineering, and manufacturing, and will ensure the identification of new technologies and new applications of technology in those areas to strengthen national security. No matter shall be assigned to the Board for its consideration that would require any Board member to participate personally and substantially in the conduct of any specific procurement or place him or her in the position of acting as a contracting or procurement official.

The Under Secretary of Defense for Acquisition, Technology and Logistics shall be authorized to act upon the

advice and recommendations of the Board.

The Board shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology and Logistics.

The Board shall be comprised of no more than 45 members and no more than 13 Senior Fellow members, who are eminent authorities in the fields of science, technology, manufacturing, acquisition process, and other matters of special interest to the DoD. Senior Fellows shall be voting members and count toward the Board's total membership.

Board members and Senior Fellows shall be appointed by the Secretary of Defense and their appointments shall be renewed on an annual basis. Those members or Senior Fellows, who are not full-time or permanent part-time federal employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employee members.

The Secretary of Defense may approve the appointment of Board members for one to four year terms of service; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service. This same term of service limitation also applies to any DoD authorized subcommittees.

Such appointments will normally be staggered among the Board membership to ensure an orderly turnover in the Board's overall composition on a periodic basis. With the exception of travel and per diem for official Board related travel, Board members and Senior Fellows shall serve without compensation, unless the Secretary of Defense authorizes compensation for particular member(s).

The Secretary of Defense, based upon the recommendation of the Under Secretary of Defense for Acquisition, Technology and Logistics, shall appoint the Board's Chairperson. The Under Secretary of Defense for Acquisition, Technology and Logistics shall appoint the Vice Chairperson. The Board Chairperson and Vice Chairperson may serve more than one term of service, not to exceed two terms, and not to exceed their maximum allowed membership on the Board.

The Secretary of Defense may invite other distinguished U.S. Government officers or chairpersons from other DoD supported federal advisory committees to serve as non-voting observers.

The Under Secretary of Defense for Acquisition, Technology, and Logistics may appoint experts and consultants, with special expertise, to assist the Board on an ad hoc basis. These experts and consultants, if not full-time or part-time government employees, shall be appointed under the authority of 5 U.S.C. 3109, shall serve as special government employees, shall be appointed on an intermittent basis to work specific Board-related efforts, and shall have no voting rights. Non-voting observers and those non-voting experts and consultants appointed by the Under Secretary of Defense for Acquisition, Technology, and Logistics shall not count toward the Board's total membership.

Each Board member is appointed to provide advice on behalf of the government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures may establish subcommittees deemed necessary to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the advisory committee's sponsor.

The Committee has established two permanent subcommittees:

a. The Permanent Task Force on Nuclear Weapons Surety shall be comprised of no more than 15 members. The primary focus of the Task Force is to assess all aspects of nuclear weapons surety to include military, federal, and contractors. This assessment should include, but is not limited to: nuclear weapons physical security, nuclear weapons safety, nuclear weapons control, command and control, nuclear operations (crew training) and execution, and nuclear surety policy. Continue to build on the work of the former Joint Advisory Committee on Nuclear Weapons Surety, the Nuclear Command & Control System End-to-End Review, and the Drell Panel. Review and recommend methods and strategies to maintain a safe, secure, and effective nuclear deterrent. Monitor and review the readiness of U.S. nuclear forces and weapons operations. The estimated number of subcommittee meetings is up to 12 per year.

b. The Survivability of DoD Systems and Assets to Electromagnetic Pulse (EMP) and Other Nuclear Weapons Effects Task Force shall be comprised of no more than 15 members. The focus of the Task Force should be to assess implementation of the DoD Instruction 3150.09, The Chemical, Biological, Radiological, and Nuclear (CBRN) Survivability Policy, dated September 17, 2008, covering nuclear survivability, including EMP, and to assess the effectiveness of the management oversight group established by the DoD Instruction. Conduct an independent review and assessment of DoD's EMP survivability program, and review other matters associated with nuclear survivability, such as the first biennial DoD report to Congress on EMP survivability. The estimated number of subcommittee meetings is up to 12 per year.

These subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees.

All subcommittee members shall be appointed in the same manner as the Board members; that is, the Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the subcommittee.

Subcommittee members, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official Board related travel, subcommittee members shall serve without compensation.

All subcommittees operate under the provisions of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Board's Chairperson. The estimated number of Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD

employee, and shall be appointed in accordance with governing DoD policies and procedures.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Defense Science Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Defense Science Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Science Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Defense Science Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Science Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 4, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8456 Filed 4–6–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Application for Grants Under the Upward Bound Math and Science Program

AGENCY: Office of Postsecondary Education, Department of Education.

SUMMARY: The Upward Bound Math and Science (UBMS) program provides grants to institutions of higher education, public and private agencies and organizations, and community-based organizations with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and secondary schools and provides grants for projects designed to provide the skills and motivation necessary for success in a program of postsecondary education that lead to careers in math and science.

DATES: Interested persons are invited to submit comments on or before May 9, 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. 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 04838. 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.

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. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants under the Upward Bound Math and Science Program.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 475.

Total Estimated Number of Annual Burden Hours: 15,830.

Abstract: The U. S. Department of Education is requesting a new application for grants under the Upward Bound Math and Science (UBMS). The previous package was part of the regular Upward Bound Program (UB) (OMB No. 1840–0550) package. The regular UB program provides federal grants for three types of projects: regular UB, UBMS, and Veterans Upward Bound. However, each project has a separate collection; therefore, we are requesting a new application package. The Department is requesting a new application because of the implementation of the Higher Education Opportunity Act revisions to the Higher Education Act of 1965, as amended, the authorizing statute for the program. This application will be used to award new grants and collect data.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: April 3, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–8422 Filed 4–6–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review; Application for Grants Under the Veterans Upward Bound Program

AGENCY: Office of Postsecondary Education, Department of Education.

SUMMARY: The Veterans Upward Bound (VUB) program provides grants to institutions of higher education, public and private agencies and organizations, community-based organization with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and secondary schools. The VUB program provides grants to projects designed to prepare, motivate and assist military veterans in the development of

academic and other requisite skills necessary for acceptance and success in a program of postsecondary education.

DATES: Interested persons are invited to submit comments on or before May 9, 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. 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 04839. 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.

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. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Grants under the Veterans Upward Bound Program.

OMB Control Number: Pending.

Type of Review: New.

Total Estimated Number of Annual Responses: 135.

Total Estimated Number of Annual Burden Hours: 4,606.

Abstract: The U.S. Department of Education is requesting a new application package for grants under the VUB program. The previous package was part of the regular Upward Bound Program (UB) (OMB No. 1840–0550) package. The regular UB program provides federal grants for three types of projects: Regular UB, VUB, and Upward Bound Math and Science. However, each project has a separate collection; therefore, we are requesting a new application package. The Department is requesting a new application because of the implementation of the Higher Education Opportunity Act revisions to the Higher Education Act of 1965, as amended, the authorizing statute for the program. This application will be used to award new grants and collect data under the VUB program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–8397 Filed 4–6–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 8, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to James R. Brodrick, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 or by email at *James.Brodrick@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James R. Brodrick, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 or by email at *James.Brodrick@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* New; (2) *Information Collection Request Title:* Bright Tomorrow Lighting Competition (L Prize®): Field Assessment and Post Prize Monitoring; (3) *Type of Request:* New; (4) *Purpose:* The Bright Tomorrow Lighting Competition was authorized in the Energy Independence and Security Act of 2007 (EISA), Subtitle E, Section 655, to encourage development and deployment of highly energy efficient solid-state lighting (SSL) products to replace several of the most common lighting products currently used in the United States. Field assessments contribute to the evaluation of L Prize entries in a wide range of lighting applications. The field assessments evaluate energy use of the installed product, the lighting system performance compared to the existing technology, and user feedback. The objective of field testing is to obtain installation data and user acceptance, in order to evaluate the product and determine its potential to be declared a winner. Additionally, DOE plans to monitor the impact of the L Prize competition through post-prize monitoring of incentive programs, educational campaigns, and retail

promotions. This monitoring will include measuring the number of customers reached, bulbs sold, energy savings, and other tangible benefits; (5) *Annual Estimated Number of Respondents:* 526; (6) *Annual Estimated Number of Total Responses:* 526; (7) *Annual Estimated Number of Burden Hours:* 115; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

Statutory Authority: 42 U.S.C. 17243.

Issued in Washington, DC, on April 3, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–8471 Filed 4–6–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket Number: EERE–2011–BT–NOA–0065]

Request for Information (RFI) Regarding Miscellaneous Residential and Commercial Electrical Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of re-opening of public comment period.

SUMMARY: This notice announces that the period for submitting comments on the RFI Regarding Miscellaneous Residential and Commercial Electrical Equipment is re-opened until April 17, 2012.

DATES: DOE will accept comments, data, and information regarding the RFI received no later than April 17, 2012.

ADDRESSES: Interested persons may submit comments in writing, identified by docket number EERE–2011–BT–NOA–0065 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: MEL-RFI-2011-NOA-0065@ee.doe.gov.*
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Request for Information on Miscellaneous Electrical Equipment, EERE–2011–BT–NOA–0065. 1000 Independence Avenue SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and docket number.

Docket: For access to the docket to read background documents or comments received, please call Ms. Brenda Edwards at the above telephone number.

FOR FURTHER INFORMATION CONTACT: Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington DC 20585–0121. Telephone: (202) 586–9870. Email: *Jeremy.Dommu@ee.doe.gov.* In the office of General Counsel, Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On January 24, 2012, DOE published a Request for Information (RFI) in the **Federal Register** (77 FR 3461) to request information regarding the energy use and energy efficiency potential of miscellaneous residential and commercial electrical equipment. The RFI provided for the submission of comments by March 26, 2012. DOE has received notice from several stakeholders that they wish to provide comments, but were unable to meet the initial deadline. In order to ensure that this input is reviewed and accepted, DOE has determined that a re-opening of the public comment period is appropriate and hereby re-opens the comment period. DOE will consider any comments received by April 17, 2012 and deems any comments received between March 26, 2012 and April 17, 2012 to be timely submitted.

Issued in Washington, DC, on April 3, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–8466 Filed 4–6–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–136]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2146–136.

c. *Date Filed:* March 1, 2012 and supplemented on March 28, 2012.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* At the Lake Point Development, on the Choccolocco Creek section of Logan Martin Lake, in Talladega County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David K. Anderson, Alabama Power Company, 600 18th Street North, Birmingham, AL 35203, Phone: (205) 257–1398, email: *dkanders@southernco.com.*

i. *FERC Contact:* Lorance Yates at (678) 245–3084; or email: *lorance.yates@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* May 3, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2146–136) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors

filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Application:* Alabama Power Company has filed a request for Commission approval to authorize Lake Point Development, LLC (applicant) to install within the project boundary various facilities for use by residents of the Lake Point subdivision. The applicant proposes to construct a 20-ft wide and approximately 187-ft long concrete boat ramp with courtesy dock on each side of the ramp. Ninety-four feet of the proposed boat ramp will be within the project boundary. Each of the pile-supported wooden courtesy docks will be 5-ft wide and 40-ft long. Approximately 35 cu yd will be excavated for the boat ramp. The applicant proposes to construct two 8-ft wide wooden boardwalks, the first approximately 395-ft in length and the second approximately 415-ft in length. There will be 20 cleats evenly spaced along the length of each boardwalk for use as temporary boat tie-offs. The applicant also proposes to construct a 20-ft by 10-ft pile-supported wooden sun deck with a 30-ft long and 6-ft wide wooden walkway connecting the deck to the shore. There will be an approximately 0.55 acres grassed common-use area for picnics and other casual uses.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at Ameren's shoreline office. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8436 Filed 4–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14357–000]

San Jose Water Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 14357–000.

c. *Date filed:* January 27, 2012.

d. *Applicant:* San Jose Water Company

e. *Name of Project:* Hostetter Turnout Pressure Reducing Valve Modernization Project—Hydroelectric Power Generation Facility (Hostetter Modernization Project)

f. *Location:* The proposed Hostetter Modernization Project would be located on the City of San Jose's municipal raw water line in the Town of San Jose, County of Santa Clara, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Thomas J. Victorine, Director of Operations, San Jose Water Company, 1221–A South Bascom Avenue, San Jose, CA 95128; Telephone: (408) 279–7814, Fax: (408) 292–5812; *tom_victorine@sjwater.com.*

i. *FERC Contact:* Linda C. Jemison, (202) 502–6363, *linda.jemison@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size of the proposed project, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.34(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under *http://www.ferc.gov/docs-filing/efiling.asp.* The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

l. *Description of Project:* The Hostetter Modernization Project would consist of: (1) A proposed powerhouse containing two micro-hydroelectric turbine/generator units utilizing existing water supply pipelines with an installed capacity of 150 kilowatts; and (2) appurtenant facilities. The entire project would be below grade within the existing Hostetter Turnout Facility. The applicant estimates that when completed, the proposed project would allow the excess head in the water supply pipelines to produce electricity, energy that would otherwise be lost, and would have an average annual generation of 240 megawatt-hours.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number, P–14357, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email FERCOnlineSupport@ferc.gov. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''COMMENTS'', ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and seven copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. *Waiver of Pre-filing Consultation:* On July 27, 2011, the applicant requested the agencies' support to waive the Commission's consultation requirements under 18 CFR 4.38(c). On October 24, 2011, the California Department of Fish and Game concurred, in writing, with this request. No other comments were received. Therefore, we intend to accept the consultation that has occurred on this project during the pre-filing period and we intend to waive pre-filing consultation under section 4.38(c), which requires, among other things, conducting studies requested by resource agencies, and distributing and consulting on a draft exemption application.

Dated: April 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8441 Filed 4–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–53–000]

Seminole Electric Cooperative, Inc. v. Florida Power & Light Company; Notice of Complaint

Take notice that on March 30, 2012, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2011), Seminole Electric Cooperative, Inc. (Complainant) filed a complaint alleging that Florida Power & Light Company (Respondent) violated its open access transmission tariff (OATT) in the implementation of OATT Schedule 4 and should refund to the Complainant the overcharges levied since August 2007 (plus interest).

Complainant certifies that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 19, 2012.

Dated: April 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8439 Filed 4–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–54–000]

Viridity Energy, Inc. v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on March 29, 2012, pursuant to section 206 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and section 206 of the Federal Power Act, 16 U.S.C. 824(e), Viridity Energy, Inc. (Complainant) filed a formal complaint against PJM Interconnection, L.L.C. (Respondent) alleging that a portion of a provision in the Respondent's Open Access Transmission Tariff, Emergency Load Response Program, is unjust, unreasonable, and unduly discriminatory.

The Complainant states that copies of the complaint were served on representatives of the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 18, 2012.

Dated: April 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8442 Filed 4–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI12–4–000]

Alaska Power & Telephone Company; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI12–4–000.

c. *Date Filed:* March 29, 2012.

d. *Applicant:* Alaska Power & Telephone Company.

e. *Name of Project:* Clearwater Creek Hydro Project.

f. *Location:* The proposed Clearwater Creek Hydro Project will be located on Clearwater Creek, near the town of Tok, Alaska, at T. 16 N., R. 11 E., secs. 1, 2, 3, and 12; T. 16 N., R. 12 E., secs. 1, 2, 3, 7, 9, 10, 17, and 18; T. 17 N. 12 E., secs. 14, 23, 26, and 35, Copper River Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Glen D. Martin, Project Manager, Alaska Power & Telephone Company, 193 Otto Street, P.O. Box 3222, Port Townsend, WA 98368; telephone: (360) 385–1733, x122; fax: (360) 385–7538; email: *www.glen.m@aptalaska.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or Email address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* May 7, 2012.

All documents should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* Please include the docket number (DI12–4–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Clearwater Creek Hydro Project will consist of: (1) An approximately 300-foot-long, 10-foot-high rock-filled and concrete diversion structure on Clearwater Creek diverting water into a 20,000-foot-long, 24-inch-diameter ductile iron buried penstock; (2) a proposed 30-foot-wide, 50-foot-long powerhouse, containing a 1,000-kW Turgo generating unit and electrical generating equipment; (3) an open, 400-foot-long tailrace from the powerhouse to Clearwater Creek; (4) a 14-mile-long transmission line; and (5) appurtenant facilities. The power will be used by local communities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8438 Filed 4–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI12–3–000]

UEK Delaware L.P.; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI12–3–000.

c. *Date Filed:* March 5, 2012.

d. *Applicant:* UEK Delaware L.P.

e. *Name of Project:* Indian River Inlet Hydroelectric Tidal Facility.

f. *Location:* The proposed Indian River Inlet Hydroelectric Tidal Facility will be located on the Indian River in Sussex County, Delaware. The United States Army Corps of Engineers designed, built, and owns the inlet channel and adjacent land.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* David O. Rickards, UEK Delaware L.P., 34612 Rickards Road, Frankford, DE 19945; telephone: (302) 539–9034; fax: (302) 537–2372; email: *www.UEKDelaware@aol.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or Email address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* May 7, 2012.

All documents should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* Please include the docket number (DI12–3–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed project uses no dam or impoundment. The proposed project would consist of: (1) Twenty-five 122-inches-tall, 252-inches-wide, and 192-inches-long, bi-directional turbine generating units, with a total installed capacity of 10-megawatts, anchored to a 400-foot-long underwater cable on the channel floor; (2) a 100-foot-long transmission line, connected to the Old Dominion Electric Cooperative; and (3) appurtenant facilities. The power will be sold into an interstate grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 3, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8437 Filed 4–6–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0778; FRL–9342–7]

Agency Information Collection Activities; Proposed Collection; Comment Request

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 EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals'' and identified by EPA ICR No. 1188.11 and OMB Control No. 2070–0038, is scheduled to expire on November 30, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before June 8, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0778, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2011–0778. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0778. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Abeer Hashem, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3128; fax number: (202) 564–4775; email address: *hashem.abeer@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are companies that manufacture, process, import, or distribute in commerce chemical substances or mixtures.

Title: TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals.

ICR Numbers: EPA ICR No. 1188.11.

OMB Control Number: OMB Control No. 2070–0038.

ICR Status: This ICR is currently scheduled to expire on November 30, 2012. 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 Code of Federal Regulations (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 for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 5 of the Toxic Substances Control Act (TSCA) provides EPA with a regulatory mechanism to monitor and, if necessary, control significant new uses of chemical substances. Section 5 authorizes EPA to determine by rule (i.e., a significant new use rule (SNUR)), after considering all relevant factors, that a use of a chemical substance represents a significant new use. If EPA determines that a use of a chemical substance is a significant new use, section 5 requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the substance for that use.

EPA uses the information obtained through this collection to evaluate the health and environmental effects of the significant new use. EPA may take regulatory actions under TSCA section 5, 6, or 7 to control the activities for which it has received a SNUR notice. These actions include orders to limit or prohibit the manufacture, importation, processing, distribution in commerce, use, or disposal of chemical substances. If EPA does not take action, section 5 also requires EPA to publish a **Federal Register** document explaining the reasons for not taking action. This information collection addresses the reporting and recordkeeping requirements inherent in TSCA section 5 significant new use rules.

Responses to the collection of information are mandatory (see 40 CFR part 721). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8.1 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated Total Number of Potential Respondents: 4.

Frequency of Response: On occasion.

Estimated Total Average Number of Responses for Each Respondent: 1.7.

Estimated Total Annual Burden Hours: 736 hours.

Estimated Total Annual Costs: $63,779. This includes an estimated burden cost of $63,779 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is a decrease of 440 hours (from 1,176 hours to 736 hours) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's updates to the number of affected sites and responses and correction of estimates from the previous ICR. Additional details are found in the Supporting Statement. This change is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 3, 2012.

Louise Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–8489 Filed 4–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9656–6]

Notice of Meeting of the Environmental Financial Advisory Board (EFAB), and Transit-Oriented Development Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold a meeting on May 22–23, 2012 and a Transit-Oriented Development Workshop on May 24, 2012. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities. The purpose of the meeting is to hear from informed speakers on environmental finance issues, proposed legislation, Agency priorities and to discuss progress with work projects under EFAB's current Strategic Action Agenda.

Environmental Finance topics expected to be discussed include: clean air technology; tribal environmental programs; transit-oriented development; energy efficiency; green infrastructure; and drinking water pricing.

The meeting is open to the public, however, seating is limited. All members of the public who wish to attend the meeting should register in advance, no later than Monday, May 14, 2012.

DATES:

Tuesday, May 22, 2012 from 1 p.m.–5 p.m.,
Wednesday, May 23, 2012 from 8:30 a.m.–5 p.m., and
Thursday, May 24, 2012 from 9 a.m.–5 p.m.

ADDRESSES: The Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Registration and Information Contact: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Sandra Williams, U.S. EPA, at (202) 564–4999 or *williams.sandra@epa.gov,* at least 10 days prior to the meeting, to allow as much time as possible to process your request.

Members of the public who would like to attend the meeting please register on or before May 14, 2012 at: *www.epa.gov/envirofinance/efabmtg.html.*

Dated: March 30, 2012.

Joseph L. Dillon,

Director, Center for Environmental Finance.

[FR Doc. 2012–8503 Filed 4–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9656–7]

Reissuance of NPDES General Permit for Concentrated Animal Feeding Operations (CAFOs) Located in Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final NPDES general permit.

SUMMARY: The Director, Office of Water and Watersheds, EPA Region 10, is publishing notice of availability of the final National Pollutant Discharge Elimination System (NPDES) general permit (IDG010000), authorizing discharges from CAFOs in Idaho including CAFOs in Indian Country. Unless excluded from coverage in the general permit, owners/operators of animal feeding operations that are defined as CAFOs, or designated as CAFOs by the permitting authority, are eligible for coverage under the general permit.

DATES: The NPDES general permit shall become effective May 9, 2012. Facilities must submit a new updated Notice of Intent (NOI) to discharge within 90 days of the effective date of this permit. Facilities that have administratively extended coverage under the previous general permit will continue to have coverage under the previous permit for 90 days after the effective date of this general permit or until obtaining coverage under the new general permit for those discharges. The CAFO's authorization is only for discharges that occur after permit coverage is granted.

ADDRESSES: The general permit, Fact Sheet and Response to Comments may be found on the Region 10 Web site at: *http://www.epa.gov/region10/water/npdes/generalpermits.html.* Copies of the general permit and Response to Comments are available upon request. Written requests for copies of the documents may be submitted to EPA, Region 10, 1200 Sixth Avenue, Suite 900, OWW–130, Seattle, WA 98101. Electronic requests may be sent to: *washington.audrey@epa.gov* or *peak.nicholas@epa.gov.* Requests by telephone may be made to Audrey Washington at (206) 553–0523.

FOR FURTHER INFORMATION CONTACT: Nicholas Peak at (208) 378–5765.

SUPPLEMENTARY INFORMATION:

Additional Background

On May 27, 2002, the previous NPDES general permit expired and was administratively extended. Pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342, the EPA proposed to reissue the general permit and solicited comments on the draft general permit in the **Federal Register** on November 16, 2009. The comment period ended on January 19, 2010. Public meetings were held in Pocatello, Jerome, and Nampa, Idaho on December 8th, 9th and 10th, 2009, respectively. Changes have been made from the draft permit to the final permit in response to comments received from: Canyon County Alliance for Responsible Growth, Idaho Concerned Area Residents for the Environment, Idaho Cattle Association, Idaho Conservation League, Idaho Dairyman's Association, Jean Public, Jerome County Planning and Zoning, J.R. Simplot Company, Natural Resources Conservation Service—Boise Idaho State of Idaho—Department of Agriculture, and Whatcom Conservation District.

State Certification

Pursuant to Section 401 of the Clean Water Act, 33 U.S.C. 1341, on February 1, 2012, the Idaho Department of Environmental Quality (IDEQ) certified that the conditions of the general permit comply with the Idaho State Water Quality Standards, including the State's antidegradation policy.

Endangered Species Act (ESA)

EPA completed a Biological Evaluation for the general permit and engaged in informal Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). EPA received concurrence in October 2011 from both agencies on EPA's determination that the permit is not likely to adversely affect threatened or endangered species and the associated critical habitat. The permit provides coverage only if the CAFO's discharge will not adversely affect species that are federally listed as endangered or threatened under ESA and will not result in the adverse modification or destruction of habitat that is designated as critical habitat under ESA.

Executive Order 12866

EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive

Order 12866 and is therefore not subject to Office of Management and Budget (OMB) review.

Paperwork Reduction Act

The information collection requirements of this general permit were previously approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

The Regulatory Flexibility Act (RFA)

5 U.S.C. 601 *et seq.,* requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not ''rules'' subject to the requirements of 5 U.S.C. 553(b), and are therefore not subject to the RFA.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, state, and local governments and the private sector. However, the general permit issued today is not a ''rule'' subject to the RFA, and is therefore not subject to the UMRA.

Appeal of Permit

Any interested person may appeal the general permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the Clean Water Act, 33 U.S.C. 1369(b)(1). This appeal must be filed within 120 days of the permit effective date. Persons affected by the permit may not challenge the conditions of the permit in further EPA proceedings (see 40 CFR 124.19). Instead, they may either challenge the permit in court or apply for an individual NPDES permit.

Dated: March 29, 2012.

Michael A. Bussell,

Director, Office of Water and Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. 2012–8495 Filed 4–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9656–8]

Public Water System Supervision Program Approval for the State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the EPA has tentatively approved three revisions to the State of Ohio's public water system supervision program. Ohio EPA has revised several of its rules to comply with the National Primary Drinking Water Regulations, including the Administrative Penalty Authority (APA), the Radionuclides Rule, and the Lead and Copper Rule Minor Revisions (LCRMR). EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these revisions to the State of Ohio's public water system supervision program, thereby giving Ohio EPA primary enforcement responsibility for these regulations. Ohio EPA has been administering the APA since October 1, 1999, with amendments effective on October 17, 2003. Ohio EPA's revised radionuclide requirements became effective on September 15, 2004, and Ohio EPA adopted the LCRMR into its lead and copper rules on July 24, 2009.

DATES: Any interested party may request a public hearing. A request for a public hearing must be submitted by May 9, 2012, to the Regional Administrator at the EPA Region 5 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by May 9, 2012, EPA Region 5 will hold a public hearing, and a notice of such hearing will be given in the **Federal Register** and a newspaper of a general circulation. If EPA Region 5 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on May 9, 2012. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection at the following offices: Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, 50 West Town Street, Suite 700, Columbus, Ohio 43215, between the hours of 8 a.m. and 5 p.m., Monday through Friday, and the United States Environmental Protection Agency, Region 5, Ground Water and Drinking Water Branch (WG–15J), 77 West Jackson Boulevard, Chicago, Illinois 60604, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wendy Drake, EPA Region 5, Ground Water and Drinking Water Branch, at the address given above, by telephone at (312) 886–6705, or at *drake.wendy@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, 42 U.S.C. 300g–2, and the federal regulations implementing Section 1413 of the Act set forth at 40 CFR part 142.

Dated: March 27, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–8504 Filed 4–6–12; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 12, 2012, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in

advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes
- March 8, 2012

B. New Business
- Operating and Strategic Business Planning—Final Rule

C. Reports
- Quarterly Report on Farm Credit System Condition
- Farm Credit System Building Association Auditor's Report on 2011 Financial Audit

Executive Session

- Meeting with Auditors [1]

Closed Session

- Office of Examination Supervisory and Oversight Activities Report [2]

Dated: April 5, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–8606 Filed 4–5–12; 4:15 pm]

BILLING CODE 6705–01–P

[1] Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(2).

[2] Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 2, 2012.

Federal Deposit Insurance Corporation

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10432	Fidelity Bank	Dearborn	MI	3/30/2012

[FR Doc. 2012–8435 Filed 4–6–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

April 3, 2012.

TIME AND DATE: 1 p.m., Wednesday, April 11, 2012.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *William Metz* v. *Carmeuse Lime, Inc.,* Docket No. PENN 2009–541–DM. (Issues include whether the operator terminated the miner's employment in violation of 30 U.S.C. 815(c)(3).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950 (202) 708–9300 for TDD Relay 1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2012–8587 Filed 4–5–12; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2012–7210) published on page 17478 of the issue for Monday, March 26, 2012.

Under the Federal Reserve Bank of Richmond heading, the entry for U.S. Immigration Investment Center, LLC, Washington, DC, is revised to read as follows:

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. U.S. Immigration Investment Center, LLC, and its sole member, USIIC, LP, both of Washington, DC, and its managing directors, Mahnaz Khazen, Saratoga, California, and Mark Nichols, Washington, DC; to acquire voting shares of HarVest Bancorp, Inc., Gaithersburg, Maryland, and thereby indirectly acquire voting shares of HarVest Bank of Maryland, Rockville, Maryland.

Comments on this application must be received by April 10, 2012.

Board of Governors of the Federal Reserve System, April 4, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–8481 Filed 4–6–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y

(12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *City Holding Company,* Cross Lanes, West Virginia; to acquire 100 percent of the voting shares of Virginia Savings Bancorp, Inc., and thereby indirectly acquire Virginia Savings Bank, F.S.B., both in Front Royal, Virginia, and thereby engage in operating a savings and loan association, pursuant to section 225.28(4)(ii).

Board of Governors of the Federal Reserve System, April 4, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–8480 Filed 4–6–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12HN]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, at CDC, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of U.S. Family Planning Guidelines—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention's (CDC) Division of Reproductive Health (DRH), in collaboration with the Office of Population Affairs (OPA), plans to conduct an evaluation of the diffusion, utilization of, and impact on provider- and clinic-level attitudes and practices of three national guidance documents. These guidelines, which are intended to improve contraceptive use and the delivery of quality family planning services in the United States, are: (1) The U.S. Medical Eligibility Criteria for Contraceptive Use (U.S. MEC); (2) the forthcoming U.S. Selected Practice Recommendations for Contraceptive Use (U.S. SPR); and (3) the forthcoming Guidelines for Providing Quality Family Planning Services (QFPS). The guidance documents have or will be widely disseminated to health-care providers and other constituents, via professional organizations, federal program grantees, scientific and programmatic meetings, scientific manuscripts, online resources, and other avenues, as deemed appropriate. The purpose of this information collection is to evaluate the adoption and implementation of recommendations included in the U.S. MEC, approximately two years after its release, and to collect baseline information on selected attitudes and practices that will be addressed in the forthcoming U.S. SPR and QFPS. The information to be collected will also allow CDC and OPA to improve family planning-related public health practice, as CDC and OPA will tailor future dissemination activities, and develop needed provider tools, based upon the results. CDC will consider conducting a follow-up information collection approximately three years after the baseline survey.

For the baseline information collection, CDC plans to administer a mailed survey to a sample of 13,125 private- and public-sector family planning providers and clinic administrators in the United States. Private-sector providers will be randomly selected from sampling frames with individual-level information on providers. To reach public-sector providers and clinic administrators, publicly funded clinics will be randomly selected; one provider and the clinic administrator will be asked to complete surveys at sampled clinics. Specifically, surveys will be completed by: (a) 3,125 private-sector office-based physicians (i.e., those specializing in obstetrics/gynecology, family medicine, and adolescent medicine), sampled from the American Medical Association Physician Masterfile; (b) 2,000 private-sector mid-level providers (i.e., nurse practitioners in women's health and certified nurse midwives), sampled from the Nurse Practitioners in Women's Health (NPWH) and the American College of Nurse Midwives (ACNM) membership lists; (c) 2,000 providers from Title X clinics, sampled from the Guttmacher Institute database of publicly funded family planning clinics; (d) 2,000 providers from non-Title X clinics, sampled from the Guttmacher Institute database of publicly funded family planning clinics; (e) 2,000 clinic administrators from Title X clinics, sampled from the Guttmacher Institute database of publicly funded family planning clinics; and (f) 2,000 clinic administrators from non-Title X clinics, sampled from the Guttmacher Institute database of publicly funded family planning clinics.

Each sampled provider and clinic will receive a mailed survey package. For private-sector family planning providers, each mailed survey package will include a single survey to be completed by the provider. For public-sector clinics, each mailed survey package will include two surveys—one to be completed by a randomly selected family planning provider at the clinic, and the second to be completed by the clinic administrator. Each mailed survey will be accompanied by a postage-paid return envelope. Individuals will also be given the option to complete the survey online via a password protected web-based data collection system. Participation in the survey will be completely voluntary. OMB approval is requested for one year.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Office-based physicians (private sector).	2012 Survey of Provider Attitudes and Practices Surrounding Contraceptive Provision.	3,125	1	24/60	1,250
Mid-level providers (private sector).	2012 Survey of Provider Attitudes and Practices Surrounding Contraceptive Provision.	2,000	1	24/60	800
Title X clinic providers (public sector).	2012 Survey of Provider Attitudes and Practices Surrounding Contraceptive Provision.	2,000	1	24/60	800
Non-Title X publicly funded clinic providers (public sector).	2012 Survey of Provider Attitudes and Practices Surrounding Contraceptive Provision.	2,000	1	24/60	800
Title X clinic administrators (public sector).	2012 Survey for Administrators of Publicly Funded Family Planning Clinics.	2,000	1	24/60	800
Non-Title X publicly funded clinic administrators (public sector).	2012 Survey for Administrators of Publicly Funded Family Planning Clinics.	2,000	1	24/60	800
Total					5,250

Dated: April 3, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–8448 Filed 4–6–12; 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: Child Welfare Demonstration Projects Information Collection.

OMB No.: New.

Description: Per section 1130 of the Social Security Act as amended by Public Law 112–34, the Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Children's Bureau (CB) is planning to announce an opportunity for title IV–E agencies to submit proposals for new child welfare waiver demonstration projects. CB is able to approve up to ten child welfare waiver demonstration projects in each of Fiscal Years 2012, 2013 and 2014. These waiver demonstration projects involve the waiver of certain requirements of title IV–E and IV–B. These projects do not provide additional funding to carry out new services; rather they allow more flexible uses of Federal funds in order to test new approaches to service delivery or financing structures in an effort to improve outcomes for children and families involved in the child welfare system. We encourage title IV–E agencies wishing to apply for approval of a waiver demonstration project to submit a letter of intent followed by a full proposal at a later date. For title IV–E agencies that choose to submit a letter of intent, the letter of intent should indicate the title IV–E agency's intent to submit a proposal, and briefly describe the demonstration project, including the nature of the intervention the agency wishes to implement, the target population the agency wishes to serve, the reasons for selecting the proposed project and the evaluation design that the agency is considering. The full proposal must describe the project in extensive detail including the goals identified in statute that the project is intended to accomplish, the geographic areas in which the proposed project will be conducted, the service interventions to be implemented, the impact intervention is expected to have on outcomes related to safety, permanency, well-being, how service provision will change for children and families under the waiver demonstration, a statement of program requirements for waivers needed to conduct the project, an estimate of the projected costs or savings of the proposed project, a description of the proposed evaluation design and an accounting of any other sources of funding that have been used to provide the services that the agency now proposes to address under a waiver demonstration.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Letter of Intent	10	1	5	50
Full proposal	10	1	40	400

Estimated Total Annual Burden Hours: 450.

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. 2012–8468 Filed 4–6–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1245]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

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

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Lee	City of Auburn (11–04–8290P).	The Honorable Bill Ham, Jr., Mayor, City of Auburn, 144 Tichenor Avenue, Auburn, AL 36830.	Public Works Department, 171 North Ross Street, Auburn, AL 36830.	*http://www.bakeraecom.com/index.php/alabama/lee-4/.*	May 4, 2012	010144
Lee	Unincorporated areas of Lee County (11–04–8290P).	The Honorable Judge Bill English, Chairman, Lee County Board of Commissioners, P.O. Box 811, Opelika, AL 36803.	Lee County Building Inspector, 909 Avenue A, Opelika, AL 36801.	*http://www.bakeraecom.com/index.php/alabama/lee-4/.*	May 4, 2012	010250
Mobile	Unincorporated areas of Mobile County (11–04–5526P).	The Honorable Merceria Ludgood, President, Mobile County Commission, P.O. Box 1443, Mobile, AL 36633.	205 Government Street, 3rd Floor, South Tower, Mobile, AL 36644.	*http://www.bakeraecom.com/index.php/alabama/mobile/.*	April 27, 2012	015008
Arizona:						
Maricopa	Town of Buckeye (11–09–3299P).	The Honorable Jackie A. Meck, Mayor, Town of Buckeye, 530 East Monroe Avenue, Buckeye, AZ 85326.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.bakeraecom.com/index.php/arizona/maricopa-county/.*	April 27, 2012	040039
Maricopa	Town of Wickenburg (11–09–3216P).	The Honorable Kelly Blunt, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, AZ 85390.	Town Hall, 155 North Tegner Street, Wickenburg, AZ 85390.	*http://www.bakeraecom.com/index.php/arizona/maricopa-county/.*	May 4, 2012	040056
Maricopa	Unincorporated areas of Maricopa County (11–09–3299P).	The Honorable Andrew Kunasek, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.bakeraecom.com/index.php/arizona/maricopa-county/.*	April 27, 2012	040037
Maricopa	Unincorporated areas of Maricopa County (11–09–3216P).	The Honorable Andrew W. Kunasek, Chairman, Maricopa County, Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.bakeraecom.com/index.php/arizona/maricopa-county/.*	May 4, 2012	040037
California:						
Tulare	Unincorporated areas of Tulare County (11–09–3490P).	The Honorable Mike Ennis, Chairman, Tulare County Board of Supervisors, 2800 West Burrell Avenue, Visalia, CA 93291.	Tulare County Resource Management Agency, 5961 South Mooney Boulevard, Visalia, CA 93227.	*http://www.bakeraecom.com/index.php/california/tulare-county/.*	April 24, 2012	065066
Tennessee:						
Hamilton	City of Chattanooga (11–04–2368P).	The Honorable Ron Littlefield, Mayor, City of Chattanooga, 101 East 11th Street, Chattanooga, TN 37402.	Planning Department, 1250 Market Street, Chattanooga, TN 37402.	*http://www.bakeraecom.com/index.php/tennessee/hamilton/.*	April 24, 2012	470072

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

Dated: March 13, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–8401 Filed 4–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–694, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Notice of Appeal of Decision Under Section 210 or 245A, Form I–694.

The Department of Homeland Security (DHS), 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 (PRA) of 1995. This information collection notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until June 8, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the Form I–694. Should USCIS decide to revise Form I–694 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the PRA. The public will then have 30 days to comment on any revisions to the Form I–694.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to DHS, USCIS, Chief, Regulatory

Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Suite 5012, 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 add the OMB Control Number 1615–0034 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision Under Section 210 or 245A.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–694, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. USCIS uses the information provided on Form I–694 in considering the appeal from a finding that an applicant is ineligible for legalization under section 210 and 245A of the Act or is ineligible for a related waiver of inadmissibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 0.5 hours (30 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 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., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 4, 2012.

Laura Dawkins,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–8508 Filed 4–6–12; 8:45 am]

BILLING CODE 9111–97–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: 30-day notice of information collection under review: Form G–1145, E-Notification of Application/Petition Acceptance; OMB Control No. 1615–0109.

* * * * *

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting 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. The information collection notice was previously published in the **Federal Register** on January 23, 2012, at 77 FR 3278, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

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) and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, 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* and to the OMB USCIS Desk Officer via facsimile at (202) 395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email please make sure to add OMB Control Number 1615–0109 in the subject line. **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 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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* 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 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) 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 Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone (202) 272–8377.

Dated: April 4, 2012.

Laura Dawkins,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–8509 Filed 4–6–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES 934 0000 L1310 0000 FI0000]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases LAES 052403 and LAES 052404, Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act of 1982, Belle Exploration, Inc. filed a petition for reinstatement of oil and gas leases numbered LAES 052403 and LAES 052404 for lands in Concordia Parish, Louisiana. Petitioner has paid all required rentals and royalties accruing from December 1, 2011, the date of termination.

FOR FURTHER INFORMATION CONTACT: Kemba Anderson-Artis, Supervisory Land Law Examiner, Bureau of Land Management—Eastern States, 7450 Boston Blvd., Springfield, VA 22153; phone number 703–440–1659; email *kembaand@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management—Eastern States (BLM–ES) is proposing to reinstate these leases effective December 1, 2011 (the date upon which they were terminated), as a Class II reinstatement in accordance with 43 CFR 3108, and under the original terms and conditions of the lease, excepting increased rental and royalty rates. The lessee agrees to pay higher rental and royalties at rates of $10 per acre or fraction thereof, per year, and 16⅔ percent, respectively. The public has 30 days after publication in the **Federal Register** to comment on the issuance of this Class II reinstatement. If no objections are received within that 30-day period, the BLM–ES will issue a decision to the lessee reinstating the lease. Written comments will be accepted by letter and may be addressed to: Bureau of Land Management—Eastern States, Attn: Kemba Anderson-Artis, 7450 Boston Blvd., Springfield, VA 22153. Comments may be sent via email to *kembaand@blm.gov,* or by fax to 703–440–1551. The lessee has paid the required $500 administrative fee and has reimbursed the BLM for the cost of publishing this Notice in the **Federal Register**. The lessee has met all the requirements for reinstatement as set out in the Federal Oil and Gas Royalty Management Act of 1982 (Pub. L. 97–451).

Kemba Anderson-Artis,

Supervisory Land Law Examiner.

[FR Doc. 2012–8445 Filed 4–6–12; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–12–L13100000–FI0000–P; NDM95190]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NDM 95190, North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), ABACO Energy LLC, Brent Clum, Cody Oil & Gas Corporation, Earthstone Energy Inc., Global Gas & Oil LLC, Hill LP, Jerry Jones, MBI Oil & Gas LLC, Vincent Melashenko, Missouri River Royalty Corporation, Northern Energy Corporation, Panther Energy Company LLC, David Peterson, Rainbow Energy Marketing Corporation, Red Willow Great Plains LLC, Slawson Exploration Company Inc., Stewart Geological Inc., Sunshine Pacific Corporation, United Energy Trading LLC, WHC Exploration LLC and Wolfe Exploration LLC timely filed a petition for reinstatement of competitive oil and gas lease NDM 95190, McKenzie and Williams counties, North Dakota. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessees agree to new lease terms for rentals and royalties of $10 per acre and 16–2/3 percent. The lessees paid the $500 administration fee for the reinstatement of the lease and the $163 cost for publishing this Notice.

The lessees met the requirements for reinstatement of the lease per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to the:

- Original terms and conditions of the lease;
- Increased rental of $10 per acre;
- Increased royalty of 16–2/3 percent; and
- $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091, *tbakken@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the

above individual. You will receive a reply during normal business hours.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2012–8449 Filed 4–6–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0092]

Agency Information Collection Activities: Proposed Collection; Comments Requested: September 11th Victim Compensation Fund Objection Form

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Civil Division, September 11th Victim Compensation Fund, 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 77, Number 20, Page 4827 on January 31, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 9, 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 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Jonathan Olin, 202–514–5585.

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:* New collection.

(2) *Title of the Form/Collection:* Victim Compensation Objection Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: N/A. Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Anyone expressing a potential objection to the filing of a claim by a purported personal representative of a deceased victim. Abstract: This form is to be submitted in connection with potential objections made to claims filed with the September 11th Victim Compensation Fund of 2001. The form asks that the objection be characterized and explained or be withdrawn.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 objectors with an average of 2.0 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 100 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, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–8392 Filed 4–6–12; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0092]

Agency Information Collection Activities: Proposed Collection; Comments Requested: September 11th Victim Compensation Fund Claimant Eligibility and Compensation Form

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Civil Division, September 11th Victim Compensation Fund, 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 publishes in the **Federal Register**, Volume 77, Number 21, Pages 5056–5057 on February 1, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 9, 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 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Jonathan Olin, 202–514–5585.

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.

Overview of This Information Collection

(1) *Type of Information Collection:* Reauthorization of a currently approved collection.

(2) *Title of the Form/Collection:* Eligibility and Compensation Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* N/A. Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The September 11th Victim Compensation Fund of 2001 provides compensation to any individual (or beneficiary of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001. The information collected from the Eligibility and Compensation Form will be used to determine whether claimants will be eligible for compensation from the Fund, and if so, the amount of compensation they will be awarded. The Form consists primarily of two main sections: Eligibility and Compensation.

The Eligibility section seeks the information required by the Zadroga Act to determine whether a claimant is eligible for the Fund, including information related to: participation in lawsuits related to September 11, 2001; presence at a 9/11 crash site between September 11, 2001 and May 30, 2002; and physical harm suffered as a result of the air crashes and/or debris removal.

The Compensation section seeks the information required by the Zadroga Act to determine the amount of compensation for which the claimant is eligible. Specifically, the section seeks information regarding the out-of-pocket losses (including medical expenses) incurred by the claimant that are attributable to the 9/11 air crashes or debris removal; the claimant's loss of earnings or replacement services that are attributable to the 9/11 air crashes or debris removal; and any collateral source payments (such as insurance payments) that the claimant received as a result of the terrorist–related aircraft crashes of September 11, 2001 or debris removal efforts.

(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 70,000 respondents will complete the form in an average of 10 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 700,000 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, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–8393 Filed 4–6–12; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disability Employment Initiative Evaluation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Disability Employment Policy (ODEP) sponsored information collection request (ICR) proposal titled, ''Disability Employment Initiative Evaluation,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before May 9, 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 DOL–ODEP, 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 ICR is to obtain OMB approval for two proposed information collections associated with an evaluation of the Disability Employment Initiative (DEI). Specifically they are: 1. Annual Site Visits/Telephone Calls to sixteen DEI grantees and 2. Implementation of the DEI Data System. These data collection efforts are essential to the measurement of program implementation, system change, program impact, and customer outcomes and will provide the DOL with important information for strategic planning, program replication and development of disability employment policy.

This proposed 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. For additional information, see the related notice published in the **Federal Register** on June 20, 2011 (76 FR 35915).

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 ICR Reference Number 201104–01230–001. 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: DOL–ODEP.

Title of Collection: Disability Employment Initiative Evaluation.

OMB ICR Reference Number: 201104–1230–001.

Affected Public: Individuals or Households; Private Sector—Businesses or Other For-Profits and Not-For-Profit Institutions; and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 72,927.

Total Estimated Number of Responses: 435,824.

Total Estimated Annual Burden Hours: 36,158.

Total Estimated Annual Other Costs Burden: $0.

Dated: April 3, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–8455 Filed 4–6–12; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individual is hereby appointed to serve on the Department's Performance Review Board: Irasema Garza.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberlee Proctor, Director, Office of Executive Resources, Room N–2453, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693–7800.

Dated: Signed at Washington, DC, this 29th day of February, 2012.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012–8400 Filed 4–6–12; 8:45 am]

BILLING CODE 4510–23–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Board of Directors and its six committees will meet April 15–16, 2012, in the order set out below. On Sunday, April 15, the first meeting will commence at 2:15 p.m., Eastern Daylight Time, and each meeting thereafter will commence promptly upon adjournment of the immediately preceding meeting. On Monday, April 16, the Promotion & Provision for the Delivery of Legal Services Committee meeting will commence at 9:20 a.m., Eastern Daylight Time, followed by the Operations & Regulations Committee meeting. Upon conclusion of the Board's scheduled luncheon and a briefing by the Office of Inspector General, the Audit Committee meeting will take place, followed by the Board of Directors meeting.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation. Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time, the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

• Call toll-free number: 1–866–451–4981;

• When prompted, enter the following numeric pass code: 5907707348

• When connected to the call, please immediately ''MUTE'' your telephone.

MEETING SCHEDULE

	Time: *
Sunday, April 15, 2012:	
1. Institutional Advancement Committee	2:15 p.m.
2. Board of Directors	
3. Finance Committee	
4. Governance & Performance Review Committee	
Monday, April 16, 2012:	
1. Promotion & Provision for the Delivery of Legal Services Committee	9:20 a.m.
2. Operations & Regulations Committee	
3. Audit Committee	

MEETING SCHEDULE—Continued

	Time: *
4. Board of Directors	

* Please note that all times in this notice are in the Eastern Daylight Time.

STATUS OF MEETING: Open, except as noted below.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public to hear briefings from management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC.**

A verbatim written transcript will be made of the closed session of the Board meeting. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(10), and the corresponding provision of the Legal Services Corporation's implementing regulations, 45 CFR 1622.5(h), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

April 15, 2012

Institutional Advancement Committee

Agenda

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of January 21, 2012
3. Discussion of Committee 2012 goals
4. Discussion of Committee members' self-evaluations
5. Public comment
6. Consider and act on other business
7. Consider and act on adjournment of meeting

Board of Directors

Agenda

Open Session

1. Pledge of Allegiance
2. Approval of agenda
3. Consider and act on a draft Strategic Plan for the Corporation
4. Consider and act on motion to recess the meeting until April 16th

** Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

Finance Committee

Agenda

1. Approval of agenda
2. Approval of the minutes of the Committee's meeting of January 20, 2012
3. Consider and act on the Revised Operating Budget for FY 2012 and recommend Resolution 2012–XXX to the full Board
   - David Richardson, Treasurer/Comptroller
4. Presentation on LSC's Financial Reports for the first five months of FY 2012
   - David Richardson, Treasurer/Comptroller
5. Report on FY 2012 appropriations process
   - Carol Bergman, Director, Office of Government Relations and Public Affairs
6. Discussion with Management regarding process and timetable for FY 2014 budget ''mark''
7. Public comment
8. Consider and act on other business
9. Consider and act on motion to adjourn the meeting

Governance & Performance Review Committee

Agenda

1. Approval of agenda
2. Approval of minutes of the Committee's meeting of January 20, 2012
3. Approval of minutes of the Committee's telephonic meeting of February 15, 2012
4. Staff report on progress on implementation of GAO recommendations
5. Consider and act on the evaluation of officers of the Corporation
   - Victor Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary
   - David Richardson, Treasurer/Comptroller
6. Consider and act on other business
7. Public Comment
8. Consider and act on motion to adjourn the meeting

Monday, April 16, 2012

Promotion & Provision for the Delivery of Legal Services Committee

Agenda

1. Approval of Agenda
2. Approval of minutes of the Committee's telephonic meeting of March 9, 2012
3. Panel Presentation on the work of the District of Columbia Access to Justice Commission
   - Moderator—Peter B. Edelman, Professor of Law, Georgetown University Law Center, Chair of the District of Columbia Access to Justice Commission
   - Judge Anna Blackburne-Rigsby, District of Columbia Court of Appeals
   - Andrew Marks, Partner, Crowell & Moring
   - Patricia Mullahy-Fugere, Executive Director of the Washington Legal Clinic for the Homeless
4. Consider and act on Management's list of suggested topics for future Committee meetings
5. Public comment
6. Consider and act on other business
7. Consider and act on motion to adjourn the meeting

Operations & Regulations Committee

1. Approval of agenda
2. Approval of minutes of the Committee's telephonic meeting of February 29, 2012
3. Staff report on open rulemaking on enforcement mechanisms
   - Mattie Cohan, Office of Legal Affairs
4. Consider and act on Board policy on LSC promulgations
   - Mattie Cohan, Office of Legal Affairs
5. Consider and act on Rulemaking Options Paper on possible amendment on LSC's regulation on Subgrants, 45 CFR part 1627
6. Staff report on Board policies and protocols
7. Consider and act on revisions to Board's contributions protocol
8. Public comment
9. Consider and act on other business
10. Consider and act on motion to adjourn the meeting

Audit Committee

Agenda

1. Approval of agenda
2. Approval of minutes of the Committee's telephonic meeting of March 15, 2012
3. Review of Audit Committee charter and consider and act on possible changes thereto
4. Quarterly review of 403(b) plan performance
   - Traci Higgins, Director, Office of Human Resources
5. Briefing by Inspector General
   - Jeff Schanz, Inspector General
6. Briefing on Travel Procedures
   - David Richardson, Treasurer/Comptroller
7. Public Comment
8. Consider and act on other business
9. Consider and act on motion to adjourn the meeting

Board of Directors

Agenda

Resumption of April 15, 2012 Board of Directors Open Session Meeting

Open Session

5. Approval of Minutes of the Board's Open Session Annual meeting of January 21, 2012
6. Chairman's Report
7. Members' Reports
8. President's Report
9. Inspector General's Report
10. Consider and act on the report of the Promotion & Provision for the Delivery of Legal Services Committee
11. Consider and act on the report of the Finance Committee
12. Consider and act on the report of the Audit Committee
13. Consider and act on the report of the Operations & Regulations Committee
14. Consider and act on the report of the Governance and Performance Review Committee
15. Consider and act on the report of the Institutional Advancement Committee
16. Consider and act on resolution regarding new Ethics Officer designation
17. Public comment
18. Consider and act on other business
19. Consider and act on whether to authorize an executive session of the Board to address items listed below, under Closed Session

Closed Session

20. Approval of Minutes of the Board's Closed Session Annual meeting of January 21, 2012
21. Briefing by Management
22. Briefing by the Inspector General
23. Consider and act on General Counsel's report on potential and pending litigation involving LSC
24. Consider and act on motion to adjourn the meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

NON-CONFIDENTIAL MEETING MATERIALS: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC Web site, at *http://www.lsc.gov/board-directors/meetings/board-meeting-notices/non-confidential-materials-be-considered-open-session.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and

Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov*, at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: April 4, 2012.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2012–8541 Filed 4–5–12; 4:15 pm]

BILLING CODE 7050–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC 12–04]

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility in Fiscal Year 2012 and Countries That Would Be Candidates but for Legal Prohibitions

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: Section 608(d) of the Millennium Challenge Act of 2003 (the ''Act'') requires the Millennium Challenge Corporation to publish a report that identifies countries that are ''candidate countries'' for Millennium Challenge Account assistance during FY 2012. In December 2011, Congress enacted changes in MCC's FY 2012 appropriation that redefined candidate countries for FY 2012 as part of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74) (the ''Appropriations Act'').[1] While this does not affect the compact or threshold program eligibility decisions made at the December 2011 MCC Board meeting, it does alter the income classification of some candidate countries. As such, it is necessary for MCC to revise its FY 2012 Candidate Country Report. This revised report incorporates the new definitions and the subsequent reclassification of countries. The report is set forth in full below and updates the report published November 8, 2011 (76 FR 69291).

Dated: April 3, 2012.

Henry C. Pitney,

Acting VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Report on Countries That Are Candidates for Millennium Challenge Account Eligibility for Fiscal Year 2012 and Countries That Would Be Candidates but for Legal Prohibitions

Summary

This report to Congress is provided in accordance with section 608(a) of the Millennium Challenge Act of 2003, as amended, 22 U.S.C. 7701, 7707(a) (the ''Act'').

The Act authorizes the provision of Millennium Challenge Account (MCA) assistance for countries that enter into a Millennium Challenge Compact with the United States to support policies and programs that advance the progress of such countries to achieve lasting economic growth and poverty reduction. The Act requires the Millennium Challenge Corporation (MCC) to take a number of steps in selecting countries with which MCC will seek to enter into a compact, including (a) determining the countries that will be eligible for MCA assistance for fiscal year 2012 (FY 2012) based on a country's demonstrated commitment to (i) just and democratic governance, (ii) economic freedom, and (iii) investments in its people; and (b) considering the opportunity to reduce poverty and generate economic growth in the country. These steps include the submission of reports to the congressional committees specified in the Act and the publication of notices in the **Federal Register** that identify:

The countries that are ''candidate countries'' for MCA assistance for FY 2012 based on their per capita income levels and their eligibility to receive assistance under U.S. law and countries that would be candidate countries but for specified legal prohibitions on assistance (section 608(a) of the Act);

The criteria and methodology that the MCC Board of Directors (Board) will use to measure and evaluate the relative policy performance of the ''candidate countries'' consistent with the requirements of subsections (a) and (b) of section 607 of the Act in order to determine ''MCA eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act); and

The list of countries determined by the Board to be ''MCA eligible countries'' for FY 2012, identification of such countries with which the Board will seek to enter into compacts, and a justification for such eligibility determination and selection for compact negotiation (section 608(d) of the Act).

This report is the first of three required reports listed above. This report was initially published in September 2011. In December 2011, Congress enacted changes in MCC's FY 2012 appropriation that redefined candidate countries for FY 2012 as part of the Consolidated Appropriations Act, 2012 (Pub. L. 112–74) (the ''Appropriations Act'').[2] While this does not affect the compact or threshold program eligibility decisions made at the December 2011 MCC Board meeting, it does alter the income classification of some candidate countries. As such, it is necessary for MCC to revise its FY 2012 Candidate Country Report. This revised report incorporates the new definitions and the subsequent reclassification of countries.

Candidate Countries for FY 2012

The Act requires the identification of all countries that are candidates for MCA assistance for FY 2012 and the identification of all countries that would be candidate countries but for specified legal prohibitions on assistance. Due to provisions in the Appropriations Act, the FY 2012 candidate pool must be structured differently than in past years. The new provisions define low income as the 75 poorest countries and provide for gradual graduation from the low income to lower middle income category. This year's newly-issued candidate list will establish the baseline of those countries for purposes of determining income levels. The provisions of the Appropriations Act that supplant Sections 606 (a) and (b) of the Act provide that for FY 2012, a country shall be a candidate for MCA assistance if it:

Meets one of the following tests:

Has a per capita income that is not greater than the World Bank's lower middle income country threshold for such fiscal year ($3,975 GNI per capita for FY12); and is among the 75 lowest per capita income countries, as identified by the World Bank; or

Has a per capita income that is not greater than the World Bank's lower middle income country threshold for such fiscal year ($3,975 GNI per capita for FY12); but is not among the 75 lowest per capita income countries as identified by the World Bank;

and

Is not ineligible to receive U.S. economic assistance under part I of the Foreign Assistance Act of 1961, as amended, (the ''Foreign Assistance Act''), by reason of the application of the Foreign Assistance Act or any other provision of law.

[1] The changes to the Act enacted in the Appropriations Act only apply to the FY 2012 selection process. The relevant language would need to be included in next year's appropriations act or in an amendment to the Act in order for these changes to continue beyond FY 2012.

[2] The changes to the Act enacted in the Appropriations Act only apply to the FY 2012 selection process. The relevant language would need to be included in next year's appropriations act or in an amendment to the Act in order for these changes to continue beyond FY 2012.

Pursuant to section 606(c) of the Act, the Board identified the following countries as candidate countries under the Act for FY 2012 at its March 22, 2012 meeting. In so doing, the Board referred to the prohibitions on assistance as applied to countries in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (SFOAA), Public Law 112–74, Div. I. All section references identified as prohibitions on assistance to a given country are taken from Title VII of the FY 2012 SFOAA, unless another statute is identified.

Candidate Countries: Low Income Category	
Afghanistan*	Liberia
Bangladesh	Malawi
Benin	Mali
Bhutan	Mauritania
Bolivia	Micronesia
Burkina Faso	Moldova
Burundi	Mongolia
Cambodia*	Mozambique
Cameroon*	Nepal
Central African Republic*	Nicaragua*
Chad*	Niger*
Comoros	Nigeria
Côte D'Ivoire*	Pakistan
Congo, Democratic Republic of*	Papua New Guinea
Congo, Republic of the	Philippines
Djibouti	Rwanda
Egypt, Arab Republic*	Sao Tome and Principe
Ethiopia*	Senegal
Gambia, The	Sierra Leone
Georgia	Solomon Islands
Ghana	Somalia*
Guatemala	Sri Lanka
Guinea*	Swaziland*
Guinea-Bissau*	Tajikistan*
Haiti	Tanzania
Honduras	Timor-Leste
India	Togo
Indonesia	Tuvalu
Iraq	Uganda
Kenya	Vanuatu
Kiribati	Vietnam
Kyrgyz Republic*	Yemen*
Lao PDR	Zambia
Lesotho	

Candidate Countries: Lower Middle Income Category	
Angola*	Marshall Islands
Armenia	Morocco
Belize	Paraguay
Cape Verde	Samoa
El Salvador	Tonga
Guyana	Turkmenistan*
Kosovo	Ukraine

* Countries are currently prohibited from assistance due to Section 7031 of the SFOAA, which prohibits assistance to governments where there is a lack of financial management and budget transparency. However, with minor exception, they are expected to receive waivers. Where waivers are granted, these countries will be considered candidate countries for FY 2012.

Countries That Would Be Candidate Countries but for Legal Prohibitions That Prohibit Assistance

Countries that would be considered candidate countries for FY 2012, but are ineligible to receive United States economic assistance under part I of the Foreign Assistance Act by reason of the application of any provision of the Foreign Assistance Act or any other provision of law are listed below. As noted above, this list is based on legal prohibitions against economic assistance that apply as of December 2011.

Prohibited Countries: Low Income Category

Burma is subject to numerous restrictions, including but not limited to section 570 of the FY 1997 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. 104–208), which prohibits assistance to the government of Burma until it makes measurable and substantial progress in improving human rights practices and implementing democratic government, and due to its status as a major drug-transit or major illicit drug producing country for FY 2012 (Presidential Determination No. 2011–16 (9/15/2011).).

Eritrea is subject to restrictions due to its status as a Tier III country under the Trafficking Victims Protection Act, as amended, 22 U.S.C. section 7101 et seq.

Madagascar is subject to section 7008 of the SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree and also section 7031(b) regarding budget transparency.

North Korea is subject to numerous restrictions, including section 7007 of the SFOAA which prohibits any direct assistance to the government.

Sudan is subject to numerous restrictions, including but not limited to section 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 7012 of the SFOAA and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default in payment to the U.S. in certain circumstances, section 7008 of the SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree, and section 7043(f).

Syria is subject to numerous restrictions, including but not limited to 620A of the Foreign Assistance Act which prohibits assistance to governments supporting international terrorism, section 7007 of the SFOAA which prohibits direct assistance, and section 7012 of the SFOAA and section 620(q) of the Foreign Assistance Act, both of which prohibit assistance to countries in default in payment to the U.S. in certain circumstances.

Uzbekistan's central government is subject to section 7076(a) of the FY 2009 SFOAA, which is carried forward by section 7063 of the FY 2012 SFOAA. This may be waived for six months at a time by the Secretary of State. The restriction limits the provision of funds (other than expanded international military education and training funds).

Zimbabwe is subject to several restrictions, including section 7043(j)(2) which prohibits assistance (except for macroeconomic growth assistance) to the central government of Zimbabwe, unless the Secretary of State determines and reports to Congress that the rule of law has been restored in Zimbabwe.

Prohibited Countries: Lower Middle Income Category

Fiji is subject to section 7008 of the SFOAA, which prohibits assistance to the government of a country whose duly elected head of government is deposed by military coup or decree.

Countries identified above as candidate countries, as well as countries that would be considered candidate countries but for the applicability of legal provisions that prohibit U.S. economic assistance, may be the subject of future statutory restrictions or determinations, or changed country circumstances, that affect their legal eligibility for assistance under part I of the Foreign Assistance Act by reason of application of the Foreign Assistance Act or any other provision of law for FY 2012.

[FR Doc. 2012–8443 Filed 4–6–12; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 21, 2012, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on April 3, 2012 to: Lockheed Martin Corporation, Permit No. 2012–016, Ms. Celia Lang (Principal in Charge).

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–8389 Filed 4–6–12; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17g–1 and Form NRSRO, SEC File No. 270–563, OMB Control No. 3235–0625.

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) has submitted to the Office of Management and Budget a request for approval of extension of the previously approved collection of information provided for in Rule 17g–1, Form NRSRO and Instructions to Form NRSRO, under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).[1]

Rule 17g–1, Form NRSRO and the Instructions to Form NRSRO contain certain recordkeeping and disclosure requirements for NRSROs. Currently, there are nine credit rating agencies registered as NRSROs with the Commission. The Commission estimates that the total burden for respondents to comply with Rule 17g–1 and Form NRSRO is 838 hours, which includes one-time reporting burdens for new registration applications, registration for additional categories of credit ratings, withdrawals of NRSRO applications, and withdrawals of NRSRO registration.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Background documentation for this information collection may be viewed at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 3, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8432 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* 17 CFR 240.17g–1 and 17 CFR 249b.300.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17g–3; SEC File No. 270–565; OMB Control No. 3235–0626.

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'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17g–3 (17 CFR 240.17g–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17g–3 contains reporting requirements. The collection of information obligations imposed by the rule is mandatory. The requirements of Rule 17g–3, however, apply only to credit rating agencies that are registered with the Commission as a nationally recognized statistical rating organization (''NRSRO)'', and registration is voluntary. Under Rule 17g–3 each NRSRO must submit annual audited financial statements. The Commission previously estimated that approximately 30 credit rating agencies would register with the Commission as NRSROs under section 15E of the Exchange Act.[1] Currently, there are nine credit rating agencies which have registered with the Commission as NRSROs. Consequently, while the Commission expects more credit rating agencies may become registered as NRSROs over the next few years, the Commission believes that the estimated number of ten NRSROs should be used for purposes of the Paperwork Reduction Act. Thus, the Commission estimates that the adjusted current industry-wide annual burden for Rule 17g–3 would be 2,033 hours, which includes a one-time reporting burden for processing reports.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Background documentation for this information collection may be viewed at the following Web site, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: April 3, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8433 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

[1] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 34–55857 (June 5, 2007), 72 FR 33564 at 33607 (June 18, 2007).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66717; File No. SR–NYSEArca–2012–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the BNP Paribas S&P Dynamic Roll Global Commodities Fund Under NYSE Arca Equities Rule 8.200

April 3, 2012.

I. Introduction

On January 30, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the BNP Paribas S&P Dynamic Roll Global Commodities Fund under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on February 21, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the BNP Paribas S&P Dynamic Roll Global Commodities Fund (''Fund'') under Commentary .02 to NYSE Arca Equities Rule 8.200, which permits the trading of Trust Issued Receipts (''TIRs'') either by listing or pursuant to unlisted trading privileges on the Exchange.[4] The Fund is a series of the BNP Paribas Exchange Traded Trust (''Trust''), a Delaware statutory trust.[5] Wilmington Trust Company (''Trustee''), a Delaware trust company, is the sole trustee of the Trust. BNP Paribas Quantitative Strategies, LLC (''Managing Owner''), a Delaware limited liability company, serves as Managing Owner of the Trust and the Fund. The Managing Owner is a wholly-owned subsidiary of Paribas North America, Inc., which is a wholly-owned, indirect subsidiary of BNP Paribas, which is affiliated with a broker-dealer.[6] The Managing Owner is registered as a commodity pool operator with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association. The Bank of New York Mellon is the administrator (''Administrator'') of the Fund, as well as the custodian (''Custodian'') and transfer agent (''Transfer Agent''). Standard and Poor's is the ''Index Sponsor.'' [7]

Overview of the Fund

The investment objective of the Fund is to track changes, whether positive or negative, in the level of the S&P GSCI® Dynamic Roll Excess Return Index (''Index'') over time. The Fund does not intend to outperform the Index. The Managing Owner will seek to cause changes in the net asset value (''NAV'') per Share of the Fund to track changes in the level of the Index during periods in which the Index is rising, flat, or declining.

The Fund seeks to achieve its investment objective by investing in exchange-traded futures (''Designated Contracts'') on the commodities (as set forth in Table 1 below) comprising the Index (''Index Commodities''), with a view to tracking the Index over time.[8] In certain circumstances, and to a limited extent, the Fund may also invest in swap agreements based on an Index Commodity that are cleared through the relevant Futures Exchanges or their affiliated provider of clearing services (''Cleared-Swaps'') or in futures contracts referencing particular commodities other than the Index Commodities (*i.e.,* futures contracts traded on exchanges other than the Futures Exchanges indicated in Table 1, including foreign exchanges) (''Substitute Contracts''), or in Alternative Financial Instruments [9] referencing the particular Index Commodity in furtherance of its investment objective if, in the commercially reasonable judgment of the Managing Owner, such instruments tend to exhibit trading prices or returns that generally correlate with the Index Commodities. Alternative Financial Instruments, if any, will be forward agreements, exchange-traded cash settled options, swaps other than Cleared Swaps, and other over-the-counter transactions that will serve as proxies to one or more Index Commodities.

Specifically, once position limits in a Designated Contract are reached or a Futures Exchange imposes limitations on the Fund's ability to maintain or increase its positions in a Designated Contract after reaching accountability levels or a price limit is in effect on a Designated Contract during the last 30 minutes of its regular trading session, the Fund's intention is to invest first in Cleared Swaps to the extent permitted under the position limits applicable to Cleared Swaps and appropriate in light of the liquidity in the Cleared Swaps market, and then, using its commercially reasonable judgment, in Substitute Contracts or in Alternative Financial Instruments (collectively, ''Other Commodity Interests,'' and together with Designated Contracts and Cleared Swaps, ''Index Commodity Interests''). By utilizing certain or all of these investments, the Managing Owner will endeavor to cause the Fund's performance to track the performance of the Index. The circumstances under which such investments in Other Commodity Interests may be utilized (*i.e.,* imposition of position limits) are further discussed below.

The Fund seeks to achieve its investment objective by investing in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66390 (February 14, 2012), 77 FR 10005 (''Notice'').

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] The Trust has filed pre-effective amendments to its registration statement (''Registration Statement'') on Form S–1 originally filed on November 3, 2010 (File No. 333–170314) relating to the Fund.

[6] The Managing Owner is affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

[7] Standard & Poor's is not a broker-dealer, is not affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index (as defined below).

[8] The Designated Contracts are traded on the Chicago Mercantile Exchange, Inc. (''CME''), COMEX (''CMX,'' a division of CME), Chicago Board of Trade (''CBT,'' a division of CME), NYMEX (''NYM,'' a division of CME), ICE Futures US (''ICE–US''), ICE Futures Europe (''ICE–UK''), Kansas City Board of Trade (''KBT''), and London Metal Exchange (''LME'') (collectively, ''Futures Exchanges'').

[9] Investing in Alternative Financial Instruments exposes the Fund to counterparty risk, or the risk that an Alternative Financial Instrument counterparty will default on its obligations under the Alternative Financial Instrument. The Managing Owner may select Alternative Financial Instrument counterparties giving due consideration to such factors as it deems appropriate, including, without limitation, creditworthiness, familiarity with the Index, and price. Under no circumstances will the Fund enter into Alternative Financial Instruments with any counterparty whose credit rating is lower than investment-grade as determined by a nationally recognized statistical rating organization (*e.g.,* BBB− and above as determined by Standard & Poor's, Baa3 and above as determined by Moody's) at the time the Alternative Financial Instrument is entered into. The Fund anticipates that the counterparties to these Alternative Financial Instruments, if any, are likely to be banks, broker dealers and other financial institutions. The Fund expects that these Alternative Financial Instruments, if any, will be on terms that are standard in the market for such Alternative Financial Instruments.

Index Commodity Interests such that daily changes in the Fund's NAV per Share will be expected to track the changes in the level of the Index. The Fund's positions in Index Commodity Interests will be changed or ''rolled'' on a regular basis in order to track the changing nature of the Index. For example, at each monthly roll determination date, roll algorithms measure the current shape of the forward curves of the eligible futures contract prices for each Index Commodity to search for the optimal contract months along the curve to roll into, subject to using only the most liquid of all available contracts of a given commodity. Since the futures contract being rolled out of will no longer be included in the Index, the Fund's investments will have to be changed accordingly.

Consistent with achieving the Fund's investment objective of tracking the Index, the Managing Owner may, after reaching position limits in the Designated Contracts or when a Futures Exchange has imposed limitations on the Fund's ability to maintain or increase its positions in a Designated Contract after reaching accountability levels or a price limit is in effect on a Designated Contract during the last 30 minutes of its regular trading session, cause the Fund to first enter into or hold Cleared Swaps and then, if applicable, enter into or hold Other Commodity Interests. For example, certain Cleared Swaps have standardized terms similar to, and are priced by reference to, a corresponding Designated Contract. Additionally, Alternative Financial Instruments that do not have standardized terms and are not exchange-traded (''over-the-counter'' Alternative Financial Instruments) can generally be structured as the parties desire. Therefore, the Fund might first enter into multiple Cleared Swaps and then, if applicable, enter into over-the-counter Alternative Financial Instruments intended to replicate the performance of each of the Designated Contracts, or a single over-the-counter Alternative Financial Instrument designed to replicate the performance of the Index as a whole. Assuming that there is no default by a counterparty to an over-the-counter Alternative Financial Instrument, the performance of the over-the-counter Alternative Financial Instrument will correlate with the performance of the Index or the applicable Designated Contract. After reaching position limits in the Designated Contracts or when a Futures Exchange has imposed limitations on the Fund's ability to maintain or increase its positions in a Designated Contract after reaching accountability levels or a price limit is in effect on a Designated Contract during the last 30 minutes of its regular trading session, and after entering into or holding Cleared Swaps, the Fund might also enter into or hold over-the-counter Alternative Financial Instruments to facilitate effective trading, consistent with the discussion of the Fund's ''roll'' strategy in the preceding paragraph or to alleviate overall deviation between the Fund's performance and that of the Index that may result from certain market and trading inefficiencies or other reasons.

The Fund will invest in Index Commodity Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Index Commodity Interests.[10] After fulfilling such margin and collateral requirements, the Fund will invest the remainder of its proceeds from the sale of baskets in obligations of the United States government (''U.S. Treasury Securities'') and/or hold such assets in cash, generally in interest-bearing accounts. Therefore, the focus of the Managing Owner in managing the Fund will be investing in Index Commodity Interests and in U.S. Treasury Securities, cash and/or cash equivalents. The Fund will earn interest income from the U.S. Treasury Securities and/or cash equivalents that it purchases and on the cash it holds through the Custodian.

The Managing Owner will employ an investment strategy intended to track changes in the level of the Index regardless of whether the Index is rising, flat, or declining. The Fund's investment strategy will be designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing indirectly in the global commodity markets in a cost-effective manner. The Managing Owner does not intend to operate the Fund in a fashion such that its NAV per Share will equal, in dollar terms, the aggregate of the spot prices of the Index Commodities or the price of any particular Designated Contract.

The Index is currently composed of Designated Contracts on 24 Index Commodities, each of which is subject to speculative position limits and other position limitations, as applicable, which are imposed by either the CFTC or the rules of the Futures Exchanges on which the Designated Contracts are traded. These position limits prohibit any person from holding a position of more than a specific number of such Designated Contracts (or Substitute Contracts, if applicable). Position limits are fixed ceilings that the Fund would not be able to exceed without specific Futures Exchange authorization. Under current law, all Designated Contracts traded on a particular Futures Exchange that are held under the control of the Managing Owner, including those held by any future series of the Trust, are aggregated in determining the application of applicable position limits.

In addition to position limits, the Futures Exchanges may establish daily price fluctuation limits on futures contracts. The daily price fluctuation limit establishes the maximum amount that the price of futures contracts may vary either up or down from the previous day's settlement price. Once the daily price fluctuation limit has been reached in a particular futures contract, no trades may be made at a price beyond that limit. Futures Exchanges may also establish accountability levels applicable to futures contracts. A Futures Exchange may order a person who holds or controls aggregate positions in excess of specified position accountability levels not to further increase the positions, to comply with any prospective limit which exceeds the size of the position owned or controlled, or to reduce any open position which exceeds position accountability levels if the Futures Exchange determines that such action is necessary to maintain an orderly market. Position limits, accountability levels, and daily price fluctuation limits set by the Futures Exchanges have the potential to cause tracking error, which could cause changes in the NAV per Share to substantially vary from changes in the level of the Index and prevent an investor from being able to effectively use the Fund as a way to indirectly invest in the global commodity markets.

The Fund will be subject to these speculative position limits and other limitations, as applicable, and, consequently, the Fund's ability to issue new baskets or to reinvest income in additional Designated Contracts may be limited to the extent these activities would cause the Fund to exceed its applicable limits unless the Fund trades Cleared Swaps, Substitute Contracts, or other Alternative Financial Instruments in addition to, and as a proxy for, Designated Contracts. These limits, and the use of Cleared Swaps, Substitute Contracts, or other Alternative Financial

[10] The Managing Owner represents that the Fund will invest in exchange-traded futures, Cleared Swaps, and Alternative Financial Instruments in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

Instruments, in addition to or as a proxy for Designated Contracts, may affect the correlation between changes in the NAV per Share and changes in the level of the Index, and the correlation between the market price of the Shares, as traded on the Exchange, and the NAV per Share.

The Fund does not intend to limit the size of the offering and will attempt to expose substantially all of its proceeds to the Index Commodities utilizing Index Commodity Interests. If the Fund encounters position limits, accountability levels, or price fluctuation limits for Designated Contracts and/or Cleared Swaps, it may then, if permitted under applicable regulatory requirements, purchase Alternative Financial Instruments and/or Substitute Contracts listed on other domestic or foreign exchanges. However, the commodity futures contracts available on such foreign exchanges may have different underlying sizes, deliveries, and prices. In addition, the commodity futures contracts available on these exchanges may be subject to their own position limits and accountability levels. In any case, notwithstanding the potential availability of these instruments in certain circumstances, position limits could force the Fund to limit the number of baskets that it sells.

Description of the Index

The Index aims to reflect the return of an investment in a world production-weighted portfolio comprised of the principal physical commodities that are the subject of active, liquid futures markets. The Index employs a flexible and systematic futures contract rolling methodology, which seeks to maximize yield from rolling long futures contracts in certain markets (backwardated markets) and minimize roll loss from rolling long futures positions in certain markets (contangoed markets).

The Index was developed by the Index Sponsor and is an index on a world production-weighted basket of principal physical commodities. The Index reflects the level of commodity prices at a given time and is designed to be a measure of the return over time of the markets for these commodities. The Index is an excess return commodity index comprised of Designated Contracts that are replaced periodically.[11] The commodities represented in the Index, each an Index Commodity, are those physical commodities on which active and liquid contracts are traded on trading facilities in major industrialized countries. The Index Commodities are weighted, on a production basis, to reflect the relative significance (in the view of the Index Sponsor) of those Index Commodities to the world economy. The fluctuations in the level of the Index are intended generally to correlate with changes in the prices of those physical Index Commodities in global markets.

The Index utilizes the S&P GSCI® Dynamic Roll Index Methodology, a monthly futures contract rolling methodology that determines the new futures contract months for the underlying commodities. The S&P GSCI® Dynamic Roll Index Methodology is designed to maximize yield from rolling long futures contracts in backwardated markets and minimize roll loss from rolling long futures positions in contangoed markets. A ''backwardated'' market means a market in which the prices of certain commodity futures contracts are higher for contracts with shorter-term expirations than for contracts with longer-term expirations. A ''contangoed'' market means a market in which the prices of certain commodity futures contracts are lower for contracts with shorter-term expirations than for contracts with longer-term expirations.

The Index is comprised of Designated Contracts, which are futures contracts on the Index Commodities. The Index Commodities are diversified across five different categories: energy, agriculture, industrial metals, precious metals, and livestock. The Index reflects the return associated with the change in prices of the underlying Designated Contracts on the Index Commodities together with the ''roll yield'' (as discussed below) associated with these Designated Contracts (the price changes of the Designated Contracts and roll yield, taken together, constitute the ''excess return'' reflected by the Index). There is no limit on the number of Designated Contracts that may be included in the Index. Any contract satisfying the eligibility criteria will become a Designated Contract and will be included in the Index. All of the Designated Contracts are exchange-traded futures contracts.

A fundamental characteristic of the Index is that as a result of being comprised of futures contracts on the applicable Index Commodity, the Fund must be managed to ensure it does not take physical delivery of each respective Index Commodity. This is achieved through a process referred to as ''rolling'' under which a given futures contract during a month in which it approaches its settlement date is rolled forward to a new contract date (*i.e.,* the futures contract is effectively ''sold'' to ''buy'' a longer-dated futures contract). All Designated Contracts will be deemed to be rolled before their respective maturities into futures contracts in the more-distant future.

Roll yield is generated during the roll process from the difference in price between the near-term and longer-dated futures contracts. The futures curve is a hypothetical curve created by plotting futures contract prices for a particular Index Commodity. When longer-dated contracts are priced lower than the nearer contract and spot prices, the market, which is in ''backwardation,'' is represented by a downward sloping futures curve, and positive roll yield is generated when higher-priced near-term futures contracts are ''sold'' to ''buy'' lower priced longer-dated contracts. When the opposite is true and longer-dated contracts are priced higher, the market, which is in ''contango,'' is represented by an upward sloping futures curve, and negative roll yields result from the ''sale'' of lower priced near-term futures contracts to ''buy'' higher priced longer-dated contracts. While many of the Index Commodities may have historically exhibited consistent periods of backwardation, backwardation will most likely not exist at all times. Moreover, certain of the Index Commodities may have historically traded in contangoed markets.

Index Methodology

The Designated Contracts currently included in the Index, the Futures Exchanges on which they are traded, their market symbols and trading times, and their reference percentage dollar weights are set forth below in Table 1.

[11] The process of periodically replacing a futures contract prior to its expiration is known as ''rolling'' a contract or position. An index that includes an assumed return on a hypothetical portfolio of 3-month Treasury bills or any other risk free component is known as a ''total return'' index. An ''excess return'' index excludes returns on a hypothetical portfolio of 3-month Treasury bills or any other risk free component.

TABLE 1

Futures exchange	Index commodity	Trading symbol	Trading times (eastern time)	2011% dollar weights
CBT	Chicago Wheat	W	09:30–13:15	3.00
KBT	Kansas City Wheat	KW	09:30–13:15	0.69
CBT	Corn	C	09:30–13:15	3.37
CBT	Soybeans	S	09:30–13:15	2.36
ICE–US	Coffee	KC	03:30–14:00	0.76
ICE–US	Sugar #11	SB	03:30–14:00	2.25
ICE–US	Cocoa	CC	04:00–14:00	0.39
ICE–US	Cotton #2	CT	21:00–14:30	1.24
CME	Lean Hogs	LH	09:05–13:00	1.59
CME	Live Cattle	LC	09:05–13:00	2.59
CME	Feeder Cattle	FC	09:05–13:00	0.44
NYM/ICE–US	Crude Oil	CL	09:00–14:30	34.71
NYM	Heating Oil	HO	09:00–14:30	4.66
NYM	RBOB Gasoline	RB	09:00–14:30	4.67
ICE–UK	Brent Crude Oil	LCO	19:00–17:00	15.22
ICE–UK	Gasoil	LGO	19:00–17:00	6.30
NYM/ICE–US	Natural Gas	NG	09:00–14:30	4.20
LME	Aluminum	MAL	11:00–10:45	2.70
LME	Copper	MCU	11:00–10:45	3.66
LME	Lead	MPB	11:00–10:45	0.51
LME	Nickel	MNI	11:00–10:45	0.82
LME	Zinc	MZN	11:00–10:45	0.72
CMX	Gold	GC	08:20–13:30	2.80
CMX	Silver	SI	08:25–13:25	0.36

The quantity of each of the Designated Contracts included in the Index (''Contract Production Weight'' or ''CPW'') is determined on the basis of a five-year average, referred to as the ''world production average,'' of the production quantity of the underlying commodity as published by a number of official sources as provided in the S&P GSCI® Dynamic Roll Index Methodology. However, if an Index Commodity is primarily a regional commodity, based on its production, use, pricing, transportation, or other factors, the Index Sponsor, in consultation with the Index Committee (described below), may calculate the weight of that Index Commodity based on regional, rather than world, production data. At present, natural gas is the only Index Commodity the weights of which are calculated on the basis of regional production data, with the relevant region defined as North America.

The five-year average is updated annually for each Index Commodity included in the Index, based on the most recent five-year period (ending approximately one and a half years prior to the date of calculation and moving backwards) for which complete data for all commodities is available. The calculation of the CPW of each Designated Contract is derived from world or regional production averages, as applicable, of the relevant Index Commodity, and is based on the total quantity traded for the relevant Designated Contract and the world or regional production average, as applicable, of the underlying Index Commodity. However, if the volume of trading in the relevant Designated Contract, as a multiple of the production levels of the Index Commodity (''Trading Volume Multiple'' or ''TVM''),[12] is below a specified threshold (''Trading Volume Multiple Threshold'' or ''TVMT''),[13] the CPW of the Designated Contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each Designated Contract is sufficiently liquid relative to the production of the Index Commodity.

In addition, the Index Sponsor performs this calculation on a monthly basis and, if the TVM of any Designated Contract is below the TVMT, the composition of the Index is reevaluated, based on the criteria and weighting procedure described above. This procedure is undertaken to allow the Index to shift from Designated Contracts that have lost substantial liquidity into more liquid contracts during the course of a given year. As a result, it is possible that the composition or weighting of the Index will change on one or more of these monthly evaluation dates. The likely circumstances under which the Index Sponsor would be expected to change the composition of the Index during a given year, however, are (1) a substantial shift of liquidity away from a Designated Contract included in the Index as described above, or (2) an emergency, such as a natural disaster or act of war or terrorism, that causes trading in a particular contract to cease permanently or for an extended period of time. In either event, the Index Sponsor will publish the nature of the changes through Web sites, news media, or other outlets, with as much prior notice to market participants as is reasonably practicable. Moreover, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the Index at the conclusion of each year, based on the above criteria, and other commodities that satisfy that criteria, if any, will be added to the Index while commodities included in the Index that no longer satisfy that criteria, if any, will be deleted.

The Index Sponsor also determines whether modifications in the selection criteria or the methodology for

[12] The TVM with respect to any Designated Contract is the quotient of (i) the product of (a) the total annualized quantity traded of such Designated Contract during the relevant calculation period and (b) the sum of the products of (x) the Designated Contract production weight of each Designated Contract included in the S&P GSCI and (y) the corresponding average month-end settlement price of the first nearby contract expiration of such Designated Contracts during the relevant period, and (ii) the product of (a) the targeted amount of investment in the S&P GSCI and related indices that needs to be supported by liquidity in the relevant Designated Contracts (currently $190 billion) and (b) the Designated Contract production weight of such Designated Contract.

[13] The TVMT is the TVM level, specified by S&P, which triggers a recalculation of the Designated Contract production weights for all Designated Contracts on an Index Commodity if the TVM of any such Designated Contract falls below such level.

determining the composition and weights of and for calculating the Index are necessary or appropriate in order to assure that the Index represents a measure of commodity market return. The Index Sponsor has the discretion to make any such modifications.

Calculation of the Closing Value of the Index

The value, or the total dollar weight, of the Index on each business day is equal to the sum of the dollar weights of each of the Index Commodities. The dollar weight of each Index Commodity on any given day is equal to the product of (i) the weight of such Index Commodity, (ii) the daily contract reference price for the appropriate Designated Contracts, and (iii) the applicable ''roll weights'' during a Roll Period.[14]

The daily contract reference price used in calculating the dollar weight of each Index Commodity on any given day is the most recent daily contract reference price for the applicable Designated Contract made available by the Futures Exchange on which it trades, except that the daily contract reference price for the most recent prior day will be used if the Futures Exchange is closed or otherwise fails to publish a daily contract reference price on that day. If the Futures Exchange fails to make a daily contract reference price available or if the Index Sponsor determines, in its reasonable judgment, that the published daily contract reference price reflects manifest error, the relevant calculation will be delayed until the price is made available or corrected. If the daily contract reference price is not made available or corrected by 4 p.m., Eastern Time, the Index Sponsor may determine, in its reasonable judgment, the appropriate daily contract reference price for the applicable Designated Contract in order to calculate the Index.

[14] The ''roll weight'' of each Index Commodity reflects the fact that the positions in the Designated Contracts must be liquidated or rolled forward into more distant contract expirations as they near expiration. If actual positions in the relevant markets were rolled forward, the roll would likely need to take place over a period of days. Because the Index is designed to replicate the return of actual investments in the underlying Designated Contracts, the rolling process incorporated in the Index also takes place over a period of days at the beginning of each month, referred to as the ''Roll Period.'' On each day of the Roll Period, the ''roll weights'' of the first nearby contract expirations on a particular Index Commodity and the more distant contract expiration into which it is rolled are adjusted, so that the hypothetical position in the Designated Contract on the Index Commodity that is included in the Index is gradually shifted from the first nearby contract expiration to the more distant contract expiration pursuant to the S&P GSCI® Dynamic Roll Index Methodology.

The Index Committee

The Index Sponsor has established an ''Index Committee'' to oversee the daily management and operations of the Index, and is responsible for all analytical methods and calculation of the Index. The Index Committee is comprised of full-time professional members of the Index Sponsor's staff. At each meeting, the Index Committee reviews any issues that may affect Index constituents, statistics comparing the composition of the Index to the market, commodities that are being considered as candidates for addition to the Index, and any significant market events. In addition, the Index Committee may revise Index policy covering rules for selecting commodities or other matters.

The Index Sponsor considers information about changes to the Index and related matters to be potentially market-moving and material. Therefore, all Index Committee discussions are confidential.

In addition, the Index Sponsor has established a ''Commodity Index Advisory Panel'' to assist it with the operation of the Index. The Commodity Index Advisory Panel meets on an annual basis and at other times at the request of the Index Committee. The principal purpose of the Commodity Index Advisory Panel is to advise the Index Committee with respect to, among other things, the calculation of the Index, the effectiveness of the Index as a measure of commodity futures market return, and the need for changes in the composition or the methodology of the Index. The Commodity Index Advisory Panel acts solely in an advisory and consultative capacity. The Index Committee makes all decisions with respect to the composition, calculation, and operation of the Index. The Index Advisory Panel representatives include employees of S&P indices, McGraw-Hill Financial, and clients of S&P indices. Certain of the members of the Index Advisory Panel may be affiliated with entities which, from time to time, may have investments linked to the S&P GSCI or other S&P commodities indices, either through transactions in the contracts included in the S&P GSCI and other S&P commodities indices, or futures contracts or derivative products linked to the S&P commodities indices. The Index Committee and the Commodity Index Advisory Panel are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

A more detailed description of the Shares, the Fund, the Index, the Index Commodities, investment risks, creation and redemption procedures, fees, trading halts, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[15]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Fund is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). The Index Sponsor will calculate and publish the value of the Index continuously on each business day, with such values updated every 15 seconds. In addition, the intra-day indicative value (''IIV'') per Share of the Fund, which will be based on the prior day's final NAV per Share and adjusted every 15 seconds during the

[15] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[16] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

NYSE Arca Core Trading Session to reflect the continuous price changes of the Designated Contracts and other holdings, if any, held by the Fund, will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session.[19] The final NAV of the Fund and the final NAV per Share will be calculated as of the closing time of NYSE Arca Core Trading Session or the last to close of the Futures Exchanges on which the Designated Contracts or Substitute Contracts (which are listed on futures exchanges other than Futures Exchanges) are traded, whichever is later, and posted in the same manner.[20] The S&P GSCI® Dynamic Roll Index Methodology will be provided by the Index Sponsor on its Web site. The Fund will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names, quantity, price, and market value of Designated Contracts, Cleared Swaps, Substitute Contracts, and Alternative Financial Instruments, if any, held by the Fund, and the characteristics of such instruments, and cash equivalents and amount of cash held in the portfolio of the Fund. The prices of the Designated Contracts, Cleared Swaps, Substitute Contracts, and exchange-traded cash settled options are available from the applicable exchanges on which they trade and from market data vendors. The closing prices and settlement prices of futures contracts on the Index Commodities are readily available from the Web sites of the applicable futures exchanges on which they trade, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant futures exchanges on which the underlying futures contracts are listed also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available on such Web sites, as well as other financial informational sources. In addition, the Managing Owner's Web site and/or the Web site of the Exchange will contain the prospectus and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV, the Index, or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the IIV, the Index, or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may halt trading in the Shares if trading is not occurring in the underlying futures contracts, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[21] In addition, the Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Managing Owner of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized participants. Accordingly, each investor will have access to the current portfolio composition of the Fund through the Fund's Web site. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Lastly, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders[22] acting as registered Market Makers[23] in TIRs to facilitate surveillance.

The Exchange has represented that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, including TIRs, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) With respect to Fund assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

[19] According to the Exchange, several major market data vendors currently display and/or make widely available IIVs published on CTA or other data feeds.

[20] The Exchange represents that, although a time gap may exist between the close of the NYSE Arca Core Trading Session and the close of the Futures Exchanges on which the Designated Contracts or Substitute Contracts (which are listed on futures exchanges other than Futures Exchanges) are traded, there is no effect on the NAV calculations as a result.

[21] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in the Shares will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule in NYSE Arca Equities Rule 7.12 or by the halt or suspension of trading of the underlying futures contracts. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[22] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[23] *See* NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

(6) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange.

(7) With respect to application of Rule 10A–3 under the Act,[24] the Fund will rely on the exception contained in Rule 10A–3(c)(7).[25]

This approval order is based on all of the Exchange's representations.[26]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [27] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSEArca–2012–10) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8425 Filed 4–6–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66725; File No. SR–NYSEArca–2012–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Option Contracts Overlying 10 Shares of a Security (''Mini-Options Contracts'') and Implementing Rule Text Necessary to Distinguish Mini-Options Contracts From Option Contracts Overlying 100 Shares of a Security (''Standard Contracts'')

April 3, 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 March 23, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade option contracts overlying 10 shares of a security (''mini-options contracts'') and implement rule text necessary to distinguish mini-options contracts from option contracts overlying 100 shares of a security (''standard contracts''). The text of the proposed rule change is available at the Exchange, *www.nyse.com,* and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to list and trade mini-options contracts and implement rule text necessary to distinguish mini-options contracts from standard contracts. Whereas standard contracts represent a deliverable of 100 shares of an underlying security, mini-options contracts would represent a deliverable of 10 shares. The Exchange proposes to list and trade mini-options contracts overlying 5 high priced securities for which the standard contract overlying the same security exhibits significant liquidity.[3] The Exchange believes that investors would benefit from the availability of mini-options contracts by making options overlying high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor.

For example, with Apple Inc. (''AAPL'') trading at $605.85 on March 21, 2012, ($60,585 for 100 shares underlying a standard contract), the 605 level call expiring on March 23 is trading at $7.65. The cost of the standard contract overlying 100 shares would be $765, which is substantially higher in notional terms than the average equity option price of $250.89.[4] Proportionately equivalent mini-options contracts on AAPL would provide investors with the ability to manage and hedge their portfolio risk on their underlying investment, at a price of $76 per contract. In addition, investors who hold a position in AAPL at less than the round lot size would still be able to avail themselves of options to manage their portfolio risk. For example, the holder of 50 shares of AAPL could write covered calls for five mini-options contracts. The table below demonstrates the proposed differences between a mini-options contracts and a standard contract with a strike price of $125 per share and a bid or offer of $3.20 per share:

	Standard	Mini
Share Deliverable Upon Exercise	100 shares	10 shares
Strike Price	125	12.5

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[24] 17 CFR 240.10A–3.

[25] 17 CFR 240.10A–3(c)(7).

[26] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes that mini-options contracts would be listed in only five issues, specifically SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN). These issues were selected because they are priced greater than $100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume (''ADV'') over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted with the Commission.

[4] A high priced underlying security may have relatively expensive options, because a low percentage move in the share price may mean a large movement in the options in terms of absolute dollars. Average non-FLEX equity option premium per contract January 1–December 31, 2011. *See http://www.theocc.com/webapps/monthly-volume-reports?reportClass=equity.*

	Standard	Mini
Bid/Offer	3.20	.32
Premium Multiplier	100	100
Total Value of Deliverable	12,500	1,250
Total Value of Contract	320	32

The Exchange notes that the Commission has approved an earlier proposal of NYSE Arca to list and trade option contracts overlying a number of shares other than 100.[5] Moreover, the concept of listing and trading parallel options products of reduced values and sizes on the same underlying security is not novel. For example, parallel product pairs on a full-value and reduced-value basis are currently listed on the S&P 500 Index (''SPX'' and ''XSP,'' respectively), the Nasdaq 100 Index (''NDX'' and ''MNX,'' respectively) and the Russell 2000 Index (''RUT'' and ''RMN,'' respectively).

The Exchange believes that the proposal to list and trade mini-options contracts would not lead to investor confusion. On the contrary, the Exchange's proposal is structured to easily convey strike prices and premiums to investors in the total amount of the investment (100 times the displayed premium) and the amount of the deliverable (100 times the strike price). The Exchange believes that the difference between the price of the 100 share standard contract and the 10 share mini-options contract would immediately alert investors that the contract is different, thereby avoiding inadvertent investment in the wrong contract. Additionally, the Exchange will designate mini-options contracts with a different trading symbols than their related standard contract.[6] The Exchange believes that the clarity of this approach is appropriate and transparent, as supported by the recent Options Clearing Corporation (''OCC'') filing to amend its bylaws to accommodate such strike prices and premiums.[7] Moreover, the Exchange believes that the terms of mini-options contracts are consistent with the terms of the Options Disclosure Document.

The Exchange recognizes the need to differentiate mini-options contracts from standard options and therefore is proposing the following changes to its rules.

The Exchange proposes to add Commentary .01 to Rule 6.3 (Option Contracts to Be Traded) to reflect that, in addition to option contracts with a unit of trading of 100, the Exchange may list option contracts overlying 10 shares of SPDR S&P 500 (SPY), Apple, Inc. (AAPL), SPDR Gold Trust (GLD), Google Inc. (GOOG), and Amazon.com Inc. (AMZN) for all expirations applicable to 100 share options in each class. The Exchange believes that these five securities are appropriate because they are high priced securities for which there is already significant options liquidity and therefore significant customer demand.

The Exchange also proposes to add Commentary .14 to Rule 6.4 (Series of Options Open for Trading) to list series of mini-options provided that (i) the underlying security has been designated as eligible under Rule 6.3 Commentary .01, (ii) no mini-options series will be listed with a strike price less than $10, and (iii) for each mini-options contract there is a corresponding option contract with a unit of trading of 100 overlying the same security, and that the underlying security is trading over $90 to list additional mini-options series. Commentary .14 would also delineate that strike prices for contracts overlying 10 shares shall be set at 1/100th of the value of the contract deliverable value. For example, an option contract to deliver 10 shares of stock at $125 per share has a total deliverable value of $1,250, and the strike price would be set at 12.50. The Exchange notes that this is consistent with the current determination of strike prices for standard contracts as well as options on the full and reduced-values of the indexes referenced above. Additionally, by restricting mini-options series to a strike price of $10 or greater and to a corresponding standard strike overlying 100 shares, the Exchange will limit the number of series and also maintain its application to high priced underlyings. Also, the Exchange proposes to not permit the listing of additional mini-options series if the underlying is trading at $90 or less to limit the number of strikes once the underlying is no longer a high priced security. The Exchange proposes a $90.01 minimum for continued qualification so that additional mini-options that correspond to standard strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above $90 for five consecutive days before the listing of mini-option contracts in a new expiration month. This restriction will allow the Exchange to list mini-option strikes without disruption when a new expiration month is added even if the underlying has had a minor decline in price.

The Exchange also proposes to add Commentary .08 to Rule 6.8 (Position Limits) to reflect that, for purposes of compliance with the Position Limits of Rules 6.8, ten mini-options contracts will equal one standard contract overlying 100 shares.

The Exchange also proposes to add subsection (c) to Rule 6.71 (Meaning of Premium Bids and Offers) to extend the explanation of bids and offers with respect to mini-options contracts and also remove references to Exchange-Traded Fund Shares, because other types of underlying securities have options traded on them.

Finally, the Exchange proposes to add Commentary .03 to Rule 6.72, Trading Differentials, to allow quoting in penny increments in mini-options contracts, because a penny increment in a mini-option is equivalent to quoting at an increment of $0.10 per share.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of mini-options contracts. The Exchange has further discussed the proposed listing and trading of mini-options contracts with the OCC, which has represented that it is able to accommodate the proposal.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[8] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section

[5] *See* Securities Exchange Act Release No. 44025 (February 28, 2001) 66 FR 13986 (March 8, 2001) (approving SR–PCX–01–12).

[6] OCC Symbology is structured for contracts with other than 100 shares to be designated with a numerical suffix to the standard trading symbol, *i.e.,* AAPL8.

[7] *See* Securities Exchange Act Release No. 61485 (February 3, 2010), 75 FR 6750 (February 10, 2010) (SR–OCC–2010–01).

[8] 15 U.S.C. 78f(b).

6(b)(5),[9] in particular, because it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that investors would benefit from the availability of mini-options contracts by making options on high priced securities more readily available as an investing tool and at more affordable and realistic prices, most notably for the average retail investor. As described above, the proposal contains a number of features designed to protect investors by reducing investor confusion, such as the mini-options contracts being designated by different trading symbols from their related standard contracts.[10] Moreover, the proposal is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, the proposed contracts will provide retail customers who invest in high priced issues in lots of less than 100 shares with a means of protecting their investments that is presently only available to those who have positions of 100 shares or more. Further, the proposal currently is limited to five high priced securities for which there is already significant options liquidity, and therefore significant customer demand and trading volume.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2012–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–26. 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 Number SR–NYSEArca–2012–26 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8428 Filed 4–6–12; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] *See* supra note 6.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66728; File No. SR–BX–2012–023]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BOX Fee Schedule

April 3, 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 March 29, 2012, NASDAQ OMX BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX''). The text of the proposed rule change is attached as Exhibit 5.[3] The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Commission's Web site at *www.sec.gov,* and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exhibit 5 is attached to the filing, not to this notice.

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

Currently, the BOX Fee Schedule lists fingerprint processing fees that are imposed on BOX Participants by the Financial Industry Regulatory Authority, Inc., (''FINRA'') in connection with participation in FINRA's Web CRD registration system. The Exchange was recently notified by FINRA that, effective March 19, 2012, FINRA decreased the per card Initial Submission and Third Submission fees from $30.25 to $27.50. As such, the Exchange proposes to amend the BOX Fee Schedule to reflect this change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposed change is reasonable because the fees for fingerprint processing will now be lower than they previously were. The proposed change is equitable and not unfairly discriminatory because the new, lower fingerprint processing fees will apply to all eligible parties. Further, this fee is not being assessed or set by BOX or the Exchange, but by FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[6] and Rule 19b–4(f)(2) thereunder,[7] because it establishes or changes a due, fee, or other charge applicable only to a member. As such, the proposed rule change is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–023. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–023 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8430 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66731; File No. SR–NSCC–2012–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Enhance Its Margining Methodology as Applied to Municipal and Corporate Bonds

April 4, 2012.

I. Introduction

On February 1, 2012, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–NSCC–2012–02 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The proposed rule change was published for comment in the **Federal Register** on February 22, 2012.[2] The Commission received no comment letters. For the reasons discussed below,

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 34–66398 (February 15, 2012), 77 FR 10589 (February 22, 2012).

the Commission is granting approval of the proposed rule change.

II. Description

This rule change will enhance NSCC's margining methodology as it applies to municipal and corporate bonds

Proposal Overview

A primary objective of NSCC's clearing fund (''Clearing Fund'') is to have on deposit from each applicable member assets sufficient to satisfy losses that may otherwise be incurred by NSCC as the result of the default of the member and the resultant close out of that member's unsettled positions under NSCC's trade guaranty. Each member's Clearing Fund required deposit is calculated daily pursuant to a formula set forth in Procedure XV of NSCC's Rules, which formula is designed to provide sufficient funds to cover this risk of loss. The Clearing Fund formula accounts for a variety of risk factors through the application of a number of components, each described in Procedure XV.[3]

The volatility component or ''VaR'' is a core component of this formula and is designed to calculate the amount of money that may be lost on a portfolio over a given period of time and that is assumed would be necessary to liquidate the portfolio within a given level of confidence. Pursuant to Procedure XV, NSCC may exclude from this calculation net unsettled positions in classes of securities such as illiquid municipal or corporate bonds, whose volatility is amenable to generally accepted statistical analysis only in a complex manner. The volatility charge for such positions is determined by multiplying the absolute value of the positions by a predetermined percentage (''haircut''), which shall not be less than 2%.

In connection with its ongoing review of the adequacy and appropriateness of its margining methodologies, NSCC is amending Procedure XV of its Rules so that NSCC will apply this haircut-based margining methodology at a rate of no less than 2% as is currently permitted by Procedure XV to all municipal and corporate bonds processed through NSCC. The proposed rule change will make clear that to the extent NSCC deems appropriate NSCC may apply this haircut to any of the municipal and corporate bonds that it processes. As NSCC continues its ongoing review of the adequacy of its margining methodology in achieving the desired coverage, the proposed rule change will allow NSCC to apply a margin requirement to these instruments that it deems appropriate.

NSCC reviews its risk management processes against applicable regulatory and industry standards, including, but not limited to: (i) The Recommendations for Central Counterparties (''Recommendations'') of the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (''IOSCO'') and (ii) the securities laws and rulemaking promulgated by the Commission. In conformance with Recommendations 3 and 4 of the IOSCO Recommendations and with the Commission rules proposed under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, specifically proposed Rule 17Ad–22(b)(1) addressing measurement and management of credit exposures, this proposed rule change will assist NSCC in its continuous efforts to ensure the reliability of its margining methodology and will limit NSCC's exposures to losses by allowing NSCC to apply a margin requirement to the corporate and municipal bonds it clears that captures the risk characteristics, which are asset class specific, of these instruments, including historical price volatility, market liquidity, and idiosyncratic risk.

Implementation Timeframe

Members will be advised of the implementation date through issuance of an NSCC Important Notice.

Proposed Rule Changes

In order to make clear that to the extent NSCC deems appropriate it may apply a haircut-based margining methodology to all municipal and corporate bonds processed at NSCC, NSCC is amending Sections I(A)(1)(a)(ii) and I(A)(2)(a)(ii) of Procedure XV, as marked on Exhibit 5 to the proposed rule filing, by removing the qualifier ''illiquid'' before ''municipal or corporate bonds.'' No other changes to the Rules are contemplated by this proposed rule change.

III. Discussion

Section 17A(b)(3)(F) of the Act[4] requires, among other things, that the rules of a clearing agency be designed, to assure the safeguarding of securities and funds which are in the custody or control of such clearing agency or for which it is responsible and in general to protect investors and the public interest.

As a central counterparty, NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions, thereby reducing the risk faced by members and contributing to global financial stability. The effectiveness of a central counterparty's risk controls and the adequacy of its financial resources are critical to achieving these risk-reducing goals. Because the proposed rule change will assist NSCC in its continuous efforts to ensure the reliability of its margining methodology and will limit NSCC's exposures to losses by allowing it to apply a margin requirement to corporate and municipal bonds cleared at NSCC that better addresses the risk characteristics of these instruments, the proposed rule change should help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, and in general, protect investors and the public interest and therefore is consistent with the requirements of Section 17A(b)(3)(F) of the Act. The proposed rule change is not inconsistent with the existing rules of NSCC, including any other rules proposed to be amended.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–2012–02) be, and hereby is, approved.[7]

[3] In addition to those described in this filing, Clearing Fund components also include (i) a mark-to-market component that takes into account the difference between the contract price and market price for the net position of each security in a member's portfolio through settlement; (ii) the Market Maker Domination component (''MMDOM'') is charged to Market Makers or firms that clear for them; (iii) a ''special charge'' in view of price fluctuations in or volatility or lack of liquidity of any security; (iv) an additional charge between 5–10% of a member's outstanding fail positions; (v) a ''specified activity charge'' for transactions scheduled to settle on a shortened settlement cycle (*i.e.,* less than T+3 or T+3 for ''as-of'' transactions); (vi) an additional charge that NSCC may require of members on surveillance status; and (vii) an ''Excess Capital Premium'' that takes into account the degree to which a member's collateral requirement compares to the member's excess net capital by applying a charge if a member's Required Deposit minus amounts applied from the charges described in (ii) and (iii) above is above its required capital.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–8463 Filed 4–6–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66724; File No. SR–NASDAQ–2012–044]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Fees Applicable to Non-Display Usage of Certain NASDAQ Depth-of-Book Market Data

April 3, 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 March 26, 2012, The NASDAQ Stock Market LLC (''NASDAQ'') 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 NASDAQ. 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

NASDAQ is filing this proposed change to modify the fees applicable to Non-Display Usage of certain NASDAQ Depth-of-Book market data. The text of the proposed rule change is available at *nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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.

[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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Growth in Use of Non-Displayed Data. The implementation of Regulation NMS in 2006 and 2007 triggered a dramatic change in the composition, speed, and consumption of market data products in U.S. equities trading. Regulation NMS spurred the development and proliferation of proprietary data products by liberalizing SEC Rule 603, allowing self-regulatory organizations to offer on a proprietary basis data that previously was confined to national market system plans, and permit investors to use this proprietary data in circumstances where consolidated data previously was required. Regulation NMS also drove market participants to increase trading speed and, by necessity, the speed of market data feeds by requiring in Rule 611 that all market participants compete to access a limited set of protected quotations. As a result, some market participants and exchanges have used Depth-of-Book data to identify liquidity in fragmented markets.

Technological advancements and their use by increasingly sophisticated market participants have intensified the changes brought about by Regulation NMS. For example, the prevalence and importance of co-location has grown rapidly as market participants seek to access protected quotes faster than their competitors. Also, markets and market participants continually seek expanded bandwidth options to communicate an ever-increasing number of trading messages without significant latencies and improvement of determinism. Connectivity offerings have multiplied as new networks and technologies come on line.

As technology, automation, speed, and other aspects of trading have evolved, so too has market data consumption. No longer is trading and investing dominated by individuals responding to market data displayed on trading screens by manually entering quotes and trades into the markets. Instead, the vast majority of trading is done by firms leveraging powerful servers running sophisticated algorithms and consuming massive quantities of data without displaying that data to individual traders. While certain groups of investors, including retail investors, continue to view traditional market data displays, their orders are generally processed, delivered, and executed by firm servers using non-displayed data. Non-Display Usage is used not only for automated order generation and program trading, but also to provide reference prices for algorithmic trading and order routing; and for various back office processes, including surveillance, order verification, and risk management functions.

NASDAQ Market Data Pricing. NASDAQ's pricing model for market data products must keep pace with changes in data consumption patterns in order to allocate fees and charges fairly among Subscribers. NASDAQ's pricing has evolved over time in response to previous changes in market data consumption, and it now includes numerous factors for setting fees. Generally, NASDAQ allocates market data fees among Subscribers based on the data elements consumed, including top-of-book,[3] Depth-of-Book,[4] and other, more sophisticated data products.[5] NASDAQ also distinguishes between different sets of securities, NASDAQ-listed securities versus securities listed on other markets for which NASDAQ's data plays a different, often more limited, role. Moreover, NASDAQ has long followed industry practice by distinguishing between real-time and delayed data, allocating higher fees to real-time usage and lower or no fees to delayed data usage. Also, since 1999 NASDAQ has distinguished between Professional and Non-Professional Subscribers, offering lower fees to Non-Professional Subscribers in order to encourage use by average investors and also recognizing that Professional Subscribers make heavier use of the same data feeds.[6] These four distinctions have existed in tandem for many years.

Since the mid-2000s, in response to changes driven by Regulation NMS, NASDAQ has added new considerations to its pricing. Thus, in 2005, NASDAQ amended its Distributor fee schedule to distinguish between distributions [sic] that is Internal (redistribution within an entity that receives NASDAQ market data) versus External (redistribution outside that entity) to the Distributor.[7] Also, in 2005 NASDAQ began differentiating between Direct Access and Indirect Access, charging more for firms that access data directly from NASDAQ based on the enhanced speed and simplicity for Subscribers and the

[3] *Compare* NASDAQ Rule 7011 (top-of-book consolidated data) and NASDAQ Rule 7047 (top-of-book NASDAQ-only data).

[4] *See* NASDAQ Rule 7023.

[5] *See* NASDAQ Rules 7044 (Market Pathfinders), 7048 (Custom Data Feeds), and 7057 (NASDAQ MatchView).

[6] *See* NASDAQ Rule 7023(a)(3)(A).

[7] *See* NASDAQ Rule 7023(a)(4).

increased burden on NASDAQ of administering individual Distributor relationships.[8] Later, in 2007, NASDAQ began offering enterprise licenses that allocate fees by volume of usage, differentiating among heavy consumers and lighter consumers by capping fees.[9]

In March 2010, NASDAQ introduced an enterprise license for Non-Display Usage of market data.[10] Currently, NASDAQ offers two options for measuring Non-Display Usage of Depth-of-Book equities data. First, a firm can count and report each server or other Subscriber or device that uses data, whether displayed or non-displayed, and pay the Professional fee for each Subscriber. Second, NASDAQ offers an optional $30,000 per month Non-Display TotalView and OpenView fee cap for Internal Distribution.[11] For firms reporting over 400 Subscribers, the optional fee cap offers a cost savings per Subscriber, as well as relief from the administrative costs of identifying, tracking, and reporting each covered Subscriber. NASDAQ is proposing to remove this enterprise license for Non-Display Usage, as described in detail below.

Current Proposal. NASDAQ is amending NASDAQ Rule 7023 to create a new Subscriber fee and tiered pricing structure for Direct Access to Depth-of-Book data that Professional Subscribers use in a Non-Display manner. This further refinement to NASDAQ's fees for Non-Display Usage of Depth-of-Book data leverages existing distinctions between Professional and Non-Professional Subscribers and between Direct and Indirect Access to data. Specifically, the proposed fee schedule for Direct Access is as follows:

Subscribers	Monthly fee
1–10	$ 300 per
11–29	3,300.00
30–49	9,000.00
50–99	15,000.00
100–249	30,000.00
250+	75,000.00

The fee for Professional Subscribers for Non-Display Usage that is accessed directly from NASDAQ shall apply to any Subscriber that accesses any data elements included in the TotalView entitlement, including the TotalView, OpenView, or Level 2 data elements. Professional Subscribers that access Depth-of-Book data indirectly and then use it in a Non-Display fashion will pay the same Subscriber fees as Professional Subscribers that use comparable Display data.

NASDAQ has determined to apply the proposed Non-Display Usage fee to a finite group of Subscribers that consume high quantities of market data but that have, due to NASDAQ's current pricing structure, paid disproportionately low fees. The new fee will apply to (1) Professional Subscribers; (2) that are Internal Distributors; (3) via Direct Access; and (4) via Non-Display Usage. The historical rationales supporting these four existing distinctions apply with equal force to the current proposal.

Empirical Data and Analysis. NASDAQ considered numerous factors in determining the proper level of non-display fees to assess. Based on NASDAQ's knowledge and experience with firm trading behavior and data usage reporting, NASDAQ hypothesized that these trading characteristics correlate highly with intense Non-Display Usage, and that firms not exhibiting those characteristics correlate highly with higher Display Usage. To test this hypothesis, NASDAQ analyzed one month's data regarding order intensity, liquidity removal, and time at the inside among firms that are co-located and those that are not and among firms that connect to NASDAQ via a high number of ports versus a lower number of ports.[12] NASDAQ then compared overall market data costs for firms with high usage of non-displayed data versus firms with high usage of displayed market data.

NASDAQ found that the group of firms with high order intensity is comprised disproportionately of firms with Non-Display Usage. NASDAQ analyzed maximum order entry rates for 370 firms for the month of January 2012. As shown on Slide 1, of 370 firms, only 38 firms had maximum order entry rates exceeding 5,000 orders per second. NASDAQ believes that 23 of those 38 firms utilize exclusively non-displayed data, thereby paying less for market data than the 15 other firms with high order intensity rates that utilize displayed data. Further analysis revealed that firms with high order intensity often paid lower market data fees than firms with lower, often substantially lower, order intensity.

NASDAQ also found that firms removing high levels of liquidity and also utilizing high numbers of OUCH connectivity ports are disproportionately likely to engage in exclusively Non-Display Usage. As shown on Slide 2, NASDAQ determined that of the 272 firms that remove an average of over 100,000 shares of liquidity per day, the top 18 liquidity takers all rely exclusively on Non-Display data.[13] Again, further analysis revealed that firms removing high levels of liquidity, using high numbers of connectivity ports, and relying on non-displayed data paid disproportionately lower market data fees than firms removing comparable or greater liquidity and using comparable numbers of ports but using displayed market data.

Additionally, NASDAQ found that firms quoting most often at the inside and also removing high levels of liquidity are disproportionately likely to use exclusively Non-Display data. As shown on Slide 3, NASDAQ observed 351 firms for the month of January 2012, measuring time at the inside and liquidity taking. High rates of quoting at the inside require continual quote updates and generates substantial message traffic. Likewise, high rates of liquidity taking require high levels of order submission, also generating high message traffic. Again, of the 351 firms covered, 27 firms that rely exclusively on non-displayed market data were over-represented among firms with high levels of both studied behaviors. Additionally, those 27 firms were under-billed relative to firms experiencing comparable or lower-intensity behavior and that consumed displayed market data.

NASDAQ found that firms that are co-located within NASDAQ's Carteret facility and that rely exclusively on Non-Display Usage account for a disproportionate percentage of overall message traffic. Based on data for January 2012, 23 co-located, non-display firms account for 70 percent of NASDAQ's overall message traffic whereas 359 other firms that are not co-located and/or that rely on displayed data account for 26 percent of NASDAQ's overall message traffic. As shown on Slide 4, Subscribers of non-displayed data, both co-located and not, account for 74 percent of NASDAQ's overall message traffic. These firms not only consume high quantities of market data, they also create significant

[8] *See* NASDAQ Rule 7023(a)(5)

[9] *See* NASDAQ Rule 7023(c).

[10] *See* NASDAQ Rule 7023(a)(1)((D). *See also* Securities Exchange Act Release No. 34–61700 (Mar. 12, 2010), 75 F.R. 13172 (Mar. 18, 2010). *See also* NASDAQ Options Rules, Chapter XV, Section 4(a).

[11] The TotalView and OpenView fee cap does *not* currently include Distributor fees. *See* NASDAQ Rule 7023(c)(4).

[12] January 2012 represents the most recent full-month of data available. As such, it best represents current trading and data usage patterns and the best prediction of the actual application of the proposed fees.

[13] NASDAQ's findings are set forth in Exhibit 3B, pages 111 through 114 of this proposed rule change. This excludes one exchange that removes over 100,000 average shares of liquidity daily.

quantities of market data that then must be processed, disseminated, and consumed by numerous industry participants.

Finally, NASDAQ studied the market data fees paid by non-display firms isolated by the data in Slides 1 through 4, comparing them with the market fees paid by otherwise comparable firms that rely on Display Usage. Based on this analysis, NASDAQ concluded that firms engaged in quoting and trading behavior based on Display Usage of market data paid on average eight times more in total market data fees compared with firms that engaged in comparable or higher-intensity behavior based on Non-Display Usage. NASDAQ designed the current [sic] to rectify this disparity by applying [sic] only to firms that use exclusively non-displayed data and by using Subscriber tiers that correlate to the trading behaviors observed.

If, after further observation, NASDAQ determines that the proposed fees are either over-inclusive or under-inclusive in reaching the desired equalization, NASDAQ will modify the fees accordingly via a future proposed rule change.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(4) of the Act,[15] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers 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.[16]

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. Level 2, TotalView and OpenView are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

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 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.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 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.' '' *NetCoalition,* 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.

For the reasons stated above, NASDAQ believes that the proposed fees are fair and equitable, and not unreasonably discriminatory. As described above, the proposed fees are based on pricing conventions and distinctions that exist in NASDAQ's current fee schedule, and the fee schedules of other exchanges. These distinctions (top-of-book versus Depth-of-Book, Professional versus Non-Professional Usage, Direct versus Indirect Access, Internal versus External Distribution) are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal. Thus, although the proposal results in a fee increase of $224 per Subscriber (from $76 to $300) or, at the top tier, $45,000 per enterprise (from $30,000 to $75,000), these increases are based on careful analysis of empirical data and the application of time-tested pricing principles already accepted by the Commission for many years.

As described in greater detail below, if NASDAQ has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can diminish or discontinue the use of their data because the proposed fee is entirely optional to all parties. Firms are not required to purchase Depth-of-Book data or to utilize any specific pricing alternative if they do choose to purchase

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Depth-of-Book data. NASDAQ is not required to make Depth-of-Book data available or to offer specific pricing alternatives for potential purchases. NASDAQ can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. NASDAQ continues to create new pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers, and NASDAQ believes this is another useful 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 *NetCoalition* 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. 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 Subscribers only insofar as they provide information that end Subscribers 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 [sic] 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 Subscribers. 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 Subscribers 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 NASDAQ Level 2 and 80 of the top 100 broker-dealers consumed TotalView. During that month, the NASDAQ Level 2 Subscribers were responsible for 94.44% of the orders entered into NASDAQ and TotalView Subscribers 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, 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 Subscriber 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-of-Book 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-of-Book information is highly competitive and continually evolves as products develop and change.

Additional evidence cited by NYSE Arca in SR–NYSE Arca–2010–097 [17] which was not before the *NetCoalition* court also demonstrates that availability of Depth-of-Book data attracts order flow and that competition for order flow can constrain the price of market data:

1. Terrence Hendershott & Charles M. Jones, *Island Goes Dark: Transparence, Fragmentation, and Regulation,* 18 Review of Financial Studies 743 (2005);

2. Charts and Tables referenced in Exhibit 3B to that filing;

3. PHB Hagler Bailly, Inc., ''Issues Surrounding Cost-Based Regulation of Market Data Prices;'' and

4. PHB Hagler Bailly, Inc., ''The Economic Perspective on Regulation of Market Data.''

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[18] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

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.

[17] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010).

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2012–044 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–044. 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–NASDAQ–2012–044 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8462 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66719; File No. SR–NASDAQ–2012–046]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Customer Routing Fees

April 3, 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 March 28, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to modify Chapter XV, Options Pricing, Section 2, of the Options Rules portion of the NASDAQ Rulebook governing pricing for NASDAQ members using The NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. The proposed rule change amends certain Customer Routing Fees to recoup costs incurred by the Exchange in routing to away markets. While changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to recoup costs that the Exchange incurs for routing and executing certain Customer orders in equity and index options to the International Securities Exchange, LLC (''ISE'') and to the NASDAQ OMX PHLX, LLC (''PHLX''). Chapter XV, Section 2 currently includes the following Routing Fees for routing Customer, Firm, Market Maker and Professional orders to away markets.

Exchange	Customer	Firm	MM	Professional
BATS	$0.55	$0.55	$0.55	$0.55
BOX	0.11	0.55	0 .55	0.11
CBOE	0.11	0.55	0. 55	0.31
CBOE orders greater than 99 contracts in NDX, MNX ETFs, ETNs & HOLDRs	0.29	0.55	0.55 0.3	1
C2	0.55	0.55	0.55	0.55
ISE	0.11	0.55	0.55	0.29
ISE Select Symbols *	0.23	0.55	0.55 0.39	
NYSE Arca Penny Pilot	0.55	0.55	0.55	0.55
NYSE Arca Non Penny Pilot	0.11	0.55	0.55	0.11
NYSE AMEX	0.11	0.55	0.55	0.31
PHLX (for all options other than PHLX Select Symbols)	0.11	0.55	0.55	0.31
PHLX Select Symbols **	0.35	0.55	0.55 0.51	

* These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Se lect Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

** These fees are applicable to orders routed to PHLX that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See PHLX's Fee Schedule for the complete list of symbols that are subject to these fees.

* * * * *

The Exchange is proposing to amend the ''ISE Select Symbols'' [3] Customer Routing Fee from $0.23 per contract to $0.31 per contract. ISE recently amended its ''taker'' fee for regular, or non-complex, Priority Customer orders in the Select Symbols, regardless of size, from $0.15 per contract to $0.20 per contract.[4] In addition to the ISE taker fee, the Exchange also incurs other routing costs which it seeks to recoup.

The Exchange is also proposing to amend the ''PHLX Select Symbols'' Customer Routing Fee from $0.35 per contract to $0.50 per contract. PHLX recently amended its Single contra-side Customer Fee for Removing Liquidity for its Select Symbols from $0.31 per contract to $0.39 per contract.[5] In addition to the PHLX Single contra-side Customer Fee for Removing Liquidity for its Select Symbols, the Exchange also incurs other routing costs which it seeks to recoup.

In addition, NASDAQ Options Services LLC (''NOS''), a member of the Exchange, is the Exchange's exclusive order router. Each time NOS routes to away markets NOS is charged a $0.06 clearing fee and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS; the Exchange's membership fees at away markets; and technical costs associated with routing.[6]

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that these fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer orders to ISE and PHLX on behalf of its members. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the customer taker fees assessed by ISE and customer Single contra-side Fee for Removing Liquidity assessed by PHLX, plus clearing fees for the execution of customer orders. The Exchange also believes that the proposed Routing Fees are equitable and not unfairly discriminatory because they would be uniformly applied to all Customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[3] *See* ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

[4] *See* ISE's Schedule of Fees. See also Securities Exchange Act Release No. 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR–ISE–2012–17).

[5] *See* Securities Exchange Act Release No. 66367 (February 9, 2012), 77 FR 8934 (February 15, 2012) (SR–Phlx-2012–15). *See also* Section I of PHLX's Pricing Schedule.

[6] The Exchange is therefore increasing the ISE Select Symbols Customer Routing Fee to $0.31 per contract to account for the $0.20 ISE taker fee, the $0.06 clearing cost and another $0.05 per contract associated with administrative and technical costs associated with operating NOS. It is also increasing the PHLX Select Symbols Customer Routing Fee to $0.50 per contract to account for the $0.39 PHLX Customer Single contra-side Fee for Removing Liquidity for its Select Symbols, the $0.06 clearing cost and another $0.05 per contract associated with with administrative and technical costs associated with operating NOS.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–2012–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–046. 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 will also 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–NASDAQ–2012–046 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8461 Filed 4–6–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66729; File No. SR–NASDAQ–2012–037]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Newly Listed Indexes

April 3, 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 March 28, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. 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

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NASDAQ proposes to adopt fees for newly listed indexes and make other minor amendments to Chapter XV at Section 2 entitled ''NASDAQ Options Market—Fees.''

While changes proposed herein are effective upon filing, the Exchange has designated these changes to be operative on April 2, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to amend Chapter XV, Section 2 to adopt fees for the following newly listed index options: PHLX Semiconductor Sector℠ (SOX℠), PHLX Housing Sector™ (HGX℠) and PHLX Oil Service Sector℠ (OSX℠).[3]

Specifically, the Exchange proposes to assess the following Fees for Adding Liquidity and Fees for Removing Liquidity for transactions in SOX, HGX and OSX:

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange plans on listing these index options on April 2, 2012.

	Customer	Professional	Firm	Non-NOM market maker	NOM market maker
SOX, HGX and OSX:					
Fee for Adding Liquidity	$0.35	$0.45	$0.45	$0.45	$0.35
Fee for Removing Liquidity	$0.35	$0.45	$0.45	$0.45	$0.35

Other Amendments

The Exchange also proposes to amend the title of Chapter XV, currently entitled ''Options Fees,'' to ''Options Pricing'' to more specifically describe this Rule. The Exchange also proposes to amend the title of ''All Other Options'' in Section 2(1) to ''Non-Penny Pilot Options'' to more specifically describe those fees. Finally, the Exchange proposes to reorder the Fees and Rebates in Section 2(1) to move the current ''All Other Options'' after the ''Penny Pilot Options'' fees and rebates.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that its proposal to adopt Fees for Adding Liquidity and Fees for Removing Liquidity for transactions in SOX, HGX and OSX is reasonable because the Exchange proposes to assess the same fees that are currently assessed by NASDAQ OMX PHLX LLC (''Phlx'') for these proprietary products.[6] The Exchange has previously distinguished other index products from the Non-Penny Pilot Options fees and rebates.[7] The Exchange assesses lower Fees for Removing Liquidity in SOX, HGX and OSX as compared to the Fees for Removing Liquidity in Non-Penny Pilot Options, which should encourage NOM Participants to transact these newly listed index options. The Fees for Adding Liquidity for transactions in SOX, HGX and OSX are the same or higher than the Fees for Adding Liquidity in Non-Penny Pilot Options. The Exchange believes that these fees are reasonable because these fees correspond to comparable fees in place at Phlx for executions in SOX, HGX, and OSX.[8]

The Exchange believes that its proposal to adopt Fees for Removing Liquidity for transactions in SOX, HGX and OSX is equitable and not unfairly discriminatory in that Customers and NOM Market Makers are assessed lower Fees for Removing Liquidity, $0.35 per contract, as compared to other market participants because Customer liquidity benefits all market participants and NOM Market Makers have certain obligations to the market and regulatory requirements, which normally do not apply to other market participants.[9] The Exchange's proposal to assess all other market participants, Professionals, Firms and Non-NOM Market Makers, a $0.45 per contract Fee for Removing Liquidity for transactions in SOX, HGX and OSX is equitable and not unfairly discriminatory because these participants are uniformly assessed the same fee.

The Exchange believes that its proposal to adopt Fees for Adding Liquidity for transactions in SOX, HGX and OSX is equitable and not unfairly discriminatory because the Customer Fee for Adding Liquidity for transacting SOX, HGX and OSX of $0.35 per contract is lower than fees assessed other market participants for transacting SOX, HGX and OSX, except NOM Market Makers. This is because, as previously stated, the Exchange desires to attract Customer order flow to the market, which liquidity benefits all market participants. The NOM Market Maker Fee for Adding Liquidity for transactions in SOX, HGX and OSX of $0.35 per contract is also lower than other market participants, except Customers, because NOM Market Makers have certain obligations to the market and regulatory requirements which are not borne by Customers, Professionals, Non-NOM Market Makers and Firms. The Exchange uniformly assesses Professionals, Firms and Non-NOM Market Makers a Fee for Adding Liquidity for transactions in SOX, HGX and OSX of $0.45 per contract.

The Exchange also believes its proposal to amend the title of Chapter XV to ''Options Pricing'' is reasonable, equitable and not unfairly discriminatory because the Exchange believes that the proposed title more specifically describes the fees, rebates and other charges reflected in the Chapter. The Exchange also believes that amending the title of Section 2(1) from ''All Other Options'' to ''Non-Penny Pilot Options'' conforms the description of these fees to that of other options exchanges.[10] Finally, the Exchange believes that reordering the fees in Section 2(1) is reasonable, equitable and not unfairly discriminatory because the Exchange is grouping the fees for indexes for ease of reference.

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fee scheme is competitive and similar to other fees in place on other exchanges. The Exchange believes that this competitive marketplace materially impacts the fees present on the Exchange today and substantially influences the proposal set forth above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Despite the fact that SOX, HGX and OSX will be Multiply Listed, Phlx will continue to assess market participants the fees for Singly Listed Options to transact index options in SOX, HGX and OSX. *See* SR–Phlx–2012–35. *See also* Section III of Phlx's Pricing Schedule. Accordingly, Phlx would continue to assess the following fees to transact index options in SOX, HGX and OSX as of April 2, 2012: Customers $0.35 per contract, Professionals $0.45 per contract, Firms $0.45 per contract, Market Makers $0.35 per contract, and Broker-Dealers $0.45 per contract. Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM. This is the equivalent of a Broker-Dealer on Phlx. While Phlx does not assess both a Fee for Adding Liquidity and Fee for Removing Liquidity, it assesses each side of the transaction the Options Transaction Charge.

[7] *See* Chapter XV, Section 2(1) fees.

[8] *See* Phlx's Pricing Schedule at Section III.

[9] *See* Exchange Rules Section VII, Market Participants, Sections 5, Obligations of Market Makers, and Section 6, Market Maker Quotations.

[10] Phlx utilizes the term non-Penny Pilot in Section II of its Fee Schedule. *See* Phlx's Pricing Schedule.

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.[11] 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–2012–037 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–037. 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–NASDAQ–2012–037 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8431 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66727; File No. SR–CBOE–2012–025]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Trading Floor Booth Fees and Policy

April 3, 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 March 26, 2012, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. CBOE has designated the proposed rule change as it pertains to fees for non-standard booths as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. Additionally, CBOE has designated the proposed rule change as it pertains to the Exchange's trading floor booth policy as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule as it pertains to Exchange trading floor booth fees and to update the Exchange's current policy regarding the rental and use of booths on the CBOE trading floor. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the 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 these statements may be examined at the places specified in Item IV below. CBOE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the Exchange's Fees Schedule to include fees for a ''non-standard booth'' (as defined below) and to update the Exchange's policy (''Policy'') regarding the rental and use of booth space on the CBOE trading floor by Trading Permit Holder (''TPH'') organizations.

Fees

The Exchange has booth space located on its trading floor that it makes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

available for rental to TPH organizations. These booths are located at various locations on the trading floor adjacent to the trading crowds where the actual CBOE trading activity takes place. The booths generally are used by TPH organizations to perform various functions in support of their CBOE trading activities.

The Exchange Fees Schedule includes a monthly fee to rent a booth that is based on the location of the booth on the trading floor. The fee for booths located along the perimeter of the trading floor is $195 per month. The fee for booths located in the OEX, Dow Jones, MNX and VIX pits is $550 per month.[7]

The Exchange is proposing to revise the Exchange Fees Schedule to include fees for a larger type of booth for use by TPH organizations. This booth type is different in design and much bigger than a standard booth. These booths can range from several hundred square feet as compared to 4 square feet for a standard booth.

The Exchange proposes to codify fees charged to TPH organizations for rental of these larger booths. The proposed fees would be reflected in Section 8 of the CBOE Fees Schedule as the fees for a ''non-standard booth.'' A TPH organization would pay the fees per square foot in the table below on a monthly basis for use of a non-standard booth:

Booth size	Per sq. ft.	Per sq. ft.	Per sq. ft.
Extra-Large (1000 sq. ft. or greater)	$5.50	$5.34	$5.23.
Large (800–999 sq. ft.)	8.00	7.76	7.60.
Medium (401–799 sq. ft.)	9.50	9.22	9.03.
Small (400 sq. ft. or less)	15.00	14.55	14.25.
LENGTH OF LEASE	1 Year	2 Years (97%)	3 Years (95%).

The fee per square foot a TPH organization would pay for a non-standard booth would be determined based on the size of the booth and length of the lease the TPH organization enters into with the Exchange. Greater booth size and longer lease terms would result in a reduced fee per square foot.

Non-standard booths would be grouped into four size categories: Small (400 square feet or less), Medium (from 401 to 799 square feet), Large (from 800 to 999 square feet) and Extra-Large (1000 square feet or greater). As an example, the fee for a Small non-standard booth leased for one year would be $15.00 per square foot. Greater booth size would result in a reduced fee per square foot.

The amount of the fee per square foot would also be reduced based on the length of the lease. For example, the fee for a Small non-standard booth leased for two years would be $14.55 per square foot (a 3% discount from the fee for a one year lease) and the fee for a Small non-standard booth leased for three years would be $14.25 per square foot (a 5% discount from the fee for a one year lease).

A TPH organization that terminates its lease prior to its expiration date would, on the effective date of such termination, pay to the Exchange an amount equal to twenty five percent (25%) of the balance of the monthly charges remaining in the lease term. In addition, a TPH Organization would be responsible for all costs associated with any modifications and alterations to any trading floor booths leased by the TPH Organization and would be required to reimburse CBOE for all costs incurred by CBOE in connection therewith. This fee would be reflected in Section 8 of the CBOE Fees Schedule as a ''booth pass-through fee.''

The proposed fees will take effect on April 1, 2012.

Policy

The Exchange memorialized the Policy and filed it with the Commission in 1994.[8] The Exchange proposes to update the Policy in a few respects. First, the Exchange proposes to change references to ''member organization'' and ''member firm'' to ''TPH Organization'' and to replace a reference to the ''Facilities Committee'', which no longer exists, with ''the Exchange''.

Second, the Exchange proposes to amend the Policy with respect to eligibility requirements for booths. The Policy currently sets forth four broad categories of TPH organizations that may rent booth space on the floor. These categories accommodate TPH organizations having the greatest need of working space in close proximity to CBOE trading activity, and they encompass almost all major types of CBOE TPH organizations. Market-maker organizations are the only major category that may not obtain a booth under the Policy. Clearing firms lease the majority of the booths on the trading floor and market-maker organizations customarily obtain booth space through their clearing firms. Until recent years, demand for booth space on the trading floor exceeded the supply. Prior to establishment of the Policy, the low supply of booths coupled with the fact that clearing firms leased most of the booths (many of which were used by their market-maker clients) meant there was little booth space on the floor to accommodate order flow providing firms. To help address this issue, market-maker organizations were not allowed to obtain a booth under the Policy since they could obtain booths through their clearing firms. At this time, there is an ample supply of booth space on the trading floor. Therefore, the Exchange believes there is no longer a need to prohibit market-maker organizations from directly leasing booths. The Exchange proposes to amend the Policy to provide that booths on the trading floor will be allocated to any TPH organization that is in good standing.

No changes are proposed to the section of the Policy that addresses the potential future need for the adoption of allocation and assignment guidelines with respect to booth space. The Exchange has no such guidelines in effect today and does not currently envision implementing any in the foreseeable future. In the event that demand for booth space at some point threatens to exceed availability, the Exchange would establish allocation guidelines. The Policy informs TPH organizations of this possibility and identifies the general nature of the criteria upon which such guidelines would be based. Any such guidelines established by the Exchange would be filed with the Commission under Section 19(b) of the Act.

At this time, the Exchange has ample space on its trading floor for booth space. The Exchange will consider any reasonable request from a TPH organization with respect to the

[7] *See* CBOE Fees Schedule, Section 8(A).

[8] Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

specifications for building a non-standard booth. The Exchange may deny a request from a TPH organization to build a non-standard booth if the Exchange determines the request is unreasonable with respect to the specifications for the non-standard booth. A TPH organization that has been denied a request to build a non-standard booth may appeal the decision to the Appeals Committee under Chapter 19 of the Exchange's rules.

The Policy includes a section that sets forth the requirement that all TPH organizations renting booths execute a ''Trading Floor Booth Rental Agreement'' (hereinafter, ''Agreement'') which sets forth the contractual terms, conditions and restrictions governing rental and use of booths by TPH organizations.[9] A copy of the Agreement was included in the Exchange's 1994 rule filing noted above for the Commission's information.[10] The Agreement specifically sets forth the details of the parties' contractual relationship regarding rental and use of the booths. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the TPH organization and the Exchange and sets forth a procedure for adding booths to and deleting booths from the Agreement. The Agreement also spells out requirements respecting the TPH's use of the booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the booths.

The Exchange has updated the Agreement (which is now referred to as the Agreement for ''standard booths'') and created a separate form of the Agreement for non-standard booths. A copy of each form of Agreement is included with this filing in Exhibit 3. The forms are substantially similar except for the differences in the lease terms (standard booths are leased on a month-to-month basis), termination provisions [11] and applicable fees. The Exchange proposes to update this section of the Policy to set forth the requirement that all TPH organizations renting booths execute the applicable form of the Agreement. The Exchange will disseminate the updated Policy and forms of the Agreement to Trading Permit Holders by posting them on the Trading Permit Holder portion of the CBOE web site (*www.cboe.org*).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[12] in general, and furthers the objectives of Section 6(b)(4) [13] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders, and the objectives of Section 6(b)(5) [14] of the Act in particular in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed fees for non-standard booths are reasonable because there are higher costs related to operation of these large size booths (e.g., utilities, routine maintenance, etc.) as compared with a standard booth. The Exchange believes the proposed fees are equitable and not unfairly discriminatory in that the fee per square foot each TPH organization would pay would be determined in an objective manner based on the size of the booth and length of the lease the TPH organization enters into with the Exchange. The proposed fees would be applied uniformly to all eligible TPH organizations that wish to use a non-standard booth.

In addition, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would update the Policy to reflect non-standard booths and the requirement that TPH organizations enter into the applicable booth lease agreement as well as make other non-substantive changes that merely clarify the Policy and make it more accurate. The Exchange believes these changes are designed to promote just and equitable principles of trade by helping to make the Policy easier to understand and putting TPH organizations on notice of the new requirements for non-standard booths. The Exchange believes that providing in the Policy for building non-standard booths for TPH organizations may help provide additional depth and liquidity to options traded on the CBOE trading floor by providing TPH organizations more booth space from which to execute additional options transactions, thereby removing impediments to and perfecting the mechanism for a free and open market and a national market system.

The proposed rule change would also establish a standard for the Exchange's consideration of requests to build non-standard booths and an appeals process for denials of such requests. The Exchange believes the proposed standard and procedures for consideration of requests to build non-standard booths and denials of such requests are reasonable and designed to promote just and equitable principles of trade in that they will help ensure Exchange decisions on building non-standard booths are made in a fair and equitable manner while also protecting the Exchange by providing it with the ability to deny any unreasonable request.

In addition, the proposed rule change would update the Policy to eliminate a prohibition against market-maker organizations directly leasing trading floor booths. Any TPH organization in good standing would be eligible to lease a booth. Therefore the Exchange believes the proposed rule change is not designed to permit unfair discrimination between TPH organizations in that it will help ensure that trading floor booths are leased to TPH organizations on equal and non-discriminatory terms.

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 proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The portion of the foregoing rule change pertaining to fees for non-standard booths has become effective pursuant to Section 19(b)(3)(A) [15] of the

[9] The Agreement is non-negotiable and its terms are the same for every TPH organization.

[10] *Supra* Footnote 8.

[11] The form of the Agreement for non-standard booths provides that a TPH Organization may terminate the Agreement at any time for any reason upon at least one hundred eighty (180) days prior written notice to CBOE.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

Act and paragraph (f)(2) of Rule 19b–4 [16] thereunder.

Additionally, because the portion of the foregoing proposed rule change pertaining to the Exchange's trading floor booth policy does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–025 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–2012–025. 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–CBOE–2012–025, and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

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[16] 17 CFR 240.19b–4(f)(2).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66721; File No. SR–Phlx–2012–34]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Singly Listed Options

April 3, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that, on March 26, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section III of the Exchange's Pricing Schedule entitled ''Singly Listed Options.'' The Exchange also proposes to amend Section II of the Pricing Schedule entitled, ''Equity Options Fees'' to clarify text concerning rebates.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated certain changes be operative on April 2, 2012, namely the amendments to the Alpha Index Options Fees and the proposed MSCI Index Options Fees. The Exchange proposes the clarifying amendment in Section II be immediately effective.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section III [3] of the Exchange's Pricing Schedule to: (1) Amend the Alpha Index Options Fees; and (ii) create fees for MSCI Index Options. With respect to the Alpha Index Options Fees, the Exchange is lowering the Customer fee and increasing the Professional,[4] Market Maker,[5] Firm and Broker-Dealer fees with respect to this index. Despite the increases, the fees will continue to be lower than the Options Transaction Charges for other Singly Listed Options.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Section III of the Pricing Schedule includes options overlying equities, ETFs, ETNs, indexes and HOLDRs which are not listed on another exchange.

[4] The Exchange defines a ''professional'' as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter ''Professional'').

[5] The term ''Market Maker'' is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

The Exchange proposes these amendments to support options overlying certain NASDAQ OMX Alpha Indexes™ (''Alpha Indexes'').[6] The Exchange is also proposing to create fees for the MSCI Indexes[7] and offer discounted pricing to encourage members and member organizations to trade options overlying MSCI Indexes.

Both the Alpha Indexes and MSCI Indexes trade on the Exchange as Singly Listed Options.[8] The Exchange currently assesses the following fees on options overlying Alpha Indexes:

	Customer	Professional	Market maker	Firm	Broker-Dealer
Alpha Index Options	$0.15+	$0.20	$0.00	$0.20	$0.20

+ Customer executions with average daily volume of 1,000 Customer contracts or more in a calendar month will be assessed $0.10 per contract.

The Exchange is proposing to amend the Alpha Index Options Fees as noted below and assess the same fees for MSCI Index Options.

	Customer	Professional	Market maker	Firm	Broker-Dealer
Alpha and MSCI Index Options	$0.10	$0.25	$0.15	$0.25	$0.25

The Exchange proposes to eliminate the current incentive for Customer executions with average daily volume of 1,000 Customer contracts or more in a calendar month that are assessed $0.10 per contract. The Exchange is proposing to assess a $0.05 per contract surcharge on non-Customer executions in MSCI Index Options in order to recover a portion of the cost associated with licensing MSCI products.[9] The Exchange intends that the aforementioned fee amendments become operative on April 2, 2012.

The Exchange also proposes to amend Section II of the Pricing Schedule to clarify that the current $0.07 per contract rebate that is applicable to Customer Orders that are electronically-delivered to a member that has an average daily volume of 50,000 contracts are *Customer* contracts. The Exchange is assessing rebates for Customer orders based on Customer volume. The Exchange proposes to clarify the text of the Pricing Schedule by adding the word ''Customer'' in the section of the sentence pertaining to the average daily volume. The Exchange proposes this amendment to be immediately effective.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] 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's proposal to amend the Alpha Index Options Fees and assess those same fees for MSCI Index Options is reasonable because the Exchange is seeking to recoup the operation and development costs associated with both the Alpha and MSCI Indexes.[12] The Exchange would also be assessing lower fees for these options products, despite the increase to certain market participants in the Alpha Index Options Fees, as compared to other Singly Listed Options products to encourage members and member organizations to trade options on Alpha and MSCI Indexes. For example, Customers would be assessed $0.10 per contract to transact options on Alpha and MSCI Indexes as compared to $0.35 per contract for other Singly Listed Options products; Professionals, Firms and Broker-Dealers would be assessed $0.25 per contract as compared to $0.45 per contract for all other Singly Listed Options products; and Market Makers would be assessed $0.15 per contract as compared to the $0.35 per contract for all other Singly Listed Options products.

The Exchange believes that its proposal to amend the Alpha Index Options Fees is equitable and not unfairly discriminatory because despite

[6] The Exchange initially received approval to list Alpha Index Options limited to specific Alpha Indexes the Target Component of which is a single stock. Specifically, Alpha Indexes based on the following Alpha Pairs: AAPL/SPY, AMZN/SPY, CSCO/SPY, F/SPY, GE/SPY, GOOG/SPY, HPQ/SPY, IBM/SPY, INTC/SPY, KO/SPY, MRK/SPY, MSFT/SPY, ORCL/SPY, PFE/SPY, RIMM/SPY, T/SPY, TGT/SPY, VZ/SPY and WMT/SPY. *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2001) (SR–Phlx–2010–176). The Exchange expanded the number of Alpha Indexes on which options can be listed to include certain Alpha Indexes based on the following Alpha Pairs: DIA/SPY, EEM/SPY, EWJ/SPY, EWZ/SPY, FXI/SPY, GLD/SPY, IWM/SPY, QQQ/SPY, SLV/SPY, TLT/SPY, XLE/SPY and XLF/SPY. In these Alpha Indexes, the Target Component as well as the Benchmark Component is an ETF share. The proposed Alpha Index Options will enable investors to trade the relative performance of the market sectors represented by the Target Components as compared with the overall market performance represented by the Benchmark Component SPY. *See* Securities Exchange Act Release No. 65149 (August 17, 2011), 76 FR 52729 (August 23, 2011) (SR–Phlx–2011–89).

[7] The Exchange filed to list options on the MSCI EM Index. The MSCI EM Index is a free float-adjusted market capitalization index consisting of large and midcap component securities from countries classified by MSCI as ''emerging markets,'' and is designed to measure equity market performance of emerging markets. The index consists of component securities from the following 21 emerging market countries: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey. *See* Securities Exchange Act Release No. 66420 (February 17, 2012), 77 FR 11177 (February 24, 2012) (SR–Phlx–2011–179) (an order granting approval of the proposal to list and trade options on the MSCI EM Index). The Exchange also proposed to list options on the MSCI EAFE Index. The MSCI EAFE Index is a free float-adjusted market capitalization index that is designed to measure the equity market performance of developed markets, excluding the U.S. and Canada. The MSCI EAFE Index consists of component securities from the following twenty-two (22) developed market countries: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. *See* SR–Phlx–2012–28.

[8] A Singly Listed Option means an option that is only listed on the Exchange and is not listed by any other national securities exchange.

[9] The Exchange has entered into a license agreement with MSCI Inc. (''MSCI'') to list certain products.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] The Exchange continues to incur costs for maintaining the Alpha proprietary index including marketing expenses. The Exchange also has incurred and will continue to incur costs to list options on MSCI Indexes. In addition, the Exchange incurs certain additional costs related to Singly Listed options as compared to Multiply Listed options. For example, in analyzing an obvious error for a Singly Listed option, the Exchange does not have the additional data points available in establishing a theoretical price as is the case for a Multiply Listed option. For this reason, a Singly Listed option requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

the increase for all market participants, except Customers, the fees for Alpha Index Options would be lower than those for other Singly Listed Options products as detailed above. Specifically, the Customer fee for Alpha Index Options is being lowered from $0.15 per contract to $0.10 per contract to encourage market participants to transact a greater number of Customer orders in options overlying Alpha Indexes. The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Customers, because all market participants benefit from Customer order flow. The Professional, Firm and Broker-Dealer Alpha Index Options Fees would be increased by $0.05 per contract (from $0.20 per contract to $0.25 per contract) and these fees would be uniformly assessed to these market participants and exclude Customers and Market Makers, which market participant fees are more specifically described herein. Currently, Market Makers [13] are not assessed a fee for Alpha Index Options. The Exchange did not initially assess Market Makers a fee because the Exchange desired to encourage such Market Makers to transact Alpha Index Options. At this time, the Exchange still desires to encourage Market Makers to transact Alpha Index Options by assessing them a fee equal to that of a Customer ($0.15 per contract) while still continuing to recognize the burdensome quoting obligations [14] to the market which do not apply to Customers, Professionals, Firms and Broker-Dealers. The Exchange also believes the Market Maker fee amendment is equitable and not unfairly discriminatory because the amendment will more closely align the Market Maker fee with other market participant fees for Alpha Index Options.

The Exchange believes that the proposed MSCI Index Options fees are equitable and not unfairly discriminatory because the fees would be lower than those for other Singly Listed Options products as detailed above. In addition, the Exchange would be assessing a lower Customer fee ($0.10 per contract) because the Exchange, as noted above, seeks to encourage Customer order flow, which benefits all market participants. The Exchange would assess Market Makers a lower fee similar to a Customer ($0.15 per contract) because of the burdensome quoting obligations borne by these participants. The remaining market participants, Professionals, Firms and Broker-Dealers, would be uniformly assessed a $0.25 per contract fee to transact MSCI Index Options.

The Exchange also believes that it is reasonable, equitable and not unfairly discriminatory to assess a surcharge of $0.05 per contract for non-Customer executions in MSCI Index Options. The Exchange incurs licensing fees associated with MSCI products and seeks to recoup those costs with the surcharge. The Exchange believes it is equitable and not unfairly discriminatory to assess this surcharge on all participants except Customers because the Exchange seeks to encourage Customer order flow and the liquidity such order flow brings to the marketplace, which in turn benefits all market participants.

The Exchange has previously stated that it incurs higher costs for Singly Listed options as compared to Multiply Listed options.[15] The Chicago Board Options Exchange, Incorporated (''CBOE'') noted in a comment letter dated June 21, 2010 that CBOE relies upon fees to recoup licensing costs incurred on options products that use third-party proprietary indexes as benchmarks (such as the S&P 500®), and to generate returns on its investments for its own popular proprietary products (such as The CBOE Volatility Index® (''VIX®'') Options).[16] The Exchange agrees with CBOE's position and while the Exchange continues to assert that Singly Listed products incur higher costs and therefore market participants should be assessed higher fees as compared to Multiply Listed products, the Exchange is proposing to assess lower fees for the Alpha Indexes, and MSCI Indexes,[17] as a means to promote these new index products.[18] In addition, the Exchange believes that the proposed fees are reasonable, equitable and not unfairly discriminatory because the fees are consistent with price differentiation that exists today at all option exchanges. For example, CBOE assesses different rates for certain proprietary indexes as compared to other index products transacted at CBOE. VIX options and The S&P 500® Index options (''SPX℠'') are assessed different fees than other indexes.[19] In addition, the concept of offering a volume discount to incentivize order flow is not novel.[20]

The Exchange believes that its proposal to add the term ''Customer'' as a clarifying amendment to a sentence describing rebates in Section II is reasonable because the addition of the word ''Customer'' will further clarify that the rebate, applicable to Customer orders, is based on members that have a certain amount of Customer volume. The Exchange believes that the proposal to amend this text is equitable and not unfairly discriminatory because it will help to clarify the Pricing Schedule and the Exchange's calculation of its fees.

The Exchange operates in a highly competitive market, comprised of nine exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[13] The term ''Market Maker'' is utilized herein to describe fees and rebates applicable to Specialists, Registered Options Traders, Streaming Quote Traders and Remote Streaming Quote Traders.

[14] *See* Exchange Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

[15] *See* Securities Exchange Release Act No. 64096 (March 18, 2011), 76 FR 16646 (March 24, 2011) (SR–Phlx–2011–34).

[16] *See* CBOE's Comment Letter dated June 21, 2010 to the Proposed Amendments to Rule 610 of Regulation NMS, File No. S7–09–10. CBOE further noted that options exchanges expend considerable resources on research and development related to new product offerings and options exchanges incur large licensing costs for many products.

[17] The proposed fees for the MSCI Index Options are lower than the options transaction charges for other Singly Listed options products even including the proposed $0.05 surcharge on non-Customer executions.

[18] The Alpha Indexes are still in an early phase of their life cycle and the MSCI EM Index is not yet listed. If the Exchange determines to increase the pricing for options overlying Alpha or MSCI Indexes at a later date, the Exchange would file a proposal with the Commission.

[19] *See* CBOE's Fees Schedule.

[20] *See* CBOE's Fees Schedule. CBOE has a sliding scale for its proprietary products whereby transaction fees are reduced when a Clearing Trading Permit Holder reaches certain volume thresholds in Multiply Listed options on CBOE in a month.

19(b)(3)(A)(ii) of the Act.[21] 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–Phlx–2012–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–34. 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–Phlx–2012–34 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8427 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66718; File No. SR–BX–2012–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for BX Members Using the NASDAQ OMX BX Equities System

April 3, 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 March 29, 2012, The NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BX. 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

BX proposes to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed change on April 2, 2012. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX is proposing to modify its rebate schedule with respect to orders that access liquidity at BX.[3] Currently, BX pays a rebate of $0.0014 per share executed with respect to orders entered through a market participant identifier (''MPID'') through which a member routes an average daily volume of 25,000 or more shares during the month.[4] For members that qualify for this rebate provision, the rebate applies to all shares entered through the MPID and executed on BX during the month, regardless of whether they are designated for routing. BX is proposing to eliminate this method of qualifying for a $0.0014 per share rebate, and replace it with an across-the-board rebate of $0.0014 per share executed for all orders that are designated for routing but that access liquidity on BX.

Both the provision being eliminated and the new provision are designed to provide incentives for BX members to make greater use of the Exchange's recently introduced routing service. The change reflects a concern that some members may be ''gaming'' the current provision by using BX's router only to the extent necessary to qualify for the higher rebate, which then applies to all of their orders entered through the applicable MPID. By contrast, the change would apply the $0.0014 rebate to all orders that are designated for routing, regardless of volume, but would not apply to orders that are not designated for routing. Other methods of

[3] The change applies to securities priced at $1 or more per share. Fees and rebates for lower-priced securities are unchanged.

[4] The $0.0014 per share executed rebate is also available for orders entered through an MPID through which the member (i) accesses an average daily volume of 3.5 million or more shares of liquidity, or (ii) provides an average daily volume of 25,000 or more shares of liquidity during the month.

qualifying for a $0.0014 per share rebate, based on the extent of liquidity accessing or liquidity providing on BX, will remain in effect for all orders executed on BX.[5]

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(4) and (5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. All similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms.

The proposed elimination of the $0.0014 per share executed rebate tier for MPIDs through which a member routes a daily average of 25,000 shares is reasonable because it is being replaced by a $0.0014 per share rebate for all routable orders that execute on BX, and because other means of receiving a $0.0014 per share rebate for order executions remain in effect. BX also believes that the proposal is reasonable because the current tier related to the BX routing service was being utilized with respect to non-routable orders to a greater extent than the Exchange had intended. BX believes that refocusing the incentive on routable orders will do more to encourage members to make use of BX's routing services. The proposal is also consistent with an equitable allocation of fees because members will either receive a credit for routable orders that access liquidity on BX or pay fees in connection with routable orders that execute at venues other than BX. BX also notes that the increased use of the BX router may encourage members to post liquidity on BX to the extent that routable orders check the BX book. Finally, the Exchange believes that the change is not unreasonably discriminatory because affected members are being provided with alternative means to earn the same rebate with respect to both routable and non-routable orders.

The proposed introduction of a $0.0014 per share executed rebate with respect to all routable orders is reasonable because it will result in a rebate being paid with respect to all routable orders that execute on BX, regardless of the volume of the member. Accordingly, the change will maintain or increase the rebate with respect to all such orders. The proposed introduction is consistent with an equitable allocation of fees because the Exchange believes that it is equitable to provide a financial incentive to members to make greater use of a service as a means of increasing its usage. In this regard, however, BX further notes that the rebate does not exceed the fees paid by liquidity providers on BX. Finally, BX believes that the rebate is not unreasonably discriminatory because it is not the exclusive means by which members may receive an enhanced rebate.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because numerous alternatives exist to the execution and routing services offered by BX, if BX increases its fees to an excessive extent, it will lose customers to its competitors. Accordingly, BX believes that competitive market forces help to ensure that the fees it charges for execution and routing are reasonable, equitably allocated, and non-discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor BX's execution and routing services if they believe that alternatives offer them better value. Moreover, the rebate provided with respect to execution of routable orders is lower than the fee charged to liquidity providers, such that BX is not providing a rebate that is higher than the corresponding charge. For these reasons and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will unfairly affect the ability of members or competitors to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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–BX–2012–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–021. 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

[5] A member that qualified for a $0.0014 per share rebate based on the extent of its liquidity providing or liquidity accessing and that used routable orders would not receive a double rebate on its routable orders.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–021 and should be submitted on or before April 30, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8426 Filed 4–6–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7842]

Culturally Significant Objects Imported for Exhibition Determinations: ''Edouard Vuillard: A Painter and His Muses, 1890–1940''

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 ''Edouard Vuillard: A Painter and His Muses, 1890–1940,'' 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 Jewish Museum, New York, New York from on or about May 4, 2012, until on or about September 23, 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 Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 3, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–8475 Filed 4–6–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7816]

Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII)

The Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union (Title VIII) will convene on Thursday, May 17, 2012 at 10:30 a.m. and last until approximately 12:30 p.m. The meeting location is Room 1205 of the U.S. Department of State, Harry S Truman Building, 2201 C Street NW., Washington, DC.

The Advisory Committee will recommend grant recipients for the FY 2012 competition of the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Chair and members of the committee, and, within the committee, discussion of grant agreements with certain ''national organizations with an interest and expertise in conducting research and training concerning the countries of Eastern Europe and the Independent States of the Former Soviet Union,'' based on the guidelines contained in the call for applications published in Grants.gov and GrantSolutions.gov on January 13, 2012. Following committee deliberation, interested members of the public may make oral statements concerning the Title VIII program in general.

This meeting will be open to the public; however attendance will be limited to the seating available. Entry into the Harry S Truman building is controlled and must be arranged in advance of the meeting. Those planning to attend should notify the Title VIII Program Office at the U.S. Department of State on (202) 736–4661 by Thursday, May 10, 2012 providing the following information: Full Name, Date of Birth, Driver's License Number and Issuing State, Country of Citizenship, and any requirements for special accommodation. All attendees must use the 2201 C Street entrance and must arrive no later than 10 a.m. to pass through security before entering the building. Visitors who arrive without prior notification and without photo identification will not be admitted.

The identifying data from the public is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Dated: March 30, 2012.

Susan Nelson,

Executive Director, Advisory Committee for Study of Eastern Europe and Eurasia (the Independent States of the Former Soviet Union).

[FR Doc. 2012–8478 Filed 4–6–12; 8:45 am]

BILLING CODE 4710–32–P

STATE DEPARTMENT

[Public Notice 7815]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on May 24, 2012, at the Department of State, Washington, DC

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552B(c)(1), it has been determined that

this Board meeting will be closed to the public because the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding arms control, international security, nuclear proliferation, and diplomacy.

For more information, contact Richard W. Hartman II, Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 736–4290.

Dated: March 28, 2012.

Richard W. Hartman II,

Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. 2012–8487 Filed 4–6–12; 8:45 am]

BILLING CODE 4710–27–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: February 1, 2012, through February 29, 2012.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; email: *rcairo@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. EXCO Resources (PA), LLC, Pad ID: Warner North Unit Pad, ABR–201202001, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: February 6, 2012.

2. SWEPI LP, Pad ID: Smith 260, ABR–201202002, Jackson Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: February 6, 2012.

3. EXCO Resources (PA), LLC, Pad ID: Spotts Unit Drilling Pad 3H, 4H, 5H, 7H, 8H, 9H, ABR–201202003, Mifflin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: February 6, 2012.

4. Chief Oil & Gas, LLC, Pad ID: Wright A Drilling Pad #1, ABR–201202004, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: February 6, 2012.

5. Southwestern Energy Production Company, Pad ID: ASNIP–ABODE, ABR–201202005, Orwell Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: February 8, 2012.

6. Chesapeake Appalachia, LLC, Pad ID: Schlapfer, ABR–201202006, Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 13, 2012.

7. Chesapeake Appalachia, LLC, Pad ID: Ferraro, ABR–201202007, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 13, 2012.

8. Chesapeake Appalachia, LLC, Pad ID: Makayla, ABR–201202008, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 13, 2012.

9. EXCO Resources (PA), LLC, Pad ID: Dale Bower East Unit Pad, ABR–201202009, Penn Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: February 13, 2012.

10. EXCO Resources (PA), LLC, Pad ID: Painters Den Pad 1, ABR–201202010, Davidson Township, Sullivan County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: February 13, 2012.

11. WPX Energy Appalachia, LLC, Pad ID: MacGeorge Well Pad, ABR–201202011, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: February 13, 2012.

12. Chief Oil & Gas, LLC, Pad ID: Castle A Drilling Pad #1, ABR–201202012, Canton Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: February 13, 2012.

13. Chief Oil & Gas, LLC, Pad ID: Crandall Drilling Pad #1, ABR–201202013, Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: February 13, 2012.

14. Chief Oil & Gas, LLC, Pad ID: L & L Construction A Drilling Pad #1, ABR–201202014, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: February 13, 2012.

15. Southwestern Energy Production Company, Pad ID: FIELDS PAD 1, ABR–201202015, Herrick Township, Bradford County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: February 28, 2012.

16. Southwestern Energy Production Company, Pad ID: PEASE, ABR–201202016, Jackson Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: February 28, 2012.

17. Range Resources—Appalachia, LLC, Pad ID: Bobst Mtn Hunting Club 30H–33H, ABR–201202017, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: February 17, 2012.

18. Range Resources—Appalachia, LLC, Pad ID: Bobst Mtn Hunting Club 24H–29H, ABR–201202018, Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 5.000 mgd; Approval Date: February 17, 2012.

19. Chesapeake Appalachia, LLC, Pad ID: Moyer, ABR–201202019, Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 17, 2012.

20. Chesapeake Appalachia, LLC, Pad ID: Yadpad, ABR–201202020, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 17, 2012.

21. Chesapeake Appalachia, LLC, Pad ID: Maple Ln Farms, ABR–201202021, Athens Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 21, 2012.

22. Chesapeake Appalachia, LLC, Pad ID: CPD, ABR–201202022, Athens Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 21, 2012.

23. Chesapeake Appalachia, LLC, Pad ID: Bumpville, ABR–201202023, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.500 mgd; Approval Date: February 21, 2012.

24. XTO Energy Incorporated, Pad ID: Everbe Farms Unit B, ABR–201202024, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: February 21, 2012.

25. EXCO Resources (PA), LLC, Pad ID: Dunwoody Pad, ABR–201202025, Plunketts Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: February 24, 2012.

26. WPX Energy Appalachia, LLC, Pad ID: Conaty Well Pad, ABR–201202026, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: February 24, 2012.

27. EXCO Resources (PA), LLC, Pad ID: Snyder Unit #1, ABR–20090430.1, Franklin Township, Lycoming County, Pa.; Consumptive Use of Up to 8.000 mgd; Approval Date: February 27, 2012.

28. Chief Oil & Gas, LLC, Pad ID: Muzzy Drilling Pad #1, ABR–201202027, Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 2.000 mgd; Approval Date: February 27, 2012.

29. Southwestern Energy Production Company, Pad ID: WATTS, ABR–201202028, New Milford Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.999 mgd; Approval Date: February 28, 2012.

30. WPX Energy Appalachia, LLC, Pad ID: Wilkes Well Pad, ABR–201202029, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: February 29, 2012.

31. SWEPI LP, Pad ID: Kreitzer 505, ABR–201202030, Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.000 mgd; Approval Date: February 29, 2012.

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR parts 806, 807, and 808.

Dated: March 29, 2012.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2012–8465 Filed 4–6–12; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2012–0031]

Extension of a Previously Approved Collection

AGENCY: Office of the Secretary, Department of Transportation (DOT).

Activity Under OMB Review: Public Charters, 14 CFR part 380.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Department of Transportation (DOT) invites the general public, industry and other governmental parties to comment on the extension of the following collection request: Public Charters, 14 CFR part 380. The pre-existing information collection request previously approved by the Office of Management and Budget (OMB) expires on 09/30/2012.

DATES: Written comments should be submitted by June 8, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Reather Flemmings, Office of the Secretary, Office of International Aviation, Special Authorities Division-X46, 202–366–1865, 1200 New Jersey Ave. SE. Washington, DC 20590 and Torlanda Archer, Office of the Secretary, OIA, X–46, 202–366–1037.

ADDRESSES: You may submit comments [identified by DOT–DMS Docket No. OST–2012–0031] through one of the following methods:

- *Web Site: http://regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140, 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0005.

Title: Public Charters, 14 CFR part 380.

Form Numbers: 4532, 4533, 4534, 4535.

Type of Review: Extension of a Previously Approved Collection.

Respondents: Private Sector: Air carriers; tour operators; the general public (including groups and individuals, corporations and Universities or Colleges, etc.).

Number of Respondents: 245.

Number of Responses: 1,782.

Total Annual Burden: 891.

Abstract: 14 CFR part 380 establishes regulations embodying the Department's terms and conditions for Public Charter operators to conduct air transportation using direct air carriers. Public Charter operators arrange transportation for groups of people on chartered aircraft. This arrangement is often less expensive for the travelers than individually buying a ticket. Part 380 exempts charter operators from certain provisions of the U.S. code in order that they may provide this service. A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus—consisting of OST Forms 4532, 4533, 4534 and 4535) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. If the prospectus information were not collected it would be extremely difficult to assure compliance with agency rules and to assure that public security and other consumer protection requirements were in place for the traveling public. The information collected is available for public inspection (*unless the respondent specifically requests confidential treatment*). Part 380 does not provide any assurances of confidentiality.

Burden Statement: Completion of all forms in a prospectus can be accomplished in approximately two hours (30 minutes per form) for new filers and one hour for amendments (existing filings). The forms are simplified and request only basic information about the proposed programs and the private sector filer. The respondent can submit a filing to operate for up to one year and include as many flights as desired, in most cases. The operator is then required by regulations to file revisions to its original prospectus.

Number of Respondents: 245.

Number of Responses: 1,782.

Frequency of Responses:

245 (respondents) × 4 = 980.

401 (amendments *from the same respondents*) × 2 = 802.

Total estimated responses: 980 + 802 = 1,782.

The frequency of response is dependant upon whether the operator is requesting a new program or amending an existing prospectus. Variations occur due to the respondents' criteria. On average four responses (forms 4532, 4533, 4534 and/or 4535) are required for filing new prospectuses and two of the responses (forms) are required for amendments. The separate hour burden estimate is as follows:

Total Annual Burden: 891.

Approximately 1,782 (responses) × 0.50 (per form) = 891.

Comments Are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d)

ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. All responses to the notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: Issued in Washington, DC, on March 23, 2012.

Jeffrey B. Gaynes,

Assistant Director for Regulatory Affairs.

[FR Doc. 2012–7657 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 24, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0042.

Date Filed: March 19, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 9, 2012.

Description: Application of People Express Airlines, Inc. (''People Express'') requesting a certificate of public convenience and necessity authorizing People Express to engage in interstate scheduled air transportation of persons, property, and mail.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–8506 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 10, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0034.

Date Filed: March 6, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 27, 2012.

Description

Application of Dassault Falcon Service (''DFS'') requesting a foreign air carrier permit to the full extent authorized by the Air Transport Agreement Between the United States and the European Community and the Member states of the European Community to enable it to engage in: (i) Foreign charter air transportation of persons and property from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons and property between any point or points in the United states and any point or points in any member of the European Common Aviation Area; (iii) other charters, (iv) transportation authorized by any additional route rights made available to European Community carrier in the future. DFS further requests exemption authority to the extent necessary to enable it to provide the service described above pending issuance of a foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Docket Number: DOT–OST–2009–0351.

Date Filed: March 9, 2012.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: March 30, 2012.

Description

Application of Premium Jet AG (''Premium Jet'') requesting renewal and amendment of its exemption and for a foreign air carrier permit authorizing Premium Jet to conduct: (i) Foreign charter air transportation of persons, property, and mail from points behind Switzerland via Switzerland and intermediate points to a point or points in the United States and beyond; and (ii) other charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–8447 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 3, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0032.

Date Filed: March 3, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 23, 2012.

Description: Application of All Nippon Airways Co., Ltd. (''ANA'') requesting an exemption and an amended foreign air carrier permit ANA to operate the following services: (i) Scheduled foreign air transportation of persons, property, and mail (separately or in combination) from points behind Japan via Japan and intermediate points to a point or points in the United States and beyond; (ii) charter foreign air transportation of persons, property, and

mail (separately or in combination) between any point or points in Japan and any point or points in the United States and between any point or points in the United States and any point or points in any third country; and, (iii) other charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–8453 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2011–0361]

Policy and Procedures Concerning the Use of Airport Revenue: Petition of the Clark County Department of Aviation to Use a Weight-Based Air Service Incentive Program

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Partial granting of petition; Disposition of comments.

SUMMARY: On April 14, 2011, the FAA issued a Notice in the **Federal Register** (76 FR 21,420, April 15, 2011) seeking comment on a petition submitted by Clark County Department of Aviation (CCDOA), owner and operator of Las Vegas McCarran International Airport (Airport). The petition requested a determination by the Federal Aviation Administration (''FAA'') that its proposed air service incentives program (''Incentives Program''), intended to induce increases in landed weight by air carriers at McCarran International Airport (the ''Airport'' or ''LAS'') in Las Vegas, is consistent with Federal law and policies on the use of airport revenue and on airport rates and charges. In its petition, CCDOA proposed the FAA amend its interpretation of ''new air service'' to include ''increases in landed weight.''

The FAA has interpreted these policies, and the underlying Federal statutes, to permit a temporary waiver of standard airport fees for carriers that provide new air service at an airport, as an incentive to begin or expand air service. In September 2010, the agency issued the Air Carrier Incentive Program Guidebook to provide specific guidance to airport operators on the use of air service incentive programs. That guidance restates FAA's previously issued opinions regarding what constitutes new service as characterized in the FAA's *Policy and Procedures Concerning the Use of Airport Revenue* (*Revenue Use Policy*) (64 FR 7,696 (Feb. 16, 1999)). Since the inception of the Revenue Use Policy in 1999, the FAA has defined new air service as: (a) Service to an airport destination not currently served, (b) nonstop service where no nonstop service is currently offered, (c) new entrant carrier, and/or (d) increased frequency of flights to a specific destination. The FAA's interpretation has not permitted an airport operator to offer an incentive program that provides discounts based on increased aircraft weight or an increased number of seats on existing flights. CCDOA proposes an incentive program that would reward air carriers for an increase in landed weight. An increase in landed weight could result from an increase in the size of aircraft used, or ''upgauging,'' on existing flights, consolidation of existing flights, and/or added flights. CCDOA requests that the FAA amend existing guidance to make clear that its proposed incentive plan is consistent with Federal law and existing agency policies on the use of airport revenue and on airport rates and charges.

This notice responds to the comments received and grants a portion of the petition as written.

ADDRESSES: Comments received on the petition [identified by Docket Number FAA–2011–0361] are available for public review in the Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review public dockets on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Willis, Manager, Airport Compliance Division, ACO–100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–3085; facsimile: (202) 267–5257.

SUPPLEMENTARY INFORMATION:

I. The Petition

On February 14, 2011, the Federal Aviation Administration (FAA) received a letter and a 13-page memorandum from counsel for CCDOA, the owner and operator of McCarran International Airport in Las Vegas, Nevada, requesting a determination from the FAA that CCDOAs proposed air service incentive program does not conflict with Federal obligations

In brief, CCDOA stated that the ''objective of the proposed Incentives Program is to provide an incentive at the margin to promote additions to scheduled air service seat capacity.'' The program provides, subject to certain terms and exceptions, that:

> * * * all monthly scheduled service landed weight, by airline, in excess of that operated in the same month of the prior year, would receive a credit of up to 100% of the landing fee (currently $2.26 per 1,000 pounds of landed weight) paid on the incremental landed weight.

In addition to new flights, the credit would apply to existing flights for which an increase in aircraft size resulted in an increase in landed weight.

In its petition, CCDOA makes the argument that upgauging should be an eligible incentive because it is considered new service. CCDOA reasons in its petition, ''*Air travelers, as well as airports, reasonably regard an upgrade in the size of equipment used on a flight to constitute ''new service(s).''* CCDOA stated the *Revenue Use Policy* does not provide for nor does it exclude upgauging as a form of new air service. Finally, the CCDOA argued the proposed petition is not contradictory to statute, grant assurance obligations, and the FAA's *Revenue Use Policy.*

The FAA published the Petition and sought comments on it prior to issuing a determination.

II. Discussion

A. Summary of Comments

In addition to the CCDOA's comments, seven comments were received in the docket. Five comments generally supported the petition; two opposed it. The four airport operator commenters generally supported the petition or greater flexibility for operators to design air service incentive programs. Of the two airline commenters, ATA opposed the petition, while British Airways supported it. One citizen opposed the petition because it would not result in savings for passengers.

Comments in Support of the Petition

In its petition, the CCDOA states it is:

> concerned with a temporary, but precipitous, drop in air service at (LAS) that has not rebounded as quickly as at other airports. Landed weight at LAS was down approximately 17% from Calendar Year 2007 through the 12-month period ending in September 2010. While some individual carriers have expanded operations, these initiatives have fallen well short of restoring McCarran operations to previous levels. This drop-off in operations has meant that the Airport's airside and terminal facilities are not optimally utilized. The shortfall in traffic has also caused a significant drop in Airport revenue, particularly non-aeronautical

revenue. While load factors at LAS are high, the service cutbacks by the carriers are reflected in a drop in passengers. On average, the Airport generates approximately $9 per passenger in non-aeronautical revenue (rental cars, concessions, taxi fees, gaming, etc.). Because of the decline in passenger volume, annual revenue from these sources declined by approximately $20 million or 10% over a two year period from FY 2008 to FY 2010.

Additionally, the CCDOA stated the proposed program is needed to:

to help induce expansion in air carrier operations, and thus promote effective utilization of airside and terminal facilities and generate additional passengers that, in turn, increase non-airline revenues that can be applied to further reduce air carrier costs(.) (T)he Department has developed the Incentive Program to provide temporary relief from fees for increased air service to LAS. The Department views the downturn in operations as a short-term anomaly, and the proposed incentives will be discontinued when traffic is back on track.

In addition to the Petitioner, two other airport operators generally supported the petition or greater flexibility to allow operators to design air service incentive programs. The Wayne County Airport Authority (WCAA) supported the petition in full. The WCAA agreed with Petitioner that the proposal meets the requirements of federal law and grant agreements, is not barred by law or other FAA policies, is not preempted by the Airline Deregulation Act (ADA), and is not discriminatory unless one carrier obtains the incentive and another is denied the incentive. WCAA also supported Petitioner's assertion that the FAA should interpret ''new service'' to include upgauge flights.

The City of St. Louis, owner and operator of Lambert-St. Louis International Airport (STL) generally supported the CCDOA's Petition to use weight-based incentive programs. STL cites its own air carrier use agreement, which allows for mitigation of landing fees with increased levels of total landed weight at the airport. It is important to note that the STL rate structure differs from the Petition because is not an exception nor an incentive but the basic fee structure agreed to by all carriers. Also, the trigger for STL's program is total landed weight at the airport, not an individual carrier's landed weight. However, STL asserts the justification is the same as that in the Petition and supports a weight-based incentive permitted by federal law.

The Airport Council International, North America (ACI–NA), supported the petition and urged FAA to increase ''flexibility in air service incentive programs.'' ACI–NA did not believe the proposal was discriminatory and did not believe it conflicted with Federal law.

Although the American Association of Airport Executives (AAAE) did not specifically state it supported the petition, it did comment that airports should have maximum flexibility to structure incentive plans to attract and retain air service. The FAA views its comments as generally in favor of allowing changes to the FAA's definitions of the type of service that qualify.

Finally, the foreign air carrier, British Airways expressed support for the petition stating that such incentives will encourage carriers to consider increased capacity and/or frequency.

Comments Not Supporting the Petition

The Air Transport Association urged the FAA to deny the petition stating the petition lacked a policy rationale, since the incentive plan is designed only to increase concession revenue from passengers, not to obtain new air service. ATA's also argued that service with more seats is not currently defined as ''new service,'' and should not be so defined, because it is not in itself new entry into new markets. ATA discounts the CCDOA's references to FAA's prior determinations in *Wichita* and *Port of Portland,* and claims these documents no not address the question whether incremental increase in landed weight may be considered new service. ATA also states an incremental increase incentive would be discriminatory, because some carriers will not be able to upgauge.

Both proponents and opponents weighed in on the proposal's compliance with the Airline Deregulation Act of 1978. (Pub. L. 95–504)

A member of the general public objected to the petition stating the benefits provided to carriers will not be passed on to passengers.

B. Summary of Relevant Law, Grant Assurance Obligations and Applicable Policy

Airport sponsors that accept federal funds under the FAA's Airport Improvement Program [49 U.S.C. 47101, *et seq.,* and 49 U.S.C. 40103(e)], agree to a set of standard grant assurances. These include an assurance that airport revenue will be used for the capital and operating costs of the airport or airport system, or certain other purposes. They also include assurances that fees charged air carriers will be reasonable, not unjustly discriminatory, and substantially comparable to fees charged other carriers making similar use of the airport. Additionally, they prohibit exclusive rights and encourage airports to create a fee and rental structure to be as self-sustaining as possible. In reviewing this petition, the FAA determined applicable assurances may include:

Grant Assurance 22, *Economic Nondiscrimination,* implements the provisions of 49 U.S.C. 47107(a)(1) through (6). The intent of the assurance and statute is to address both the reasonableness of airport access and the prohibition of adopting unjustly discriminatory conditions as a potential for limiting access as well as air carrier agreements.

Grant Assurance 23, *Exclusive Rights,* implements the provisions of 49 U.S.C. 40103(e) and 47107(a) (4) and prohibits airport sponsors from granting exclusive rights to airport users.

Grant Assurance 24, *Fee and Rental Structure,* implements Title 49 U.S.C. 47107(a)(13) by addressing self-sustainability. The intent of the assurance and statute is for the airport operator to charge fees that are sufficient to cover as much of the airport's costs as is feasible while maintaining a fee and rental structure consistent with the sponsor's other federal obligations.

Grant Assurance 25, *Airport Revenue Use,* implements Title 49 U.S.C. 47107(b)(1) which requires that grant agreements for airport development grants include an assurance that ''the revenues generated by a public airport will be expended for the capital or operating costs of—(A) The airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.''

In addition to the grant assurance obligations, FAA reviewed the petition's compliance with FAA's *Policy Regarding Airport Rates and Charges* and the Revenue Use Policy.

1. Policy Regarding Airport Rates and Charges (Rates and Charges Policy)

The Department of Transportation published the Rates and Charges Policy on June 21, 1996 (61 FR 31,994), which was amended on July 14, 2008 (73 FR 40,430). The 2008 amendments were intended to provide greater flexibility to operators of congested airports to use landing fees to provide incentives to air carriers to use the airport at less congested times or to use alternate airports to meet regional air service needs. The policy as amended does not specifically refer to incentive programs or fee waivers, but provides in part:

3. Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

2. Policy and Procedures Concerning the Use of Airport Revenue (Revenue Use Policy)

In the FAA Authorization Act of 1994, Congress expressly prohibited ''the use of airport revenues for general economic development, marketing and promotional activities unrelated to airports or airport systems.'' [49 U.S.C. 47107(1)(2)(b)]. In accordance with Congressional direction, the Department of Transportation and the FAA published FAA's *Policy and Procedures Concerning the Use of Airport Revenue.* This policy stood up the air carrier incentive program. Specifically under Section V.A.2, Permitted uses of Airport Revenue, the policy states:

> expenditures for the promotion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. [64 FR 7703]

Section VI.B.12 of the policy, *Prohibited Uses of Airport Revenue,* specifically prohibits the direct subsidy of air carriers with airport revenues, but notes:

> Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. [64 FR 7720]

As stated in the Revenue Use Policy,

> The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. [*See,* 64 FR 7709–7710]

Finally, in its analysis of the petition, the FAA applied the 1978 Airline Deregulation Act (ADA), specifically the preemption provision, [See, 49 U.S.C. 41713(b)] which states that State and local governments are prohibited from enacting or enforcing any provision having the force or effect of law related to a ''price, route, or service of an air carrier.''

C. Discussion/Analysis

FAA's Revenue Use Policy specifically permits airport operators to offer certain limited term incentives, using airport revenue, to air carriers that opt to participate in incentive programs. Each incentive program is developed individually and independently by airport operators; however, the Revenue Use Policy specifically limits the goals of incentive programs to encourage (1) new service and/or (2) competition. Over the past decade, FAA has defined new service to include:

(1) Service to a new airport;

(2) Nonstop service where no nonstop service currently is offered;

(3) New entrant carrier; and/or

(4) Increased frequency of flight(s) to a specific destination.

CCDOA petitioned the FAA to expand the definition of new service to include ''increases in landed weight.'' CCDOA's petition stated an increase in landed weight could result from an increase in the size of the aircraft a carrier uses—also known as ''upgauging''—on existing routes, consolidation of existing flights, and/or added flights. CCDOA requested the FAA amend its existing guidance to make clear that its proposed incentive plan is consistent with Federal law and existing agency policies.

CCDOA did not request FAA amend the Revenue Use Policy; instead, CCDOA asked the FAA make a finding that would expand the agency's interpretation of new service. FAA has the legal authority to amend or modify interpretations of Policy. It is under this authority that the FAA considered CCDOA's petition.

1. Legal Issues

In its request, the CCDOA argues increases in seats through increases in landed weight meets the definition of new air service as prescribed in the Revenue Use Policy. The Revenue Use Policy permits airports to offer incentives to airlines for establishing ''new service'' to (a) increase travel using the airport or (b) promote competition at the airport.

In consideration of CCDOA's request, the FAA has reviewed the petition based on the goals of the air carrier incentive program as defined in the Revenue Use Policy, as well as in accordance with FAA's airport sponsor assurances and the Rates and Charges Policy.

Previously, FAA opined that an addition of seats on existing flights was not new service. Moreover, since the publication of the Revenue Use Policy in 1999, FAA has been requested on several occasions to opine on its definition of ''new service.'' Over the past thirteen years, FAA has defined ''new service'' to include: (a) Service to an airport destination not currently served; (b) nonstop service where no nonstop service is currently offered; (c) new entrant carrier; and/or (d) increased frequency of flights to a specific destination, if incentivized by an airport would clearly set out to achieve the goals of the air carrier incentive program. However based on a thoughtful review, FAA agrees that an increase in seats by adding flights, which results in increases in landed weight, can be regarded as new service.

The petition argues that an airport sponsor should be permitted to offer incentives to air carriers based on increases in landed weight. The FAA separated the petition into two arguments based on comments received and FAA's position that adding seats through adding flights is considered new service. First, the FAA analyzed CCDOA's position that an air carrier should be eligible for incentives solely based on increases in landed weight. Second, FAA analyzed whether increases in passenger yields as a result of increases in landed weight, whether through adding more flights or upgauging existing flights, should be eligible for incentives.

In analyzing the first argument, FAA determined, that air carriers could increase landed weight, yet reduce the number of flights and the number of seats, which amounts jointly and individually to a reduction in service. As such, this argument could actually undermine one of the two goals of the incentive program allotted for under the current Policy (new service or competition).

FAA then analyzed the second argument, limiting the scope of review to the premise that upgauging individual flights may provide more passenger seats to a designated market or to an airline's overall operation, thus potentially increasing use of an airport. Under certain conditions, the FAA has determined such a program may meet the goals of new service and/or competition in conformance with an airport sponsor's federal obligations and existing policy. Adding more passenger seats to an air carrier's existing flight schedule through upgauging may provide more opportunity for the flying public, which the FAA agrees may increase travel using the airport. However, if an airline decides to consolidate a schedule to a given market while adding passenger seats through upgauging, the airline would be reducing service offered to the flying public or limiting air travel options. This is contrary to the goals of the program, which is to encourage new service and increase competition. An existing, and unchallenged definition of new service, is adding new flights to existing routes. Allowing flights to be consolidated on existing routes may result in more seats but fewer travel options for the traveling public. The FAA cannot view actions that actually reduce options to be beneficial to the

traveling public. Therefore, the FAA has determined that such a program may conflict with program goals specifically identified in existing Policy as well as the airport sponsor's grant obligations even conducted without any controls.

Thus FAA reviewed the petition in light of comments received and FAA's existing position, to determine if upgauging with certain conditions would be a viable option for expanding the definition of new service, as the CCDOA requested in its petition. As a stand-alone incentive, upgauging could possibly be viewed as unjustly discriminatory or conferring an exclusive right because some airlines may not have the ability to upgauge based on the fleet of aircraft used to operate. It is important to understand it is not the role of FAA to accommodate the manner in which an airline or any aviation-based service provider structures its enterprise. However, when using airport revenue to incentivize new service, it is the FAA's role to ensure sponsors do so in a manner consistent with their federal obligations, including the Revenue Use Policy. After FAA's extensive review, with consideration of the incentive program's goals, as well as an airport's federal obligation to be not unjustly discriminatory and not to confer an exclusive right, the FAA has determined the definition of new service can be expanded to include upgauging with certain conditions that ensure compliance goals.

In permitting use of airport revenue for incentive programs, the Revenue Use Policy specifically ties the use to the goal of increasing travel or promoting competition at the airport. Thus, when FAA analyzed the argument that upgauging may allow sponsors more options to increase travel and therefore, use of the airport, the FAA recognized the logical conclusion that more seats on larger aircraft would be a potential means to that goal. It is critical to note that the FAA recognizes that the existence of more seats on an existing route does not necessarily result in more passengers. However, the agency has determined that more seats on larger aircraft serving existing routes may indeed allow sponsors to create incentive programs with more options, as noted by many commenters to the petition, in pursuit of the program's goals.

Balancing the sponsors' goal of increasing travel in accordance with its federal obligations and the Revenue Use Policy, with the airline's business decisions, the FAA has determined that an incentive program may include incentives for upgauging as an expanded definition of ''new service'' with certain conditions. The FAA has determined that incentive programs cannot target upgauging as the specific goal of the program; instead, the goal must be expanded or added new service. In the petition before the agency, the measurable goal would be to increase use of the airport by increasing total landed-weight, through upgauging on currently served routes and/or additional flights. Such a program would offer all airlines, regardless of aircraft fleet, the ability to participate and thus meet the airport's obligations under Grant Assurances 22 and 23. Any decreases in service on incentive routes is not eligible for participation in the incentive program.

FAA's granting of the CCDOA Petition in part represents a modification to the agency's interpretation of the definition of ''new service,'' which is not defined in the Revenue Use Policy.

2. Implementation

In granting the CCDOA Petition in part, FAA has determined an incentive program may implement the goal of encouraging new service by offering incentives to air carriers opting to either upgauge existing flights to aircraft offering more seats and/or adding a new flight. When an incentive program allows air carriers the option to upgauge aircraft on existing flights to increase seats and/or adding an additional flight, the FAA has determined such a program may meet the definition of new air service as prescribed in the Revenue Use Policy with certain conditions. Previously, the FAA opined that an addition of seats on an existing flight was not new service. This is a change in interpretation on a definition not defined in the Policy.

An air carrier incentive program that includes the following conditions may achieve the goals of the air carrier incentive program as defined in the Revenue Use Policy, and in accordance with statute cited herein:

- A condition permitting an airport sponsor to use airport revenue as part of a comprehensive incentive program to encourage air carriers to increases seats on existing flights though upgauging must preclude upgauging from being the only component of the incentive program. In other words, upgauging cannot be the stand alone piece of the incentive program. The program must also include offering similarly formulated incentives for adding new flights.
- A condition permitting an airport sponsor to use airport revenue as part of a comprehensive incentive program includes prohibiting air carriers participating in the incentive program from cancelling existing service on the route(s) for which the airport sponsors is offering incentives. To be eligible for incentives to upgauge, an air carrier must demonstrate an increase in service above and beyond the baseline set by the market(s) targeted by the incentive program.
- A condition prohibiting air carriers from receiving incentives for ''new'' flights to other markets targeted under the incentive program when it reduces service in other markets targeted. The goal is for airport sponsor's to increase use of the airport, thus incentivizing carriers for swapping service to extend incentives is not congruent with the airport sponsor's goal.

In its review, FAA agrees air carrier incentive programs should include, as a matter of compliance, a provision to ensure air service is not lost nor substituted. In response to the CCDOA's petition, the FAA agrees that an airport sponsor may exercise oversight and judgment to ensure its air carrier incentive program is administered in a nondiscriminatory manner. Any allegations of unjustly discriminatory treatment or other assurance violations remain within the jurisdiction of the FAA. The oversight described by the CCDOA in its petition would allow the airport operator the ability to set parameters for carriers for certain landed weight of different aircraft type. The FAA believes the manner in which CCDOA plans to implement its oversight on landed weight will achieve the goal of nondiscriminatory application. While the FAA is comfortable with CCDOA's stated intent, the FAA is not opining on the actual implementation of the plan. FAA must remain objective should a complaint be filed alleging inconsistences with CCDOA's plan and federal obligations.

3. Unintended Consequences

The air carrier incentive program was not created to test the upper limit of what a market will yield with respect to the number of passenger seats demanded. As such, an incentive program that allows for upgauging of aircraft must be constructed in a manner that does not allow for a perpetual upgauging of aircraft. Once the incentive period expires, upgauging aircraft as a means of offering new service cannot again be incentivized. This determination is consistent with the Revenue Use Policy and Grant Assurance 24 as it relates to the addition of flights to a markets schedule as well.

While a sponsor's air carrier incentive program may be ongoing for several years, each air carrier's incentive period should be

limited to no more than two years except under special circumstances (e.g., new entrants).

The air carrier incentive program was never intended to be a maximum sustainable market growth-incentive program where airlines would be incentivized to test the limits of a markets demands. Rather the program was offered to airports to encourage airlines to test new markets and offer passengers more travel options and in turn promote more travel using the airport. The limits on allowable incentive periods have been vetted by FAA and deemed reasonable timeframes for airlines to assess the demand for a ''new service'' and evaluate the sustainability to continue that service without incentives in accordance with existing policy, grant assurance obligations, and statute.

III. Conclusion

Incentive programs must walk the fine line between allowing sponsors the ability to enhance the viability of new service through temporary incentives and simply buying increased use of the airport. The air carrier incentive program, as currently constituted, ensures properly structured programs will meet the goals for which an air carrier incentive program is allowed. FAA has viewed the CCDOAs petition in order to ensure its proposal will meet the same goals. As such, FAA agrees that, with certain conditions in place, incentive programs may include opportunities for air carriers to upgauge existing service. The conditions must require flight schedules are not contracted while allowing airlines to receive proportional credit for upgauging existing flight(s) to targeted market(s) within the schedule to provide more capacity.

While FAA agrees to expand its interpretation of ''new service'' to include upgauging with stated parameters as an accepted form of new service, the onus to create an incentive program that is not unjustly discriminatory must be borne by the sponsor responsible for the airport-specific air carrier incentive program. The conditions included within this notice are guidance.

All existing guidance not addressed herein remains applicable. FAA reminds airport sponsors: Incentives must not be offered in an unjustly discriminatory manner; incentives must be applied similarly to similarly situated carriers participating in incentive programs; new entrants are deemed similarly situated to incumbents after one year; and additional incentives for incumbents are limited to one year in accordance with past guidance.

Issued in Washington, DC on April 3, 2012.

Randall Fiertz,

Director, Airport Compliance and Management Analysis.

[FR Doc. 2012–8399 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0048]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ASPIRE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0048. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ASPIRE is:

Intended Commercial Use of Vessel: ''Six pack charter for sport fishing.''

Geographic Region: ''Washington, Oregon, California.'' The complete application is given in DOT docket MARAD–2012–0048 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: April 2, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–8454 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0047]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SIR MARTIN II; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for

such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012 0047. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SIR MARTIN II is:

Intended Commercial Use of Vessel: ''Day charter up to 6 passengers for local area sails. Extended and overnight charter for up to 4 passengers during local area sails and destination voyages.''

Geographic Region: ''Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana and Texas'' The complete application is given in DOT docket MARAD–2012 0047 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: April 3, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–8458 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0046]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BRAVEHEART; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0046. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BRAVEHEART is:

Intended Commercial Use of Vessel: ''Sailing charters and sailing education.''

Geographic Region: ''Michigan, Indiana, Illinois, Wisconsin.''

The complete application is given in DOT docket MARAD–2012–0046 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: April 2, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–8459 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2012 0045]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LOST SOUL; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before May 9, 2012.

ADDRESSES: Comments should refer to docket number MARAD–2012–0045. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W21–203, Washington, DC 20590. Telephone 202–366–5979, Email *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LOST SOUL is:

Intended Commercial Use of Vessel: ''Pleasure charter.''

Geographic Region: ''California, Oregon, Washington.''

The complete application is given in DOT docket MARAD–2012–0045 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

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

By Order of the Maritime Administrator.

Dated: April 3, 2012.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–8457 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0008; Notice 1]

OSRAM SYLVANIA Products Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of Petition.

SUMMARY: OSRAM SYLVANIA Products, Inc.[1] (OSRAM) has determined that certain Type HB2 replaceable light sources, manufactured between September 25, 2011, and October 8, 2011, do not fully comply with paragraph S7.7 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamp, Reflective Devices, and Associated Equipment.* OSRAM has filed an appropriate report dated November 23, 2011[2], pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), OSRAM submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of OSRAM's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Equipment involved: Affected are approximately 40,544 Type HB2 replaceable light sources that were manufactured by OSRAM Sylvania Products, Inc., between September 25, 2011, and October 8, 2011.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject Type HB2 replaceable light sources that OSRAM no longer controlled at the time it determined that the noncompliance existed.

Noncompliance: OSRAM explains that the noncompliance is due to an error in the production facility. Certain Type HB2 replaceable light sources were produced with an incorrect upper beam filament wire which results in an upper beam luminous flux outside (below) the specifications as required in paragraph S7.7 of FMVSS No. 108.

Rule text: Paragraph S7.7 of FMVSS No. 108 requires in pertinent part:

S7.7 Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements:* * *

Summary of OSRAM's Analysis and Arguments:

OSRAM stated its belief that although the subject Type HB2 replaceable light source may not meet the required luminous flux specifications the noncompliance is inconsequential to motor vehicle safety. OSRAM came to this conclusion based on the following results of testing that it conducted on a large sample of lamps using the subject noncompliant Type HB2 replaceable light sources:

[1] OSRAM SYLVANIA Products Inc., is a manufacturer of motor vehicle replacement equipment and is registered under the laws of the state of Delaware.

[2] OSRAM submitted an amended version of the report on January 6, 2012.

(1) In half of the vehicle/lamp applications, the upper beam photometry specified for HB2 lamps will continue to be met,

(2) in the remaining applications, the photometry performance falls just below the specified minimums for HB2 lamps (and in no more than three, but typically just one or two, test points on a per-measured headlamp basis), and

(3) all lamps using the noncompliant bulbs perform at or above the upper beam photometry requirements of other lamp types, such as HB1 and HB5, that are currently permitted by FMVSS 108 and in prevalent use on U.S. roads.

OSRAM also stated that the issue that caused the subject noncompliance has been corrected at the production facility and all products currently being shipped meet the applicable requirements.

In summation, OSRAM believes that the described noncompliance of its Type HB2 replaceable light sources to meet the requirements of FMVSS No. 108 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

DATES: Comment closing date: May 9, 2012.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: April 2, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–8460 Filed 4–6–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1096X]

Georgia Department of Transportation—Abandonment Exemption—in Fulton County, GA

On March 20, 2012,[1] the Georgia Department of Transportation (GDOT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon a 3.12-mile line of railroad between milepost 469.15 and milepost 472.27, which comprises a portion of a line known as the L&N Belt, in Fulton County, Ga. (West End Property). The West End Property traverses United States Postal Service Zip Codes 30310 and 30314, and includes no stations.

In addition to an exemption from the prior approval requirements of 49 U.S.C. 10903, GDOT seeks an exemption from 49 U.S.C. 10904 (offer of financial assistance procedures) and 10905 (public use provisions). In support, GDOT states that, following abandonment, the West End Property would be used in developing the Atlanta BeltLine, an economic development effort that combines transit, green space, trails and new commercial, residential, and public facility development along a 22-mile ring of historic rail segments encircling Atlanta's urban core. Specifically, according to GDOT, the West End Property would be used to develop a transit corridor to accommodate light rail or buses in a fixed guideway, along with a trail and adjacent uses designed to support and be supported by the variety of available transportation modes. These requests will be addressed in a later decision.

GDOT states that, based on information in its possession, the West End Property does not contain federally granted rights-of-way. Any documentation in GDOT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued no later than July 6, 2012.[2]

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any

[1] GDOT submitted its petition on March 15, 2012. However, GDOT acquired the line in December 2001 but did not seek the requisite regulatory authority for this acquisition until February 2012. *See Ga. Dep't of Transp.—Acquis. Exemption—CSX Transp., Inc.,* FD 35591 (STB served Feb. 27, 2012). The acquisition exemption sought by GDOT in Docket No. FD 35591 did not become effective until March 18, 2012, three days after GDOT submitted its petition for abandonment in this proceeding. Thus, on March 28, 2012, GDOT submitted a letter asking the Board to deem GDOT's petition for abandonment exemption to have been filed on March 20, 2012. GDOT's petition is deemed to have been filed on March 20, 2012.

[2] GDOT has requested expedited consideration of its petition.

request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 30, 2012. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1096X, and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Charles A. Spitulnik, Kaplan Kirsch & Rockwell, 1001 Connecticut Ave. NW., Suite 800, Washington, DC 20036. Replies to the petition are due on or before April 30, 2012.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 2, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2012–8423 Filed 4–6–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 6 (Sub-No. 480X)]

BNSF Railway Company—Abandonment Exemption—in Oklahoma County, OK

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon 1.22 miles of rail line extending between milepost 541.69 and milepost 542.91 in Oklahoma City, Oklahoma County, Okla. (the Line).[1] The Line traverses United States Postal Service Zip Codes 73108 and 73109 and includes no stations.

BNSF has certified that: (1) No local traffic has moved over the Line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 USC 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 9, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 19, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 30, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by April 13, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by BNSF's filing of a notice of consummation by April 9, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 3, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk,

[FR Doc. 2012–8424 Filed 4–6–12; 8:45 am]

BILLING CODE 4915–01–P

[1] The Line previously was part of a larger BNSF line that was the subject of a notice of exemption filed in *BNSF Ry.—Aban. Exemption—in Oklahoma County, Okla.,* AB 6 (Sub–No. 430X) (STB served Oct. 13, 2005). By a decision served on June 5, 2008, the Board granted a petition to reopen the proceeding and reject BNSF's notice of exemption as void *ab initio* on the grounds that BNSF had provided service on a portion of the line to the east of the Line here during the two-year period prior to the filing of that notice.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Blocked Persons Pursuant to Executive Order 13067 and Executive Order 13412

SUB-AGENCY: Office of Foreign Assets Control.

ACTION: Notice.

SUMMARY: The Department of Treasury's Office of Foreign Assets Control (''OFAC'') is publishing the names of two entities whose property and interests in property have been unblocked pursuant to Executive Order 13067 of November 3, 1997, ''Blocking Sudanese Government Property and Prohibiting Transactions With Sudan,'' and Executive Order 13412 of October 13, 2006, ''Blocking Property of and Prohibiting Transactions With the Government of Sudan.''

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the entities identified in this notice whose property and interests in property were blocked pursuant to Executive Order 13067 of November 3, 1997, and Executive Order 13412 of October 13, 2006, is effective February 1, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Ave. NW. (Treasury Annex), Washington, DC 20220, Tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

On November 3, 1997 the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13067 (''E.O. 13067''). In E.O. 13067, the President declared a national emergency to deal with the Government of Sudan's continued support of international terrorism; ongoing efforts to destabilize neighboring governments; and the prevalence there of human rights violations, including slavery and the denial of religious freedom. Section 1 of E.O. 13067 blocks, with certain exceptions, all property and interests in property of the Government of Sudan that are in the United States, that hereafter come within the United States, or that hereafter come within the possession or control of United States persons, including their overseas branches. Section 4 defines the term ''Government of Sudan'' to include the Government of Sudan, its agencies, instrumentalities and controlled entities, and the Central Bank of Sudan.

On October 13, 2006, the President, invoking the authority of, *inter alia,* IEEPA, issued Executive Order 13412 (''E.O. 13412''), in order to take additional steps with respect to the national emergency declared in E.O. 13067. Section 1 of E.O. 13412 restates the blocking of the Government of Sudan imposed by E.O. 13067. Section 6 excludes the regional government of Southern Sudan from the definition of the Government of Sudan.

On February 1, 2012, OFAC removed the entities listed below, whose property and interests in property were blocked pursuant to E.O. 13067 and E.O. 13412 from the SDN List:

1. PEOPLE'S CO-OPERATIVE BANK, P.O. Box 922, Khartoum, Sudan; [SUDAN]
2. UNITY BANK, Bariman Avenue, P.O. Box 408, Khartoum, Sudan; Now part of BANK OF KHARTOUM GROUP; [SUDAN]

Dated: January 31, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–8409 Filed 4–6–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 8, 2012.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be held Tuesday, May 08, 2012, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8411 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 31, 2012 and Friday, June 1, 2012.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be held Thursday, May 31, 2012, at 8 a.m. to 4:30 p.m. and Friday, June 1st from 8 a.m. to 12:00 noon Pacific Time at TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. The public is invited to make oral comments or submit written statements for consideration. Notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8415 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Return Processing Delays Project Committee will be held Tuesday, May 01, 2012, at 9:30 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notifications of intent to participate must be made with Ms. Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8417 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 23, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, May 23, 2012, 2 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS topics.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8419 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 1, 2012.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be held Tuesday, May 1, 2012, at 11 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8421 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 3 and Friday, May 4, 2012.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be

held Thursday, May 3, 2012 from 8 a.m. to 4:30 p.m. and Friday, May 4, 2012 from 8 a.m. to 12 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8420 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 1, 2012 and Wednesday May 2, 2012.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be held Tuesday, May 1, 2012, at 8 a.m. to 4:30 p.m. and Wednesday, May 2, 2012 from 8 a.m. to 12 p.m. Eastern Time at 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. The public is invited to make oral comments or submit written statements for consideration. Notifications of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 26, 2012.

Louis Morizio,

Acting TAP Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8418 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 8, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be held Tuesday, May 08, 2012, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the web site: *http://www.improveirs.org*.

The agenda will include various IRS Issues

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8416 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 15, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be held Tuesday, May 15, 2012, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8414 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service; Open Meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday May 24 and Friday, May 25, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be held Thursday, May 24 from 8 a.m. to 5 p.m. and Friday, May 25 from 8 a.m. to Noon Central Time at 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8412 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 3, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be held Thursday, May 03, 2012 at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: March 28, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–8413 Filed 4–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

VA Directive 0005 on Scientific Integrity: Availability for Review and Comment

AGENCY: Office of Policy and Planning, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This **Federal Register** Notice announces an opportunity for public review and comment on the Draft Department of Veterans Affairs (VA) Directive 0005 on Scientific Integrity. The Draft Directive incorporates the principles of scientific integrity contained in the Presidential Memorandum of March 9, 2009, and the Director, Office of Science and Technology Policy's Memorandum of December 17, 2010, on scientific integrity. It addresses how VA ensures quality science in its methods, review, policy application, and information dissemination.

DATES: Written comments on the Draft VA Directive 0005 on Scientific Integrity must be received on or before May 24, 2012.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* or by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''Draft VA Directive 0005: Scientific Integrity.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Call (202) 461–4902 for an appointment. Those without computer access may call Dr. Billy Jones at (202) 368–5836 to request a copy of the Draft Directive.

FOR FURTHER INFORMATION CONTACT: Billy E. Jones, MD, Senior Advisor to the Assistant Secretary for Policy and Planning (008), Department of Veterans Affairs, at 202–461–5762. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

The Presidential Memorandum on Scientific Integrity and the Office of Science and Technology Policy 2010 guidance memorandum on scientific integrity call for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes.

The Draft VA Directive 0005 on Scientific Integrity:

☐ Fosters a culture of transparency, integrity, and ethical behavior in the development and application of scientific and technological findings in VA;

☐ Protects the development, application, and dissemination of scientific and technological information from inappropriate political or commercial influence;

☐ Ensures that selection and retention of candidates for science and technology positions are based on demonstrated knowledge, potential, credentials, experience, and integrity;

☐ Prohibits suppression or alteration of scientific and technological finds for political purposes;

☐ Affords whistleblower protections to employees who have scientific integrity concerns;

☐ Upholds professional and governmental standards for the conduct of research, including the protection of human subjects, laboratory animal welfare, research safety and security; research information protection and privacy; and research integrity;

☐ Promotes free flow and exchange of scientific and technological information within the scientific and medical communities, as well as to Veterans and the general public;

☐ Ensures that clinical care, health care operations, and public health decisions are informed by sound scientific data and rigorous scientific analysis;

☐ Upholds the independence, transparency, and diversity of Scientific Advisory Committees;

☐ Encourages the full participation of employees in scientific and professional societies, publication and presentation of scientific and technological findings in scientific journals, and at professional meetings.

In order to reach as many members of the public as possible, the Draft VA Directive 0005 on Scientific Integrity is available for public review and comment at *http://www.va.gov/health/scint.asp.* After the public comment period for this notice has closed, VA will make any necessary adjustments to the Draft Directive and publish a second notice responding to those comments.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on April 3, 2012, for publication.

Dated: April 4, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–8434 Filed 4–6–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 68 April 9, 2012

Part II

Department of Agriculture

Forest Service

36 CFR Part 219

National Forest System Land Management Planning; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AD02

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule and record of decision.

SUMMARY: The U.S. Department of Agriculture is adopting a new National Forest System land management planning rule (planning rule). The new planning rule guides the development, amendment, and revision of land management plans for all units of the National Forest System (NFS), consisting of 155 national forests, 20 grasslands, and 1 prairie.

This planning rule sets forth process and content requirements to guide the development, amendment, and revision of land management plans to maintain and restore NFS land and water ecosystems while providing for ecosystem services and multiple uses. The planning rule is designed to ensure that plans provide for the sustainability of ecosystems and resources; meet the need for forest restoration and conservation, watershed protection, and species diversity and conservation; and assist the Agency in providing a sustainable flow of benefits, services, and uses of NFS lands that provide jobs and contribute to the economic and social sustainability of communities.

DATES: *Effective Date:* This rule is effective May 9, 2012.

ADDRESSES: For more information, including a copy of the final PEIS, refer to the World Wide Web/Internet at: *http://www.fs.usda.gov/planningrule.* More information may be obtained on written request from the Director, Ecosystem Management Coordination Staff, Forest Service, USDA Mail Stop 1104, 1400 Independence Avenue SW., Washington, DC 20250–1104.

FOR FURTHER INFORMATION CONTACT: Ecosystem Management Coordination staff's Assistant Director for Planning Ric Rine at (202) 205–1022 or Planning Specialist Regis Terney at (202) 205–0895.

SUPPLEMENTARY INFORMATION:

Decision

This document records the decision that the U.S. Department of Agriculture (USDA) reached in determining the alternative that best meets the purpose and need for a new planning rule. The USDA based this decision on the analyses presented in the *Final Programmatic Environmental Impact Statement, National Forest System Land Management Planning* (USDA, Forest Service, 2011) (PEIS). The PEIS was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA).

For the reasons set out in the discussion that follows, the Department hereby promulgates a regulation establishing a National Forest System land management planning rule as described in Modified Alternative A of the *National Forest System Land Management Planning Rule Final Programmatic Environmental Impact Statement* (USDA Forest Service, 2011) with clarifications, and the supporting record. The planning rule describes the process the Forest Service will use for development, amendment, and revision of national forest and grassland plans. It also sets out requirements for the structure of those plans and includes requirements for their content.

This planning rule replaces the final 2000 land management planning rule (2000 rule) as reinstated in the Code of Federal Regulations on December 18, 2009 (74 FR 67062).

Outline

The following outline shows the contents of the preamble which states the basis and purpose of the rule, includes responses to comments received on the proposed rule, and serves as the record of decision for this rulemaking.

Introduction and Background
Purpose and Need for the New Rule
Public Involvement
Summary of Alternatives Considered by the Agency
The Environmentally Preferred Alternative
Decision and Rationale
Compliance with the Endangered Species Act of 1973, as Amended
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Introduction and Background

The mission of the Forest Service is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. Responsible officials for each national forest, grassland, and prairie will follow the direction of the planning rule to develop, amend, or revise their land management plans.

The new planning rule provides a process for planning that is adaptive and science-based, engages the public, and is designed to be efficient, effective, and within the Agency's ability to implement. It meets the requirements under the National Forest Management Act (NFMA), the Multiple-Use Sustained-Yield Act (MUSYA), and the Endangered Species Act, as well as all other legal requirements. It was also developed to ensure that plans are consistent with and complement existing, related Agency policies that guide management of resources on the National Forest System (NFS), such as the Climate Change Scorecard, the Watershed Condition Framework, and the Sustainable Recreation Framework.

The planning rule framework includes three phases: Assessment, plan development/amendment/revision, and monitoring. The framework supports an integrated approach to the management of resources and uses, incorporates the landscape-scale context for management, and will help the Agency to adapt to changing conditions and improve management based on new information and monitoring. It is intended to provide the flexibility to respond to the various social, economic, and ecologic needs across a very diverse system, while including a consistent set of process and content requirements for NFS land management plans. The Department anticipates that the Agency will use the framework to keep plans current and respond to changing conditions and new information over time.

The planning rule requires the use of best available scientific information to inform planning and plan decisions. It also emphasizes providing meaningful opportunities for public participation early and throughout the planning process, increases the transparency of decision-making, and provides a platform for the Agency to work with the public and across boundaries with other land managers to identify and share information and inform planning.

The final planning rule reflects key themes expressed by members of the public, as well as experience gained through the Agency's 30-year history

with land management planning. It is intended to create a more efficient and effective planning process and provide an adaptive framework for planning.

This final planning rule requires that land management plans provide for ecological sustainability and contribute to social and economic sustainability, using public input and the best available scientific information to inform plan decisions. The rule contains a strong emphasis on protecting and enhancing water resources, restoring land and water ecosystems, and providing ecological conditions to support the diversity of plant and animal communities, while providing for ecosystem services and multiple uses.

The 1982 planning rule procedures have guided the development, amendment, and revision of all existing Forest Service land management plans. However, since 1982 much has changed in our understanding of land management planning. The body of science that informs land management planning in areas such as conservation biology and ecology has advanced considerably, along with our understanding of the values and benefits of NFS lands, and the challenges and stressors that may impact them.

Because planning under the procedures of the 1982 rule is often time consuming and cumbersome, it has been a challenge for responsible officials to keep plans current. Instead of amending plans as conditions on the ground change, responsible officials often wait and make changes all at once during the required revision process. The result can be a drawn-out, difficult, and costly revision process. Much of the planning under the 1982 rule procedures focused on writing plans that would mitigate negative environmental impacts. The protective measures in the 1982 rule were important, but the focus of land management has changed since then and the Agency needs plans that do more than mitigate harm. The Agency needs a planning process that leads to plans that contribute to ecological, social, and economic sustainability to protect resources on the unit and maintain the flow of goods and services from NFS lands on the unit over time.

The NFMA requires the Agency to develop a planning rule ''under the principles of the Multiple-Use Sustained-Yield Act of 1960, that set[s] out the process for the development and revision of the land management plans, and the guidelines and standards'' (16 U.S.C. 1604(g)). The Forest Service fulfills this requirement by codifying a planning rule at Title 36, Code of Federal Regulations, part 219 (36 CFR part 219), which sets requirements for land management planning and content of plans.

In 1979, the Department issued the first regulations to comply with this statutory requirement. The 1979 regulations were superseded by the 1982 planning rule, which has formed the basis for all existing Forest Service land management plans.

In 1989, the Agency initiated a comprehensive Critique of Land Management Planning, which identified a number of adjustments that were needed to the 1982 planning rule. The Critique found that the 1982 planning rule process was complex, costly, lengthy, and cumbersome for the public to provide input. The recommendations in the Critique and the Agency's own experiences with planning led to the Agency issuing an advance notice of proposed rulemaking for a new planning rule in 1991 and proposing a new, revised rule initially in 1995 and again in 1999.

The Department worked with a committee of scientists to develop a final rule, which was issued in 2000. The 2000 revision of the planning rule described a new agenda for NFS planning; made sustainability the foundation for NFS planning and management; required the consideration of the best available scientific information during the planning and implementation process; and set forth requirements for implementation, monitoring, evaluation, amendment, and revision of land management plans. However, a review in the spring of 2001 found that the 2000 rule was costly, complex, and procedurally burdensome. The results of the review led the Department to issue a new planning rule in 2005 and a revised version again in 2008; however, the U.S. District Court for Northern District of California invalidated each of those rules on procedural grounds (*Citizens for Better Forestry* v. *USDA,* 481 F. Supp.2d 1059 (N.D. Cal. 2007) (2005 rule); *Citizens for Better Forestry* v. *USDA,* 632 F. Supp.2d 968 (N.D. Cal. 2009) (2008 rule)).

This final rule replaces the 2000 rule. Because the 2000 rule was the last promulgated planning rule to take effect and not be set aside by a court, the 2000 rule is the rule currently in effect. While the 2000 planning rule replaced the 1982 rule in the Code of Federal Regulations, the transition section of the 2000 rule allowed units to use the 1982 planning rule procedures for plan amendments and revisions until a new planning rule was issued. After the 2008 rule was invalidated, on December 18, 2009, the Department reinstated the 2000 rule in the Code of Federal Regulations and made technical amendments to update transition provisions as an interim measure to be in effect until a new planning rule was issued (74 FR 67062).

The instability created by these past planning rule efforts has caused delays in planning and confused the public. At the same time, the vastly different context for management and improved understanding of science and sustainability that have evolved over the past three decades have created a need for an updated planning rule that will help the Agency respond to new challenges in meeting management objectives for NFS lands.

This final rule is intended to ensure that plans respond to the requirements of land management that the Agency faces today, including the need to provide sustainable benefits, services, and uses, including recreation; the need for forest restoration and conservation, watershed protection, and wildlife conservation; and the need for sound resource management under changing conditions. The new rule sets forth a process that is adaptive, science-based, collaborative, and within the Agency's capability to carry out on all NFS units. Finally, the new rule is designed to make planning more efficient and effective.

Purpose and Need for the New Rule

The NFMA requires regulations consistent with the principles of the Multiple-Use Sustained-Yield Act of 1960, that set out the process for the development and revision of the land management plans and the guidelines and standards the Act prescribes (16 U.S.C. 1604(g)). The Forest Service's experience, evolving scientific understanding of approaches to land management, changing social demands, and new challenges such as changing climate have made clear the need for a revised rule to more effectively fulfill NFMA's mandate.

On August 14, 2009, Agriculture Secretary Tom Vilsack outlined his vision for the future of our nation's forests, setting forth a direction for conservation, management, and restoration of NFS lands. Secretary Vilsack stated that: ''It is time for a change in the way we view and manage America's forestlands with an eye towards the future. This will require a new approach that engages the American people and stakeholders in conserving and restoring both our National Forests and our privately-owned forests.'' The Secretary emphasized that the Forest Service planning process provides an important means for integrating forest restoration,

climate resilience, watershed protection, wildlife conservation, opportunities to contribute to vibrant local economies, and the collaboration necessary to manage our national forests. ''Our best opportunity to accomplish this is in the developing of a new forest planning rule for our national forests.''

The NFS currently consists of 127 land management plans, 68 of which are past due for revision. Most plans were developed between 1983 and 1993 and should have been revised between 1998 and 2008, based on NFMA direction to revise plans at least once every 15 years. The efforts to produce a new planning rule over the past decade have contributed to the delay in plan revisions. With clarity and stability in planning regulations, land management planning can regain momentum and units will be able to complete revisions more efficiently.

As explained in the Introduction and Background section of this document, the present planning rule is the 2000 planning rule. Under the transition provisions of that rule, the Agency can choose to use either the procedures of the 2000 rule or the planning procedures of the 1982 rule to develop, amend, or revise land management plans. Based on the concerns about implementing the 2000 rule procedures, the Forest Service has been relying upon the 2000 rule's transition provision to develop, amend, and revise land management plans under the 1982 procedures until a new planning rule is in place.

The Forest Service and the Department conclude that the procedures of neither the 2000 rule nor the 1982 rule meet the needs of the Agency today or fulfill the Secretary's vision. Moreover, the Department and the Forest Service have determined that the 2000 rule is beyond the Agency's capability to implement. Even though the Agency has had the option to use the procedures in the 2000 rule, no line officer has chosen to use the 2000 rule to revise or amend a land management plan because the 2000 rule is too costly, complex, and procedurally burdensome. At the same time, the 1982 rule procedures are not current with regard to science, knowledge of the environment, practices for planning and adaptive management, or social values, and are also too complex, costly, lengthy, and cumbersome.

The purpose of, and the need for, a new planning rule is to provide the direction for National Forests and Grasslands to develop, amend, and revise land management plans that will enable land managers to consistently and efficiently respond to social, economic, and ecological conditions.

The Secretary of Agriculture is vested with broad authority to make rules ''to regulate occupancy and use and to preserve [the forests] from destruction'' (16 U.S.C. 551). The MUSYA authorizes and directs that the national forests be managed under the principles of multiple use and to produce sustained yield of products and services. NFMA directs the Secretary to promulgate regulations for the development and revision of land management plans and prescribes a number of provisions that the regulations shall include, but not be limited to (16 U.S.C. 1600(g)). Based on the principles of the MUSYA, the requirements of NFMA, the Secretary's direction and nearly three decades of land management planning experience, the Department and the Forest Service find that a planning rule must address the following eight purposes and needs:

1. Emphasize restoration of natural resources to make our NFS lands more resilient to climate change, protect water resources, and improve forest health.

2. Contribute to ecological, social, and economic sustainability by ensuring that all plans will be responsive and can adapt to issues such as the challenges of climate change; the need for forest restoration and conservation, watershed protection, and species conservation; and the sustainable use of public lands to support vibrant communities.

3. Be consistent with NFMA and MUSYA.

4. Be consistent with Federal policy on the use of scientific information and the Agency's expertise and experience gained in over thirty years of land management planning.

5. Provide for a transparent, collaborative process that allows effective public participation.

6. Ensure planning takes place in the context of the larger landscape by taking an ''all-lands approach.''

7. Be within the Agency's capability to implement on all NFS units; be clear; provide an efficient framework for planning; and be able to be implemented within the financial capacity of the Agency.

8. Be effective by requiring a consistent approach to ensure that all plans address the issues outlined by the Secretary and yet allow for land management plans to be developed and implemented to address social, economic, and ecological needs across the diverse and highly variable systems of the National Forest System.

Public Involvement

Public Involvement in the Development of the Proposed Rule and Draft Environmental Impact Statement (DEIS)

The Department and the Agency engaged in an extensive public outreach and participation process unprecedented for the development of a planning rule. A Notice of Intent (NOI) to prepare a new planning rule and an accompanying draft environmental impact statement (DEIS) was published in the **Federal Register** on December 18, 2009 (74 FR 67165). The NOI solicited public comments on the proposal until February 16, 2010. The notice presented a series of substantive and procedural principles to guide development of a new planning rule. Under each principle, the notice posed several questions to stimulate thoughts and encourage responses. The Forest Service received over 26,000 comments in response to the notice.

The Agency held a science forum on March 29 and 30, 2010, in Washington, DC to ground development of a new planning rule in science and to foster a collaborative dialogue with the scientific community. Panels made up of 21 scientists drawn from academia, research organizations, non-government organizations, industry, and the Federal Government presented the latest science on topics relevant to the development of a new rule for developing land management plans. The format was designed to encourage scientists and practitioners to share the current state of knowledge in key areas and to encourage open dialogue with interested stakeholders.

The Forest Service convened a series of four national roundtables held in Washington, DC during the course of developing the proposed planning rule. The intent was to have a national-level dialogue around the concepts for development of the Forest Service proposed planning rule, to get public input prior to developing the proposed rule. The Forest Service also held 33 regional roundtables during April and May 2010 in the following States: Alaska, Arizona, California, Colorado, Georgia, Idaho, Illinois, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, and Wyoming.

Additionally, the Forest Service Webcast many of the national and regional roundtables, posted materials and summaries of the roundtables online, and hosted a blog to further encourage participation. In all, more than 3,000 members of the public participated in these opportunities to provide their input.

Public Involvement in the Development of the Final Rule and Final Programmatic Environmental Impact Statement (PEIS)

The Department and the Agency used the input provided by the public in response to the NOI and during the roundtables to inform the development of the proposed rule and DEIS. The proposed planning rule and draft programmatic environmental impact statement (PEIS) were published for comment on February 14, 2011 (76 FR 8480). The comment period ran for 90 days through May 16, 2011. The Department received nearly 300,000 comments during the comment period.

Early in the comment period, the Agency held a series of public meetings that provided opportunities for interested persons to ask questions about the proposed rule. The intent of the meetings was to explain the proposed rule and provide information to the public as they developed their comments on the proposed rule. Between March 10, 2011, and April 7, 2001, the Agency held 1 national and 28 regional forums, which reached 72 satellite locations across the country. The national meeting was held in Washington, DC. Regional and satellite meetings were held in the following States: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Tribal Involvement

To ensure Tribes and Alaska Native Corporations were heard in a way that gave recognition to their special and unique relationship with the Federal Government, the Agency provided opportunities for participation and consultation throughout the process.

To get input early in the process, the Agency hosted two national Tribal roundtables conducted via conference call in May and August, 2010. Additionally, six Tribal roundtables were held in California, Arizona, and New Mexico. Tribes and Alaska Native Corporations also participated in many of the national and regional roundtables prior to development of the proposed rule.

On September 23, 2010, the Deputy Chief for the National Forest System sent a letter inviting 564 federally recognized Tribes and 29 Alaska Native Corporations to begin government-to-government consultation on the proposed planning rule. The Agency held 16 consultation meetings across the country with designated Tribal officials in November and December, 2010, prior to the publication of the proposed rule in February, 2011. Tribal consultation continued following the release of the proposed rule, with additional opportunities for Tribal consultation provided in 2011.

During the public comment period on the proposed rule the Forest Service held a Tribal teleconference to discuss with Tribes how their previous comments were addressed in the proposed rule. Sixteen Tribes participated in the discussion and had the opportunity to have their questions answered by members of the rule writing team, the Ecosystem Management Coordination Director, and the Associate Chief of the Forest Service. Additionally consultation with Tribes continued at the local level.

Summaries of public involvement may be viewed at *http://www.fs.usda.gov/planningrule.*

Issues Identified in the Programmatic Environmental Impact Statement (PEIS)

Based on public comments, an interdisciplinary team identified a list of issues to analyze:

- Ecosystem Restoration.
- Watershed Protection.
- Diversity of Plant and Animal Communities.
- Climate Change.
- Multiple Uses.
- Efficiency and Effectiveness.
- Transparency and Collaboration.
- Coordination and Cooperation beyond NFS Boundaries.

The PEIS analyzes six fully developed alternatives (A, Modified A, and B through E), and considered nine additional alternatives that were eliminated from detailed study (40 CFR 1502.14(a)). The six fully developed alternatives, with the exception of Alternative B (No Action), meet all aspects of the purpose and need to varying degrees and are described below. The additional alternatives (Alternatives F through N) were considered but eliminated from detailed study because they did not meet some of the aspects of the purpose and need. Chapter 2 of the PEIS provides a more complete discussion of the disposition of these alternatives.

Summary of Alternatives Considered by the Agency

The following summaries describe each alternative. A comparison of the alternatives is available in Chapter 2 of the PEIS.

Alternative A (Proposed Action and Proposed Planning Rule)

Alternative A uses an adaptive framework. The framework consists of a three-part learning and planning framework to assess conditions and stressors; develop, amend, or revise land management plans based on the need for change; and monitor to test assumptions, detect changes, and evaluate whether progress is being made toward desired outcomes.

Alternative A would make the supervisor of the national forest, grassland, prairie, or other comparable administrative unit the responsible official for approving new plans, plan amendments, and plan revisions.

This alternative would require the responsible official to take science into account in the planning process and would require documentation as to how science was considered.

This alternative would require the responsible official to provide opportunities for public participation throughout all stages of the planning process, and includes requirements for outreach, Tribal consultation, and coordination with other planning efforts. This alternative would require responsible officials to provide formal public notification at various points in the process and to post all notifications online. This alternative requires the responsible official to encourage participation by youth, low-income, and minority populations. Alternative A would explicitly require the responsible official to provide the opportunity to undertake consultation with federally recognized Indian Tribes and Alaska Native Corporations and require the responsible official to encourage participation by interested or affected federally recognized Indian Tribes and Alaska Native Corporations. As part of Tribal participation and consultation, the responsible official would invite Tribes to share native knowledge during the planning process. Alternative A would require that the responsible official coordinate planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian Tribes.

Alternative A would require assessments to identify and evaluate information needed to understand and assess existing and potential future conditions on NFS lands in the context of the broader landscape. These assessments would include a review of relevant information from other governmental or non-governmental assessments, plans, reports, and studies.

Alternative A would require plans to include five plan components—desired conditions, objectives, standards, guidelines, and suitability of areas for resource management. Plans could also include goals as option plan components. Alternative A includes direction for other content required in the plan, including the monitoring program.

Alternative A would require plan components to provide for the maintenance or restoration of the structure, function, composition, and connectivity of healthy and resilient aquatic ecosystems and watersheds in the plan area. In addition, Alternative A would include plan components to guide the unit's contribution to social and economic sustainability.

Under Alternative A, plan components for ecological sustainability would be required to take into account air quality, landscape-scale integration of ecosystems, system drivers and stressors including climate change, and opportunities to restore fire adapted ecosystems. Plan components would also be designed to maintain, protect and restore various ecosystem elements including soil, water, and riparian areas.

Alternative A would require plan components for the conservation of all native aquatic and terrestrial species with the aim of providing the ecological conditions to contribute to the recovery of federally listed threatened and endangered species, conserve candidate species, and maintain viable populations of species of conservation concern. Alternative A would also require monitoring of select ecological and watershed conditions and focal species to assess progress towards meeting diversity and ecological sustainability requirements.

Alternative A would require that plans provide for multiple uses and ecosystem services, considering a full range of resources, uses, and benefits relevant to the unit, as well as stressors, and other important factors.

Alternative A would require plan components for sustainable recreation, considering opportunities and access for a range of uses. Recreational opportunities could include non-motorized, motorized, developed, and dispersed recreation on land, water, and air. In addition, plans should identify recreational settings and desired conditions for scenic landscape character.

Alternative A includes requirements for plan components for timber, consistent with the requirements of NFMA.

Alternative A provides an efficient process for amendments, required for any substantive change to plan components, and for administrative changes to make corrections or changes to parts of the plan other than the plan components.

Alternative A requires plan-level and broader-scale monitoring, to inform adaptive management.

Alternative A would require an environmental impact statement for new plans and plan revisions. Plan amendments would require either an environmental impact statement or an environmental assessment, or could be categorically excluded from documentation, based on the significance of effects pursuant to Agency NEPA procedures.

Alternative A would require that the decision document for the plan include the rationale for approval, an explanation of how the plan components meet the requirements for sustainability and diversity, best available scientific information documentation, and direction for project application.

Alternative A requires that projects and activities must be consistent with the plan components, and provides direction for determining consistency. It also requires that other resource plans that apply to the plan area be consistent with the plan components.

The responsible official initiating a plan revision or development of a new plan before Alternative A went into effect would have the option to complete the plan revision or development of the new plan under the prior rule or conform to the requirements of the final rule after providing notice to the public. All plan revisions or new plans initiated after the effective date of the final rule would have to conform to the new planning requirements.

Alternative A includes a severability provision, stating if parts of Alternative A are separately found invalid in litigation, individual provisions of the rule could be severed and the other parts of the rule could continue to be implemented.

Alternative A provides a pre-decisional administrative review (objection) process for proposed plans, plan amendments, and plan revisions. The objection process is based on the objection regulations for certain proposed hazardous fuel reduction projects, found at 36 CFR part 218, and is intended to foster continued collaboration in the administrative review process.

The complete text of Alternative A is provided in Appendix A of the PEIS.

Reason for non-selection: Alternative A meets the purpose and need and responds to the significant issues displayed in the PEIS in a manner very similar to Modified Alternative A. The Department received a large number of public comments on Alternative A including suggestions about how to change Alternative A, improve clarity, and better align the text of the alternative with the Department's intent as described in the preamble for the proposed rule. The Department developed Modified Alternative A after considering public comments. Modified Alternative A is described below. Alternative A was not selected because the Agency developed Modified Alternative A in response to public comment. For this reason, Alternative A was not selected as the final rule.

Modified Alternative A (Final Rule)

Modified Alternative A, with clarifications, was selected as the final rule, (see the Decision and Rationale section of this document).

Modified Alternative A includes the same concepts and underlying principles as Alternative A, and retains much of the same content. However, a number of changes to the rule text and organization have been made, based on public comment on the proposed rule (Alternative A) and the DEIS. The Forest Service considered the available option of replacing the text of Alternative A with the text of Modified Alternative A in the PEIS. However, because Modified Alternative A looks different than Alternative A, the Agency included it as a new alternative for transparency and for the ease of the reviewer in comparing the proposed rule with the final preferred alternative.

Modified Alternative A uses an adaptive framework for planning. The framework consists of a three-part learning and planning framework to assess information relevant to the plan area, develop, amend, or revise land management plans based on the need for change, and monitor to test assumptions, detect changes, and evaluate whether progress is being made toward desired outcomes.

Modified Alternative A would make the supervisor of the national forest, grassland, prairie, or other comparable administrative unit the responsible official for approving new plans, plan amendments, and plan revisions. The Chief would be required to establish a national oversight process for consistency and accountability.

Modified Alternative A would require the responsible official to use the best available scientific information to inform the planning process, plan components, and other plan content including the monitoring program, and

includes requirements for documentation of how the best available scientific information was used to inform the plan decision.

Modified Alternative A would require the responsible official to provide opportunities for public participation throughout all stages of the planning process, and includes requirements for outreach, Tribal consultation, and coordination with other planning efforts. Modified Alternative A requires the responsible official to encourage participation by youth, low-income, and minority populations. Modified Alternative A would explicitly require the responsible official to provide the opportunity to undertake consultation with federally recognized Indian Tribes and Alaska Native Corporations and require the responsible official to encourage participation by interested or affected federally recognized Indian Tribes and Alaska Native Corporations. As part of Tribal participation and consultation, the responsible official would invite Tribes to share native knowledge during the planning process. Modified Alternative A would require that the responsible official coordinate planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian Tribes.

Modified Alternative A would require assessments to rapidly identify and evaluate existing information relevant to the plan area to understand and assess existing and potential future conditions on NFS lands in the context of the broader landscape, focused on a set of topics that relate to the requirements for plan components and other plan content. These assessments would include a review of relevant information from other governmental or non-governmental assessments, plans, reports, and studies.

Modified Alternative A would require plans to include five plan components—desired conditions, objectives, standards, guidelines, and suitability of areas for resource management. Plans could also include goals as option plan components. Modified Alternative A includes direction for other content required in the plan, including the monitoring program.

Modified Alternative A would require plan components to provide for the maintenance or restoration of the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area. In addition, Modified Alternative A would include plan components to guide the unit's contribution to social and economic sustainability.

Under Modified Alternative A, plan components for ecological integrity would be required to take into account the interdependence of ecosystems, impacts from and to the broader landscape, system drivers and stressors including climate change, and opportunities to restore fire adapted ecosystems and for landscape scale restoration. Plan components would be also be required to maintain or restore air, soil and water resources, and to maintain or restore the ecological integrity of riparian areas.

Modified Alternative A would require that plans use a complementary ecosystem and species-specific approach to provide for the diversity of plant and animal communities and maintain the persistence of native species in the plan area. Ecosystem plan components would be required for ecosystem integrity and diversity, along with additional, species-specific plan components where necessary to provide the ecological conditions to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain viable populations of species of conservation concern. Modified Alternative A would also require monitoring of select ecological and watershed conditions and focal species to assess progress towards meeting diversity and ecological sustainability requirements.

Modified Alternative A would require that plans provide for ecosystem services and multiple uses, considering a full range of resources, uses, and benefits relevant to the unit, as well as stressors and other important factors.

Modified Alternative A would require plan components for sustainable recreation, including recreation settings, opportunities, access; and scenic character. Recreational opportunities could include non-motorized, motorized, developed, and dispersed recreation on land, water, and air.

Modified Alternative A includes requirements for plan components for timber management, consistent with the requirements of NFMA.

Modified Alternative A provides an efficient process for amendments, required for any substantive change to plan components, and for administrative changes to make corrections or changes to parts of the plan other than the plan components.

Modified Alternative A requires plan-level and broader-scale monitoring to inform adaptive management.

Modified Alternative A would require an environmental impact statement for new plans and plan revisions. Plan amendments would require either an environmental impact statement or an environmental assessment, or could be categorically excluded from documentation, based on the significance of effects pursuant to Agency NEPA procedures.

Modified Alternative A would require that the decision document for the plan include the rationale for approval; an explanation of how the plan components meet the requirements for sustainability, diversity, multiple use and timber; best available scientific information documentation; and direction for project application.

Modified Alternative A requires that projects and activities must be consistent with the plan components, and provides direction for determining consistency. It also requires that other resource plans that apply to the plan area be consistent with the plan components.

Modified Alternative A would require responsible officials to provide formal public notification at various points in the process and to post all notifications online.

The responsible official initiating a plan revision or development of a new plan before Modified Alternative A went into effect would have the option to complete the plan revision or development of the new plan under the prior rule or conform to the requirements of the final rule after providing notice to the public. All plan revisions or new plans initiated after the effective date of the final rule would have to conform to the new planning requirements.

Modified Alternative A includes a severability provision, stating if parts of Alternative A are separately found invalid in litigation, individual provisions of the rule could be severed and the other parts of the rule could continue to be implemented.

Modified Alternative A provides a pre-decisional administrative review (objection) process for proposed plans, plan amendments, and plan revisions. The objection process is based on the objection regulations for certain proposed hazardous fuel reduction projects, found at 36 CFR part 218, and is intended to foster continued collaboration in the administrative review process.

As is clear from this summary, Modified Alternative A includes the same concepts and underlying principles as Alternative A, and retains much of the same content. However, a number of changes to the rule text and organization were made based on public comment on the proposed rule (Alternative A) and the DEIS.

Many people commented that the proposed rule lacked clarity and was ambiguous in places. Others felt that the intent stated in the preamble of the proposed rule was at times not reflected in the actual text of the proposed rule itself. They were concerned that this ambiguity would lead to inconsistent implementation of the rule and that the intent as expressed in the preamble would not be realized. Modified Alternative A rewords the text in a number of places to improve clarity and better reflect the Department's intent as stated in the preamble to the proposed rule.

There are also a number of changes to the process and content requirements of Alternative A, to address certain concerns raised by the public, reduce process, and make other modifications in response to public comments. A complete description of these changes is provided in the Response to Comments section of this document.

A detailed analysis was conducted to determine if there were any difference in programmatic effects between Alternative A and Modified Alternative A. Because Modified Alternative A was developed to reflect the intent of Alternative A, there were very few differences in programmatic effects between the two alternatives. The few differences in programmatic effects between Alternative A and Modified Alternative A were to plan content and the planning process (requirements for assessments, documentation, notification, plan components) or to the costs of implementation. Any differences in effects to resources cannot be determined at this programmatic level. However, the Department concludes the added clarity in Modified Alternative A will lead to more consistent implementation of the rule.

The full text of Modified Alternative A can be found in Appendix I of the PEIS and is set out as the final rule below. A detailed description of changes to Alternative A that led to Modified Alternative A can be found in the Response to Comments section of this document and in Appendix O of the PEIS. An analysis of the effects of Modified Alternative A has been included in Chapter 3 of the PEIS.

Alternative B (No Action)

The ''No Action'' alternative, as stated by the Council on Environmental Quality, ''may be thought of in terms of continuing with the present course of action until that action is changed'' (Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 FR 18026, 18027 (March 23, 1981)). The ''No Action'' alternative is the 2000 planning rule, which, since the 2008 rule was set aside by court order, is the current rule (see 74 FR 67059 (December 18, 2009)). If the Department chooses to take no action, the 2000 rule would remain in effect. However, the ''present course of action'' under the 2000 rule is not to use the 2000 rule in its entirety but to use its transition provisions at 36 CFR 219.35, which allow use of the 1982 rule procedures to develop, amend, and revise land management plans until a new planning rule is in place. Since identifying a set of issues with the 2000 rule provisions, as explained in the PEIS at Chapter 1 and in the discussion section of Alternative F, the Forest Service has been relying upon the 2000 rule's transition wording at § 219.35 to use the 1982 rule procedures to develop, amend, and revise land management plans.

The 1982 rule, as amended, is in Appendix B of the PEIS. However, only the provisions of that rule applicable to the development, amendment, and revision of land management plans are available for use pursuant to 36 CFR 219.35 of the current (2000) rule. The 1982 rule procedures require integration of natural resource planning for national forests and grasslands, by including requirements for integrated management of timber, range, fish and wildlife, water, wilderness, and recreation resources, with resource protection activities such as fire management, and the use of other resources such as minerals.

An appeal process has been used throughout the life of the 1982 planning rule. Under § 219.35 of the current (2000) rule, responsible officials have the option of using either a post-decisional appeal process or a pre-decisional objection process for challenging plan approval decisions.

The 1982 rule procedures require regional foresters to be the responsible official for approval of new plans and plan revisions.

Alternative B would continue to require an environmental impact statement for new plans and plan revisions. Documentation for plan amendments would continue to be determined by the significance of effects pursuant to Agency NEPA procedures and could, therefore, range from categorical exclusions to environmental impact statements.

Rule text for this alternative is provided in Appendices B, C, and D of the PEIS, which contain planning provisions, transition provisions, and administrative review provisions respectively.

Reason for non-selection: Alternative B is the no action alternative. The 1982 rule procedures are not current with regard to science, knowledge of the environment, practices for planning and adaptive management, or social values, and are unduly complex, costly, lengthy, and cumbersome. For those reasons, the Agency has actively been trying to promulgate a new planning rule to replace the 1982 planning procedures for over a decade (see Introduction and Background section above).

Many plans recently revised under the 1982 planning procedures reflect elements of the purpose and need such as emphasizing restoration, addressing climate change, using a coarse-filter/fine-filter approach for maintaining species diversity, and using a collaborative approach to planning. However, the 1982 planning procedures do not require consideration of these and other important elements in planning that reflect current science, Agency expertise, and best practices in planning. This has resulted in inconsistent incorporation of the elements of the purpose and need in plans.

Alternative B reflects an approach to land management planning that focused on producing outputs (for example, board feet of timber, recreation visitor days, and animal months of grazing) and mitigating the effects of management activities on other resources. The Agency recognizes and supports the importance, value, and legal responsibility of providing for multiple use purposes. Timber, grazing, recreation, and other multiple uses supported on NFS lands provide jobs and income to local communities, and products used by all Americans. However, land management planning today focuses on managing toward desired conditions, or outcomes, rather than focusing simply on outputs.

Outcome-based planning shifts the focus from how to get something done to why it is done. In contemporary planning, outputs are services that are generated as projects and activities are carried out that lead to desired outcomes on the ground. Outcome based planning is well supported by the Agency's experience in land management planning. This approach to planning is also well supported by other land and urban planning agencies at all scales—from urban planning for small cities to international level planning efforts. It is also extensively used in the fields of education, health care, economics, and others. Outcome based planning can and does occur under

Alternative B. However, this approach is not required under this alternative.

Alternative B does not meet several elements of the purpose and need. Alternative B does not:

• Emphasize restoration of natural resources to make our NFS lands more resilient to climate change, protect water resources, and improve forest health.

• Ensure all plans will be responsive to issues such as the challenges of climate change; the need for forest restoration and conservation, and watershed protection.

• Be consistent with Federal policy on the use of scientific information and the Agency's expertise and experience gained in more than 30 years of land management planning.

• Ensure planning takes place in the context of the larger landscape by taking an ''all-lands approach.''

Alternative B has also proven costly to implement. The 1982 planning procedures require complex analysis processes, such as benchmark analysis, resulting in plan revisions that have, on average, taken 5 to 7 years to complete. In 1989, the Forest Service, with the assistance of the Conservation Foundation, conducted a comprehensive review of the planning process and published the results in a summary report, ''Synthesis of the Critique of Land Management Planning'' (*http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5127602.pdf*). The Critique found that the planning process of the 1982 rule was very complex, had significant costs, took too long, and was too cumbersome.

Finally, Alternative B includes planning procedures that do not reflect current science or result in unrealistic or unattainable expectations because of circumstances outside of the Agency's control, particularly for maintaining the diversity of plant and animal species. The 1982 rule at 36 CFR 219.19 requires that fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area. These requirements do not recognize that there are limitations on the Agency's authority and the inherent capability of the land. In addition, these requirements do not reflect the most current science. For example:

(1) At times, circumstances that are not within the *authority* of the Agency limit the Agency's ability to manage fish and wildlife habitat to insure the maintenance of a viable population of a species within the plan area, such as:

• Forest clearing in South America—South American forests provide important wintering areas for many Neotropical birds that nest in North America. The clearing of these forests for agricultural purposes poses a serious threat to the long-term viability of the Cerulean warbler and the ability of national forests in the southern Appalachian Mountains to maintain populations of this species.

• Hydropower facilities in the Pacific Northwest and off-shore fishing harvest practices—These facilities and practices are primary downstream threats to Chinook salmon populations whose spawning beds may occur on stream reaches within national forests in the Intermountain West, thus affecting the ability of national forests within this salmon's range to maintain viable populations of this species on their respective units.

• Land use patterns on private lands within and adjacent to NFS units, such as the continuing agricultural uses and urbanization that is occurring east of the Rocky Mountains—habitat fragmentation as a result of these changes reduces available habitat and further isolates existing swift fox populations. This affects the ability of national grasslands in eastern Colorado to maintain viable populations of this species.

(2) At times, it may be beyond the Agency's authority to manage habitat to insure the maintenance of a viable population of a species within the plan area, given that the Agency must comply with all applicable laws and regulations. An example would be when efforts to maintain the habitat conditions necessary for a viable population of one species would jeopardize an endangered or threatened species, in violation of the Agency's statutory obligations under the ESA. Another example would be when maintaining the habitat conditions necessary for a viable population of one species would consume the resources available to a unit to the point of precluding other activities from occurring on the unit that are necessary to comply with independent statutory or regulatory requirements.

(3) Examples of circumstances that are not consistent with the *inherent capability* of the plan area that limit the Agency's ability to manage fish and wildlife habitat to insure the maintenance of a viable population of a species within the plan area include:

• Where a species is inherently rare because its members occur at low numbers and are wide ranging individuals. For such a species the number of breeding individuals that may occur on an individual national forest may be too small to be considered a viable population. The wolverine of the northern Rocky Mountains is such a species.

• Plan areas that lack sufficient land area with the ecological capacity to produce enough habitat to maintain a viable population within the plan area. An example is the Kisatchie National Forest's inability to maintain a viable population of swallow-tailed kite on the Forest due to very limited amounts of land area ecologically capable of producing broad bottomland hardwood and cypress swamp habitats.

• Water quality conditions in Appalachian Mountain streams that provide habitat for eastern brook trout have been altered through acid deposition, due to past and current acid rain, rendering many of them unsuitable for brook trout and compromising the ability of some Appalachian national forests to maintain viable populations of this species.

(4) Sometimes a combination of a lack of authority and the inherent capability of the land limit the Agency's ability to manage fish and wildlife habitat to ''*insure* [a vertebrate species'] continued existence is well distributed in the planning area,'' for example, a federally listed threatened or endangered species may face a combination of stressors such that a population may no longer be viable and whose recovery, in most cases, cannot be achieved within the boundaries of a single unit.

(5) An example of an approach included in the 1982 requirements that is no longer supported by the best available scientific information is the concept of management indicator species (MIS). The 1982 rule is largely reliant on the ability of selected MIS and their associated habitat conditions to adequately represent all other vertebrates in the plan area for assessing vertebrate species viability. Even though the process of assessing and selecting MIS has evolved, the ability of a species or species group, on its own, to adequately represent all associated species that rely on similar habitat conditions is now largely unsupported in the scientific literature.

For these reasons Alternative B was not selected as the final rule.

Alternative C

Alternative C was developed to meet the minimum requirements of NFMA, with additional provisions narrowly designed to meet the purpose and need for this rule-making effort.

Provisions to meet the purpose and need, but not otherwise required by NFMA, were included in this alternative to ensure that plans would be responsive to the challenges of climate change, the need for forest restoration, and to ensure the sustainable use of NFS lands to support vibrant communities. The full text of Alternative C is displayed in Appendix E of the PEIS. Specifically, the multiple uses provision in this alternative at § 219.10 requires plan components to include guidance to identify and consider climate change, forest restoration and conservation, and social and economic elements of sustainability to support vibrant rural communities. Provisions were also added to ensure that plans would be developed in a collaborative manner. The public participation provision in this alternative at § 219.4 requires the responsible official to use a collaborative and participatory approach to land management planning. The same provisions for pre-decisional objections found in Alternative A are also included in this alternative.

Unlike the other alternatives considered in detail, this alternative would not explicitly require preparation of an environmental impact statement for development of a new plan or for a plan revision. Instead, this alternative would rely on Agency NEPA implementing procedures at 36 CFR part 220 to determine the level of environmental analysis and documentation. Similar to other alternatives considered in detail, documentation for plan amendments would be determined by the significance of effects pursuant to Agency NEPA procedures and could, therefore, range from categorical exclusions to environmental impact statements.

Reason for non-selection: Alternative C imposes the fewest specific requirements for the planning process and plan content of all alternatives analyzed in detail. This alternative reflects the opposite end of the spectrum from Alternative E (the most prescriptive of the alternatives). Under Alternative C the process of plan development, amendment, and revision would be largely guided by the Forest Service Directives System. The result of having few requirements in a rule is greater uncertainty as to what the effects on plan content and the planning process would be and as a result, greater uncertainty as to potential effects to resources over time.

Under Alternative C, the Agency would expect a range of results: The range might vary from an expedited planning process producing very streamlined plans on some units to a planning process and plans that are similar to those plans that have been recently revised using the 1982 planning procedures on other units. There would be no certainty with regard to the inclusion of any plan components beyond the minimum required by this Alternative, and a potential lack of consistency across the National Forest System.

A similar approach of developing a streamlined planning rule and relying on the Forest Service directives for details of implementation was used for the 2008 planning rule. The uncertainty of this approach generated a great deal of distrust by many members of the public who felt the full intent of management direction related to planning should be reflected in the rule.

Alternative C does not expressly include an adaptive management framework. The Department concludes that the adaptive management framework of assessing, revising, amending, and monitoring provides a scientifically supported foundation for addressing uncertainty, understanding changes in conditions that are either the result of management actions or others factors, and keeping plans current and relevant.

This is the least costly of all of the alternatives and that is an important consideration. However, there are other alternatives that would reduce the current costs of planning, have broader based public support, and that, in the Department's view, provide for a more appropriate balance between prescriptive and non-prescriptive approaches to planning.

Even though Agency costs are lower under Alternative C compared to other alternatives, the Department is uncertain whether plans will be developed, amended, or revised to the high standards of excellence the Department expects. All units would comply with the requirements of this alternative. However, there is higher uncertainty associated with selecting an alternative with few requirements as the final rule. The level of uncertainty results in a higher risk that the level of compliance with such important elements as monitoring, public participation, species conservation, or watershed protection may not lead to plans that meet the Department's full objectives.

For these reasons, Alternative C was not selected as the final rule.

Alternative D

The full text of Alternative D is displayed in Appendix F of the PEIS. This alternative consists of Alternative A with additional and substitute direction focused on coordination requirements at § 219.4, assessment requirements at § 219.6, sustainability requirements at § 219.8, species requirements at § 219.9, monitoring requirements at § 219.12, and some additional and alternative definitions at § 219.19.

This alternative was designed to evaluate additional protections for watersheds and an alternative approach to addressing the diversity of plant and animal communities. These approaches were addressed together because they both involve requirements for substantive plan content for resource protection, as opposed to other issues that are concerned with procedural requirements.

Unlike Alternative A, this alternative requires establishment of riparian conservation areas and key watersheds, prescribes a 100-foot width for riparian conservation areas, and places the highest restoration priority on road removal in watersheds. Watershed assessments would be required to provide information for defining riparian conservation area boundaries and developing watershed monitoring programs. The alternative would require the identification of key watersheds to serve as anchor points for the protection, maintenance, and restoration of habitat for species dependent on aquatic habitat. It would also require plans to provide spatial connectivity among aquatic and upland habitats.

This alternative would take a somewhat different approach than Alternative A for maintaining viable populations within the plan area. It would require an assessment prior to plan development or revision that identifies: current and historic ecological conditions and trends, including the effects of global climate change; ecological conditions required to support viable populations of native species and desired non-native species within the planning area; and current expected future viability of focal species within the planning area. It would also require that the unit monitoring program establish critical values for ecological conditions and focal species that trigger reviews of planning and management decisions to achieve compliance with the provision for

maintaining viable populations within the plan area.

See Appendix F of the PEIS for Alternative D text in a side-by-side comparison with Alternative A.

Reason for non-selection: Alternative D meets the purpose and need in a manner similar to Alternative A. Alternative D includes additional requirements for watershed and species protection and collaboration that provide among the highest levels of watershed and species conservation of all alternatives. However, Alternative D has the second highest planning and monitoring costs of all alternatives, and there are several requirements of Alternative D that would be difficult to implement or not appropriate across all NFS units.

This alternative capitalizes on approaches for watershed management that have been demonstrated to be effective in some areas of the country—largely the Pacific Northwest. However, a single, prescriptive approach may not be effective for improving watershed conditions across the highly diverse watersheds of the NFS.

For example, it is unlikely that the requirements of this Alternative that all plans establish watershed networks that can serve as anchor points for the protection, maintenance, and restoration of broad-scale processes and recovery of broadly distributed species and to maintain spatial connectivity within or between watersheds would be an effective management strategy for improving watershed conditions on certain units, for example, where the percentage of NFS land ownership in a given watershed is very low. Such requirements also may not be the most effective means of maintaining or restoring watershed health on these or other units, and attempting to meet this requirement may preclude other more effective management options.

Alternative D includes a national standard for a minimum 100 foot default width for riparian conservation areas. Based on the analysis in the PEIS, a national standard setting a minimum default width applicable to all types of waterbodies and in all geomorphic settings is not consistent with the preponderance of scientific literature which largely argues for scalable widths, widths tailored to geomorphic settings or an adaptable approach matched to resource characteristics. The national standard does provide certainty or assurance that all riparian areas of 100 feet or less would be fully incorporated within the riparian conservation area, even where narrower widths would be more appropriate based on geomorphic features, conditions, or type of water bodies. However, to expand the default width beyond 100 feet will require a ''burden of proof'' during the planning process that some units may not be willing or able to accomplish, which could lead to the width being under inclusive for riparian areas in the plan area.

Alternative D requires standards to restore sediment regimes to within a natural range of variability. While an understanding of the natural range of variability in sediment regime could provide important context for sediment reduction activities, standards to restore sediment regimes to a natural range of variability might be impractical as they require information on historical flow regimes that might not be applicable to future conditions. Historical ranges of variation as standards or guidelines for restoration may be inappropriate in the face of changing hydrologic conditions brought about by climate change. The added requirements are likely not appropriate for all NFS units, will be data intensive, and might constrain or delay other management actions that could address known sediment problems.

This alternative requires that road removal or remediation in riparian conservation areas and key watersheds be considered a top restoration priority. Setting one primary national restoration priority for all units does not take into account the high variability of conditions and stressors across NFS lands. Also, it does not take into account changing conditions. While road remediation in riparian areas will likely be the highest priority in some places or at some times, it might not be for all units and across the entire life of a plan. For example, it might be more important to shift restoration focus to control a new occurrence of invasive species before it becomes pervasive in a watershed, or to reduce hazardous fuels to reduce the risk of negative effects to soil and water of uncharacteristic or extreme wildfire events.

Finally, Alternative D requires that, with limited exceptions, only management activities for restoration would be allowed in riparian areas. The Department understands the importance and supports the protection of healthy functioning riparian areas for water quality, water quantity, and aquatic and terrestrial habitat. The Department also understands the potential negative effects that management activities or uses such as dispersed or developed recreation, grazing, and water level management can have on riparian areas. However, the Department concludes that decisions regarding management activities in riparian areas are better made at the individual plan and project levels where the effects to the resources, to the users, and to communities can be better determined within the context of overall watershed restoration and the maintenance and restoration of the ecological integrity of riparian areas in the plan area.

None of the individual elements of Alternative D is inconsistent with the final planning rule and they could be incorporated at the plan level into plan direction where they are determined to be applicable and effective for those units. In fact, many current plans already incorporate elements of this alternative. However, requiring incorporation of all elements of Alternative D does not provide enough flexibility for effective and efficient resource management on all units of the NFS.

For these reasons Alternative D was not selected as the final rule.

Alternative E

The full text of Alternative E is displayed in Appendix G of the PEIS. This alternative consists of the proposed rule (Alternative A) with additional and substitute direction focused on prescriptive requirements for public notification at § 219.4, assessment requirements at § 219.6, and monitoring requirements at § 219.12.

This alternative prescribes an extensive list of monitoring and assessment questions and requires plan monitoring programs to identify signals for action for each question and its associated indicator.

This alternative specifies performance accountability for line officers' management of unit monitoring and adds responsibility for the Chief to conduct periodic evaluations of unit monitoring programs and the regional monitoring strategies.

Alternative E adds more prescriptive requirements for public participation in the planning process. To help connect people to the outdoors, this alternative also includes requirements for plans to provide for conservation education and volunteer programs.

See Appendix G of the PEIS for Alternative E text in a side-by-side comparison with Alternative A.

Reason for non-selection: Alternative E requires more evaluation of ecological conditions and possible scenarios during assessment for plan revisions and more monitoring of specific conditions and responses to restoration. The use of signal points could potentially make land managers more aware and responsive when monitoring results are outside of expected levels. However, the difficulty of establishing

statistically and temporally significant signal points related to restoration, especially where there is insufficient data and where conditions are changing, will increase the complexity of planning. The prescriptive nature of the monitoring requirements could increase the ability to aggregate and compare data between units or at higher scales but could also result in the costly collection of data that is not necessarily relevant to the management of particular individual units or ecological conditions.

Requirements to identify possible scenarios in assessments would have short-term cost increases with possible long-term gains in efficiency. Additional requirements regarding coordination in the assessment and monitoring process would increase initial costs, but consistent coordination might also result in more cost-effective long-term planning efforts to meet viability objectives. However, while additional requirements for standardized collaboration methods might work well for some units, other units might find that some required steps are not relevant to their local public involvement needs. Based on the analysis in the PEIS, collaboration strategies tailored to a unit's particular needs are often more effective than very prescriptive approaches to collaboration.

The PEIS points out potential benefits of more prescriptive requirements for assessment, monitoring, and collaboration. But, the PEIS also points out the drawbacks, particularly in trying to efficiently apply a ''one-size-fits-all'' approach to such things as monitoring or collaboration across highly diverse resources conditions and communities associated with NFS Units. This Alternative also has the highest implementation costs of all alternatives. The Department does not believe that the potential gains in effectiveness warrant the increased costs.

None of the individual elements of Alternative E are inconsistent with the final planning rule and any of them can be incorporated into plan direction where they are determined to be applicable and effective for those units. However, requiring incorporation of all elements of Alternative E does not provide enough flexibility for effective and efficient resource management on all units of the NFS. For these reasons Alternative E was not selected as the final rule.

The Environmentally Preferred Alternative

Under the Council on Environmental Quality's (CEQ) NEPA regulation, the Department is required to identify the environmentally preferred alternative (40 CFR 1505.2(b)). This is interpreted to mean the alternative that will promote the national environmental policy as expressed in NEPA's section 101 and that would cause the least damage to the biological and physical components of the environment. The environmentally preferred alternative best protects, preserves, and enhances historic, cultural, and natural resources (Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (46 FR 18026, 18028 (March 23, 1981)).

The two alternatives that best meet these criteria are Alternative D (if it could be fully implemented) and Modified Alternative A. Alternative D provides the highest level of resource protection, particularly for water and riparian resources. Some requirements of this alternative would be difficult to implement across the entire NFS, add increased cost and complexity to the planning process for little benefit, and may not always represent the best approach for the resource. The additional funds spent on the planning process would not be available for other management activities including restoration and habitat improvement.

Modified Alternative A also provides high levels of resource protection and can be effectively implemented across all units. It does not preclude incorporation of elements of Alternative D into plans where they are most suited to meet resource conditions.

The approval of a planning rule to guide development, revision, and amendment of land management plans is a broad policy decision. Accordingly, impacts described in the PEIS reflect issues concerning effects over a broad geographic and time horizon. The depth and detail of impact analysis is necessarily broad and general because a planning rule is two steps removed from site-specific projects and activities. Quantitative, site-specific effects can only be predicted with any certainty when site-specific actions are proposed.

Decision and Rationale

Decision

Modified Alternative A, with clarifications, is selected as the final planning rule. A few clarifications were made to better represent the Department's intent, and do not substantively change Modified Alternative A. They include:

(1) Changes made to § 219.7(e)(1)(iv) and § 219.15(d)(3) to clarify that compliance with both standards and guidelines is mandatory, with standards requiring strict adherence to their terms, while guidelines allow for flexibility so long as the purpose for the guideline is achieved.

(2) Changes made to § 219.9(b)(1) to clarify that the responsible official must determine whether the plan components of paragraph (a) provide the necessary ecological conditions, or whether additional, species-specific plan components must be included in the plan.

(3) Changes made to the definition of designated areas in § 219.19 to clarify that the examples of designated areas included in Modified Alternative A were not intended to be exclusive.

(4) Changes throughout Subpart B to clarify that organizations, States and Tribes are among the entities that may object, pursuant to the other requirements in Subpart B.

This decision is based on the *Programmatic Environmental Impact Statement—National Forest System Land Management Planning,* USDA Forest Service, 2011, and its supporting record. This decision is not subject to Forest Service appeal regulations.

Nearly 300,000 comments were received on the DEIS and the proposed rule. The Agency also consulted with Indian Tribes, the US Fish and Wildlife Service and the National Marine Fisheries Service. The Department has reviewed and considered these comments, the results of the consultations, and worked with Agency managers in concluding that the proposed rule would be improved by clarifying the proposed wording and incorporating the changes reflected in Modified Alternative A into the final rule.

This decision does not authorize any projects or activities. The planning rule describes the process the Forest Service will use for development, amendment, and revision of land management plans for national forests and grasslands, and includes requirements for the structure and content of those plans. Any commitment of resources takes place only after (1) a land management plan is approved under the provisions of the final rule (including the completion of the appropriate NEPA process), and (2) the Forest Service proposes projects or activities, analyzes their effects in the appropriate NEPA process, determines consistency with the applicable land management plan, and authorizes the final projects or activities.

Sometimes projects or activities may be authorized at the same time and in the same decision document when approving a plan, plan amendment, or plan revision. One example might be opening or closing trails to the use of

off-highway vehicles. In these cases, the part of the decision associated with the project or activity would represent a commitment of resources.

Rationale for the Decision

The following paragraphs outline the rationale for the decision, including how Modified Alternative A meets the purpose and need and addresses the significant issues described in the final PEIS.

The Department determined Modified Alternative A best meets the purpose and need for a new planning rule. Modified Alternative A provides a process for planning that is adaptive and science-based, engages the public, and is designed to be efficient, effective, and within the Agency's ability to implement. It is designed to ensure that plans provide for the sustainability of ecosystems and resources; meet the need for forest restoration and conservation, watershed protection, and species diversity and conservation; and assist the Agency in providing a sustainable flow of benefits, services, and uses of NFS lands that contribute to the economic and social sustainability of communities.

The paragraphs below describe how Modified Alternative A meets the purpose and need for a new planning rule. Many of the requirements described for each element can be found in one or more of the alternatives analyzed in the PEIS. However, the Department concludes that the combination of requirements provided in Modified Alternative A provide the best approach for developing, amending, and revising plans. Modified Alternative A is clearer than Alternative A, better reflects the Department's intent as described in the preamble for the proposed rule, and reflects public comments and suggestions for improving the proposed rule. Unlike Alternative B, it meets the purpose and need for a new planning rule. It is also more implementable and less costly than Alternatives D and E, and allows greater flexibility to develop plans that best meet the ecological, social, and economic needs of units across the very diverse National Forest System. The Department concludes that the combination of provisions in Modified Alternative A best meets the purpose and need for a new planning rule and provides assurance that the Department's objectives will be met.

For those reasons, Modified Alternative A provides the best balance among the alternatives to meet the purpose and need for a new planning rule.

Response to Purpose and Need

All of the alternatives analyzed in detail, with the exception of Alternative B, meet the purpose and need to varying degrees. No single alternative can maximize all of the elements of the purpose and need. The Department finds that Modified Alternative A provides the best planning framework for meeting the various elements of the purpose and need by creating a rule that:

1. Emphasizes restoration of natural resources to make NFS lands more resilient to climate change, protect water resources, and improve forest health. The Department concludes that Modified Alternative A will result in plans that are adaptive and therefore more likely to remain relevant and implementable, including by providing an adaptive framework that will help responsible officials to respond to changing conditions and new information.

2. Contributes to ecological, social, and economic sustainability by ensuring that all plans will be responsive to issues such as the challenges of climate change; the need for forest restoration and conservation, watershed protection, and species conservation; and the sustainable use of public lands to support vibrant communities.

3. Is consistent with NFMA and MUSYA. The Department intends that the requirements of Modified Alternative A will be integrated into the development or revision of a plan in a manner that provides for the long-term ecological sustainability of the plan area while sustaining ecosystem services and providing for multiple uses.

4. Is consistent with Federal policy on the use of scientific information and the Agency's expertise and experience gained in more than 30 years of land management planning. Responsible officials will use the best available scientific information to inform the plan components and the monitoring program. The Department concludes that Modified Alternative A requires a planning process that is science-based and additionally recognizes the value of local knowledge, the Agency experience, knowledge, and information of other land managers, and indigenous knowledge.

5. Provides for a transparent, collaborative process that allows effective public participation. Modified Alternative A includes requirements to engage the public, Tribes, other government agencies, and groups and communities that have been at times under-represented in planning, such as youth and minorities, throughout the planning process. The Department concludes that the collaborative approach required by Modified Alternative A will result in improved relationships and plans that better meet the needs of diverse communities, which in turn will translate into more successful projects and activities developed under the plans.

6. Ensures planning takes place in the context of the larger landscape by taking an ''all-lands approach.'' Modified Alternative A uses an ''all-lands approach'' to consider conditions beyond the plan area and how they might influences resources within the plan area as well as how actions on the NFS might affect resources and communities outside of the plan area. It also requires that responsible officials coordinate with entities with equivalent and related planning efforts.

7. Is within the Agency's capability to implement on all NFS units. It is clear and provides an efficient framework for planning, and is able to be implemented within the financial capacity of the Agency.

The Department concludes that Modified Alternative A provides an appropriate balance between the flexibility needed to address issues unique to the plan area and the need for consistent requirements and a consistent approach. Modified Alternative A reduces planning costs and the time needed for a plan revision from current levels.

Response to the Issue of Ecosystem Restoration

As many respondents correctly noted, not all NFS lands are in need of restoration and, in fact, NFS lands often provide among the highest quality habitat and the cleanest water of all lands in the country. The final rule provides for the maintenance of those lands. There is also widespread consensus that some NFS lands are degraded or are at risk of becoming degraded. From large scale pine beetle outbreaks in the Intermountain West to watersheds across NFS lands with poorly sited or maintained roads that cause sedimentation or block the movement of fish and aquatic organisms, there are many restoration needs on NFS lands. Modified Alternative A addresses the need for ecosystem maintenance and restoration.

Modified Alternative A incorporates the concept of ecological integrity. This concept is defined in the scientific literature as a means of evaluating ecological conditions in terms of their sustainability. The concept of ecological integrity is also used by the U.S. Department of the Interior's National

Park Service and Bureau of Land Management. Aligning approaches across the broader landscape will facilitate an all-lands approach to ecological sustainability.

Under Modified Alternative A, information relevant for ecosystem maintenance and restoration will be identified and evaluated during the assessment phase. Plan components are required for the maintenance and restoration of the ecological integrity of riparian areas and air, soil, and water resources. Responsible officials will consider opportunities to restore fire adapted ecosystems and for landscape scale restoration. The monitoring program will track ecological and watershed conditions and measure progress towards meeting desired conditions and objectives.

Modified Alternative A captures many of the concepts of ''best practices'' in restoration that are already occurring on NFS lands. Examples of such best practice efforts include the Collaborative Forest Landscape Restoration Program established under section 4003(a) of Title IV of the Omnibus Public Land Management Act of 2009, (*http://www.fs.fed.us/restoration/CFLR/index.shtml*), which promotes healthier, safer, and more productive public lands through partnership efforts, and the Four Forest Restoration Initiative to accomplish landscape scale restoration of ponderosa pine ecosystems in the Southwest. These restoration efforts bring people together to work across ownerships, restore ecosystems, increase organizational capacity, and in the process create jobs and economic opportunities that contribute to sustainable economies. Modified Alternative A provides a platform for working with the public and other land managers to identify restoration needs across the landscape and manage NFS lands to support meeting shared restoration objectives.

Response to the Issue of Watershed Protection

Watersheds and water resources on NFS lands are important for many reasons: For example, they are the source of drinking water for one in five Americans, provide important species habitat for terrestrial and aquatic species, and support recreation opportunities in the plan area.

Modified Alternative A includes a strong set of requirements associated with maintaining and restoring watersheds and aquatic ecosystems, water resources, and riparian areas in the plan area. It incorporates the protection or mitigation requirements of the 1982 rule, but goes beyond the 1982 rule in requiring a proactive approach for maintaining or restoring terrestrial and aquatic ecosystems and watersheds in the plan area.

Under Modified Alternative A, information relevant to watersheds, aquatic ecosystems, and water resources will be identified and evaluated during the assessment phase. Plans will be required to identify priority watersheds for maintenance or restoration. Plan components are required for the maintenance and restoration of the ecological integrity of aquatic ecosystems and watersheds, water quality, and water resources in the plan area, including lakes, streams, wetlands, and sources of drinking water.

Plan components are also required for the maintenance and restoration of the ecological integrity of riparian areas, including structure, function, composition, and connectivity; taking into account a number of factors; and plan components must establish widths for riparian management zones. Because riparian resources across NFS units are very diverse, Modified Alternative A retains the 1982 rule requirements to give special attention to land and vegetation within approximately 100 feet of all perennial streams and lakes and prevent management practices that have serious or adverse impacts, but does not require a single national width for riparian management zones. Riparian areas may be forested or open, they are connected with all types of streams, lakes and wetlands, and they vary widely in existing condition and types of use. Modified Alternative A allows for the requirements to be tailored to specific conditions on the plan area. The set of requirements included in Modified Alternative A for riparian areas is more implementable and less costly than the requirements in Alternative D, and will lead to a more effective and appropriate set of plan components across a diverse system.

Under Modified Alternative A, responsible officials must ensure that projects and activities in riparian areas are consistent with plan requirements for maintaining or restoring riparian areas, do not seriously or adversely affect water resources, are suitable uses, and are compatible with desired conditions for those lands. The consistency requirement places the decision about what types of projects or activities may or may not be allowed and what management direction will guide these activities at the plan level. The Department concludes that this is the appropriate level at which to make these decisions.

NFS lands provide some of the highest quality water in the country and are important sources of drinking water, but there are streams that do not meet State water quality standards. Modified Alternative A requires that the Chief of the Forest Service establish requirements for best management practices for water quality, and that plans ensure implementation of those practices.

The Department concludes that Modified Alternative A appropriately elevates the emphasis on the conservation of water and riparian resources, can be implemented on all NFS units, and is soundly supported by recent advances in conservation biology and ecology.

Response to the Issue of Diversity of Plant and Animal Communities

Perhaps no other aspect of the proposed planning rule has sparked as much interest or generated as much debate as the requirement to provide for plant and animal diversity. In particular, there is disagreement between those who believe that without strong, specific requirements in the rule for maintaining species diversity and viability, the persistence of many species will be at increased risk, and those who believe that putting specific requirements in the rule will result in endless litigation that will keep the Agency from moving forward with planning and with projects and activities.

The Department's intent is to provide for the diversity of plant and animal communities, and keep common native species common, contribute to the recovery of threatened and endangered species, conserve proposed and candidate species, and maintain species of conservation concern within the plan area, within Agency authority and the inherent capability of the land.

Modified Alternative A requires that future plans be based on a complementary ecosystem and species-specific approach to provide for the diversity of plant and animal communities in the plan area and the long-term persistence of native species in the plan area. This approach is often referred to as the coarse-filter/fine-filter approach.

The ecosystem integrity and diversity requirements in Modified Alternative A are meant to provide a coarse-filter designed to maintain biological diversity. By working toward diverse, connected ecosystems with ecological integrity, the Agency expects that over time, management will create ecological conditions which support the abundance, distribution, and long-term

persistence of most native species within a plan area, as well as provide for diversity of plant and animal communities. The fine-filter provisions are intended to provide a safety net for those species whose specific habitat needs or other influences on their life requirements may not be fully met under the coarse-filter provisions.

The coarse-filter/fine-filter approach is a well-developed concept in the scientific literature and has broad support from the scientific community and many stakeholders. It incorporates the considerable advances of the past three decades in understanding of biological and conservation science. The coarse-filter/fine-filter approach is already incorporated into many recently revised plans and is yielding positive results. For example, restoration of longleaf pine in the South is resulting in increases in red-cockaded woodpecker populations, and restoration of watersheds and instream habitat in the Pacific Northwest is yielding benefits for salmon.

The provisions in Modified Alternative A recognize the importance of maintaining biological diversity of native species on each national forest and grassland, and the compositional, structural, and functional components that comprise the biological diversity on each NFS unit, and recognize the importance of native species and their contributions to maintaining the ecological integrity of ecosystems.

Considering habitat needs for non-vertebrates is not new to the Forest Service. Non-vertebrate species can be federally recognized as threatened or endangered. In addition, the Agency has developed and maintained a list of regional forester sensitive species (RFSS) for over two decades. An RFSS list can include any native plant or animal species. RFSS are those plant and animal species identified by a regional forester for which population viability is a concern, as evidenced by: significant current or predicted downward trends in population numbers or density or significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution. RFSS are thus similar to species of conservation concern. The conservation and management of many RFSS has been a part of many land management plans and projects and activities for decades.

The Department intends to provide for the persistence of all native species by the use of the coarse-filter/fine-filter approach, within Forest Service authority and the inherent capability of the plan area. Modified Alternative A provides a three-fold treatment of all native species.

First, Modified Alternative A requires coarse-filter plan components for the maintenance and restoration of the ecological integrity and diversity of ecosystems in the plan area. Plan components will support the long-term persistence of most native species in the plan area, including providing for species that are common or secure.

Second, species that are federally recognized species under ESA (threatened, endangered, proposed, and candidate species) may not have viable populations on NFS lands and whose recovery, in most cases, cannot be achieved on a single NFS plan area. Modified Alternative A requires the responsible official to develop coarse-filter plan components, and fine-filter plan components where necessary, to contribute to the recovery of listed species and conserve proposed and candidate species.

Third, Modified Alternative A requires the responsible official to develop coarse-filter plan components, and fine-filter plan components where necessary, to provide the desired ecological conditions necessary to maintain viable populations of species of conservation concern within the plan area, or to contribute to maintaining a viable population of a species of conservation concern across its range where it is not within the Agency's authority or is beyond the inherent capability of the plan area to provide the ecological conditions to maintain a viable population of that species within the plan area.

Species of conservation concern are those plant and animal species whose long-term persistence within the plan area is of known conservation concern. The rule requires that species of conservation concern must be ''known to occur in the plan area'' and that the regional forester identify the species of conservation concern for which ''the best available scientific information indicates substantial concern about the species' capability to persist over the long term in the plan area.''

The Department has considered the concerns raised by many that the requirement for maintaining viable populations of species of conservation concern on the plan area is an impossible task and that attempting to meet this requirement will come at the cost of all other management of the NFS lands. The Department concludes that Modified Alternative A provides a more holistic, consistent, realistic, and effective approach to maintaining native fish, wildlife, and plant species on national forests and grasslands than provided under the 1982 rule, while meeting restoration goals and the mandate of multiple use.

Modified Alternative A recognizes that there are limits to the Agency's authority and the inherent capability of the land, whereas the 1982 rule required management prescriptions to ''[p]rovide for adequate fish and wildlife habitat to maintain viable populations of [all] existing native vertebrate species,'' (See 1982 rule at § 219.27 (a)(6)) regardless of whether there are circumstances outside of the authority or the control of the Agency. Examples of circumstances that may be outside of the Agency's authority or the inherent capability of the plan area are provided above in the rationale for non-selection of Alternative B.

The Department concludes the management emphasis on species of conservation concern is more focused than the viability provisions under the 1982 rule, which included all vertebrate species whether there was concern about their persistence in the plan area or not. Since these species may be wide ranging or may occur on multiple units, the regional forester, in coordination with the responsible official, will identify species of conservation concern. Requiring that the regional forester identify species of conservation concern will increase consistency across units and build efficiency into the Agency's collective efforts to maintain the diversity of plant and animal communities.

The Department also considered the challenges the Forest Service has faced in monitoring management indicator species (MIS) under the 1982 rule. MIS monitoring has been the subject of much of the legal debate around the species provisions of the 1982 rule. Modified Alternative A does not include requirements to designate MIS or monitor their population trends. The concept of MIS as a surrogate for the status of other species is not supported by current science, and population trends are difficult and sometimes impossible to determine within the lifespan of a plan.

In the final rule, MIS monitoring has been replaced with monitoring of focal species. The concept of focal species is well supported in the scientific literature and community. Focal species are not surrogates for the status of other species. Focal species monitoring provides information regarding the effectiveness of the plan in providing the ecological conditions necessary to maintain the diversity of plant and animal communities and the persistence of native species in the plan area. Modified Alternative A does not require

or prohibit monitoring of population trends of focal species. Instead, it allows the use of any existing or emerging approaches for monitoring the status of focal species that are supported by current science. Monitoring methods for evaluating the status of focal species may include measures of abundance, distribution, reproduction, presence/absence, area occupied, survival rates, or others.

The Department expects that monitoring key ecosystem and watershed conditions along with monitoring the status of a set of well-chosen focal species will provide timely information regarding the effectiveness of plan components related to plant and animal diversity.

The requirements in Modified Alternative A regarding sustainability and diversity of plant and animal communities are part of the planning framework cycle that requires public participation, assessments, and monitoring. Additionally, provisions in these sections require the responsible official to coordinate with other land owners. These requirements support cooperation and an all-lands approach to ecosystem and species diversity and conservation.

Under plans developed under Modified Alternative A, the Department expects NFS lands to more consistently provide the ecological conditions necessary to maintain the diversity of plant and animal communities and the persistence of native species. Over time, the Department expects habitat quantity to increase and habitat quality to improve for most native species across the NFS including aquatic and riparian species. The Department also expects ecological conditions for many federally listed species, species proposed, and candidates for listing and species of conservation concern to improve within and among plan areas because Modified Alternative A gives emphasis to maintaining and restoring ecological conditions needed by these species. The final rule provides for collaborative approaches to addressing the range-wide concerns of species whose range and long term viability is associated with lands beyond the plan area.

The Department concludes that the combination of requirements in Modified Alternative A reflects a strong, implementable approach to providing for the diversity of plant and animal communities and the persistence of native species in the plan area, and is supported by the scientific literature and community. This approach meets the requirements of NFMA and MUSYA, and provides a holistic, consistent, realistic, and effective approach to providing for diversity of plant and animal communities on national forests and grasslands, while meeting restoration goals and the mandate of multiple use and sustained yield.

Response to the Issue of Climate Change

Consideration of changing conditions including climate in planning is not new to the Forest Service. The Climate Change Resource Center has been developed as a reference for Forest Service resource managers and decision makers who need information and tools to address climate change in planning and project implementation on NFS lands. For more than 20 years, Forest Service scientists have been studying and assessing climate change effects on forests and rangelands. Forest Service Research and Development provides long term research, scientific information, and tools that can be used by managers and policymakers to address climate change impacts to forests and rangelands. Climate change-related activities are carried out within research stations covering the whole country. In 2009, the Agency issued guidance for climate change considerations to provide the Agency with the support needed to incorporate climate change into land management planning and project-level NEPA documentation. Recent plan revisions include consideration of climate change.

Modified Alternative A incorporates a strategic framework for adaptive management: assess conditions on the ground using readily available information, build plan components recognizing that conditions may be changing, and monitor to determine if there are measurable changes related to climate change and other stressors on the plan area.

Under Modified Alternative A, responsible officials will identify and evaluate information relevant to understanding ecological conditions and trends and to forming a baseline assessment of carbon stocks. Plans will include plan components to maintain or restore ecological integrity, so that ecosystems can resist change, are resilient under changing conditions, and are able to recover from disturbance. Modified Alternative A also requires monitoring measurable changes on the plan area related to climate change and other stressors that may be affecting the plan area. Taken together, the planning framework and these requirements will ensure that information related to climate change will be addressed in a consistent and strategic fashion.

Modified Alternative A is consistent with and complements the Agency's climate change National Roadmap and Performance Scorecard, the Watershed Condition Framework and ecological restoration and sustainability policies. The climate change roadmap directs national forests and grasslands to develop climate change vulnerability assessments and identifies monitoring strategies. Elements in the scorecard will help the Agency to determine whether assessments and monitoring are being developed in a way that will help inform decisionmaking at the unit level. The scorecard includes requirements that complement or are complemented by requirements in Modified Alternative A. The climate change roadmap and scorecard are available online at *http://www.fs.fed.us/climatechange/advisor/.*

The national watershed condition framework (WCF) approach uses an annual outcome-based performance system to measure progress toward improving watershed condition on NFS lands. The WCF improves the way the Forest Service approaches watershed restoration by targeting the implementation of integrated suites of activities in those watersheds that have been identified as priorities for restoration. A short description of the framework is discussed in Chapter 3 of the final PEIS under watershed protection and a Forest Service publication is available at *http://www.fs.fed.us/publications/watershed/Watershed_Condition_Framework.pdf.*

Modified Alternative A capitalizes on existing Agency work such as the baseline carbon assessments conducted under the Climate Change Scorecard, the assessment and monitoring conducted under the Watershed Condition Framework, and the monitoring of climate change indicators occurring in the Forest Inventory and Analysis program, by ensuring integration of these activities into the land management planning process.

In selecting Modified Alternative A, the Department considered the present capability of the Agency to address climate change in planning. The Department also considered existing Agency policy on climate change and the ways in which the different alternatives could be integrated effectively with those policies. The Department concludes that the requirements for addressing climate change in the final rule can be carried out on all NFS units.

Response to the Issue of Multiple Uses

Modified Alternative A embraces the multiple use mandate of the Multiple-Use Sustained-Yield Act and recognizes the importance of multiple uses in many

sections of the alternative. Recreation, timber, grazing, and other multiple uses provide jobs and income to local communities, help to maintain social cultures and long standing traditions, connect people to the land, and contribute to the quality of life for many Americans.

The Agency has reported that spending by recreation visitors in areas within 50 miles of national forests and grasslands amounts to nearly $13 billion each year. Those dollars sustain more than 224,000 full and part-time jobs. Recreation accounts for more than half of all job and income effects attributable to Forest Service programs. Harvest of timber and other forest products from NFS lands contributed to more than 44,000 full- and part-time jobs with labor income totaling more than $2 billion in 2009. Livestock grazing on NFS lands contributes to an estimated 3,695 jobs and labor income totaling $91.9 million per year.

Timber harvest on NFS lands has declined from over 12 billion board feet in 1985 to approximately 2 billion board feet in 2009. In 1985, there were over 8 million cattle, sheep, and other domestic animals grazing on NFS lands. In 2009, this number dropped to approximately 6 million. In contrast, recreation visits to NFS lands have increased over this same period. There are many factors that influence the levels of timber harvest, grazing, and recreation, as well as other individual multiple uses of the NFS. These factors include increasing population, changing cultural and social values, greater access to NFS lands, changing rural and global economies, NFS budgets, and competing resource concerns. It is difficult to predict at this programmatic level the extent to which a new planning rule is likely to affect specific multiple uses in the future. As a result, the Department considered how each of the alternatives in the PEIS provides a framework for supporting the continued delivery of ecosystem services and multiple uses from the NFS.

Modified Alternative A considers ecological, economic, and social sustainability as equal and interdependent factors. Modified Alternative A emphasizes restoration of ecosystems so that they are capable of sustaining multiple uses over time. Restoration activities will produce jobs and income; at the same time; restored, functioning ecosystems can support species diversity while allowing multiple uses to continue. Under Modified Alternative A, timber production and grazing will continue to provide jobs, income, and ways of life for many Americans. Modified Alternative A emphasizes the importance of the continued delivery of sustainable recreation. Providing high quality recreation opportunities and a range of access to NFS lands creates jobs and income and connects people to the land.

Under Modified Alternative A, plans must contribute to economic and social sustainability and must provide for ecosystem services and multiple uses in the plan area. Responsible officials will use an integrated resource management approach to provide for multiple uses and ecosystem services in the plan area, considering a full range of resources, uses, and benefits relevant to the unit, as well as stressors and other important factors. As part of the multiple use requirements, Modified Alternative A will require plan components for sustainable recreation, including recreation settings, opportunities, access, and scenic character. Modified Alternative A also includes requirements for plan components for timber management, consistent with the requirements of NFMA.

Information relevant to multiple uses and their contributions to local, regional, and national economies, along with information about the benefits (ecosystem services) people obtain from the plan area, will be identified and evaluated in the assessment phase.

Monitoring will track progress towards meeting desired conditions and objectives for recreation and other multiple uses. Broad and unit scale monitoring may provide information on resource and social concerns and conflicts before they result in insurmountable challenges. Most importantly, the Department concludes that the requirements in Modified Alternative A for encouraging public participation, working across boundaries, and engaging other Federal agencies, State, local, and Tribal governments, will help identify multiple uses in the plan area, resolve conflicts, and facilitate the forward movement of effective land management activities.

The Department concludes that Modified Alternative A meets the Agency's multiple-use and sustained-yield obligations under MUSYA and provides an effective framework for sustaining the flow of goods and services from NFS lands over time.

Response to the Issue of Efficiency and Effectiveness

Under Modified Alternative A, the Department expects that individual plan revisions will cost less money and consume less time than they do under the 1982 rule procedures. The 1982 rule procedures are considered the baseline for comparing changes in cost and time for plan revisions because, until a new planning rule is in place, the 1982 rule procedures are being used as permitted by the transition provision of the 2000 rule to develop, revise, and amend all plans.

According to the Agency's regulatory impact analysis and cost-benefit analysis under Modified Alternative A, the Agency estimates that land management planning will cost an estimated $97.7 million per year, which is $6.3 million per year less than it currently costs to conduct planning under the 1982 procedures. More significantly, under Modified Alternative A, the Agency estimates that plan revisions will take, on average, 3 to 4 years as compared to 5 to 7 years under Alternative B, and will cost, on average, $3 to $4 million as compared to $5 to $7 million. As a result of these savings and efficiencies, the Forest Service will be able to revise significantly more plans during the 15-year revision cycle, than under the current planning structure.

Beyond cost and time savings, there are important ancillary benefits to increasing the efficiency of the planning revision process. Under shorter time frames it will be easier for the public to remain engaged throughout the revision process. One of the common concerns expressed by members of the public is that there is a significant amount of turnover in key Agency staff during the long timeframes required for plan revision under the current planning process. This can cause disruption and confusion as established relationships are severed and time and effort is needed to develop new relationships.

The new rule's requirements for increased collaboration and monitoring will lead to higher costs than are projected under Alternative B, but are expected to increase the effectiveness and relevance of land management plans. Increased collaboration provides benefits throughout the planning process and well into implementation. Analysis time may be shortened, administrative objections and the time needed to resolve them may be reduced, and projects developed under the resulting plans may be better understood and supported. Monitoring is important for adaptive management, and can help the Agency to test assumptions, track changing conditions, and measure management effectiveness over time. However, the Agency has long recognized that monitoring efforts when viewed across the Agency as a whole have often lacked consistency and, at times, credibility. The

monitoring requirements of Modified Alternative A complement broader Agency efforts to increase the efficiency and effectiveness of its inventory, monitoring and assessment programs, and make better use of the money currently spent on monitoring.

While the cost of each requirement is included in the total cost estimate of Modified Alternative A, many of the requirements involve work that is already occurring and that will continue to occur regardless of whether this, or another alternative is selected as the final rule. Modified Alternative A was developed as part of an integrated Agency framework to manage the NFS lands more efficiently. Other initiatives and Agency priorities that will complement and support the implementation of the new land management planning process and address critical NFS resource issues include the Watershed Condition Framework, Climate Change Scorecard, landscape scale restoration, an all lands approach, and a new system for inventory, monitoring, and assessment work that addresses core resource information and data needs at all levels of the Agency.

Modified Alternative A is neither the least nor the most costly of the alternatives the Department considered. Modified Alternative A reduces the costs and time required for plan development, amendment, and revision. However, the Department does not believe that selecting the least costly alternative should be the overriding criterion. Planning is an important investment. The requirements in Modified Alternative A are designed to lead to more effective plans, to yield greater efficiencies over time by ensuring a consistent approach to planning, to build on existing information, to facilitate adaptive management, and to allow the use of amendments and administrative changes to keep plans current so that future revisions are less costly.

The Department recognizes that some of the definitions, concepts, and terms used in Modified Alternative A are new or broadly worded. This Alternative sets forth process and content requirements to guide the development, amendment, and revision of land management plans across very diverse national forests and grasslands and over a long period of time. By setting out substantive and procedural requirements, the rule establishes the decision space within which the planning process is to be carried out and within which plan content must fit. The Forest Service will develop directives (the Forest Service Manual and Handbook) that will provide additional guidance and more detailed interpretation to ensure consistent and effective implementation of the rule. These directives will be available for public review and comment before they are finalized. Plans developed, revised and amended under the rule will be consistent with the rule and the directives.

Response to the Issue of Transparency and Collaboration

Modified Alternative A supports a transparent and collaborative approach to planning. As described in the PEIS, best practices in public involvement and collaboration emphasize the importance of engaging a broad spectrum of participants. Participants might live close to a plan area or not. What matters is they care about that area for some reason, can contribute to an understanding of relevant issues, can help get planning or project work done, and can help increase organizational and community capacity. A plan revision or amendment process that offers a broad spectrum of participation opportunities is much more likely to produce a meaningful, shared understanding of the social, economic, or ecological factors of importance in the plan area. Forests and grasslands that already engage a broad spectrum of public interests early and often report that their proposed projects and plans more accurately incorporate public vision and interests. They further report that upfront public involvement builds more understanding of proposed actions, and that people typically respond more positively to these proposals.

Under Modified Alternative A, responsible official will be required to provide meaningful opportunities for public participation in each phase of the planning framework. Modified Alternative A includes requirements for outreach, Tribal consultation, and coordination with other planning efforts. Responsible officials will continue to engage State and local governments, Tribes, private landowners, other Federal agencies, and the public at large, but additionally will encourage participation by youth, low-income and minority populations, who have traditionally been underrepresented in the planning process. Having the forest or grassland supervisor as the responsible official provides greater opportunity for people to interact directly with the decision maker than under current rule procedures. Use of a pre-decisional review (objection) process is also consistent with a more collaborative approach.

Modified Alternative A allows flexibility at the local level to determine the most appropriate method and scale of the public involvement. Much of the literature on building effective collaboration discusses the need for flexibility to select public involvement methods appropriate for the unique needs of specific situations and participants.

Modified Alternative A is consistent with current practice on effective public engagement and incorporates approaches that have proven successful and implementable on NFS units.

The requirements for public participation, notification, and documentation required in Modified Alternative A support transparency in planning. This alternative's requirements to consider the accessibility of the process and of information, to use contemporary tools to engage the public and to post all notifications online further increase transparency.

Response to the Issue of Coordination and Cooperation Beyond NFS Boundaries

Ecological and social systems are not confined within NFS unit boundaries. Ecosystem services produced by national forests and grasslands affect and are affected by land management activities on adjacent private, State, local, and other Federal Government lands.

Under Modified Alternative A, the responsible official will consider the landscape-scale context for management and will look across boundaries throughout the assessment, plan development/revision, and monitoring phases of the planning process. The assessment phase will provide information about conditions and trends relevant to management of the plan area in the context of the broader landscape. Responsible officials will take an all-lands approach into account when developing plan components for ecological sustainability and multiple uses and ecosystem services. Plan and broader-scale monitoring, along with direction to engage the public and other land managers in each phase, will also support an all-lands approach. Responsible officials will leverage their resources and knowledge with those of other agencies to increase effectiveness and gain efficiency in planning and future implementation of their plans.

The PEIS includes several examples of landscape scale planning, projects, and assessments that are currently using an all-lands approach in planning, assessment and monitoring. They have resulted from an increased recognition

that NFS land management must be considered in the broader landscape and that only this kind of approach can address problems such as maintaining watershed conditions, conserving wide-ranging species, and providing for effective transportation and infrastructure on and off NFS lands. The Department concludes that Modified Alternative A incorporates these best practices and provides a framework for continuing and expanding them.

Compliance With the Endangered Species Act of 1973, as Amended

Beginning in September, 2010 and continuing through the development of the final rule and its accompanying final programmatic environmental impact statement (PEIS), representatives from the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) Fisheries (the reviewing agencies) met regularly with members of the Forest Service to discuss Endangered Species Act of 1973 issues related to the final rule. During that time, the three agencies worked closely together to identify the relevant issues and appropriate level of analysis associated with this rule and the environmental analysis for it. They collaborated on a consultation process and on the biological assessment (BA). The Agency requested consultation under section 7(a)(1) and 7(a)(2) of the Endangered Species Act of 1973 with the reviewing agencies in July, 2011. Additionally, the Agency requested conferencing on the potential effects of the rule on all species that are proposed for Federal listing and currently occur on NFS lands, and those that are candidates for Federal listing that occur on or are suspected to occur on NFS lands. A summary of the consultation meetings between the Forest Service, NOAA Fisheries, and the USFWS can be found in Appendix E of the final PEIS.

NOAA Fisheries and USFWS have each prepared a biological opinion pursuant to section 7(a)(2) of the Endangered Species Act including a conservation review pursuant to section 7(a)(l) Act (16 U.S.C. 1536(a)(1) and (2)). Each agency issued a biological opinion that adoption of the final planning rule is not likely to jeopardize the continued existence of the endangered or threatened species under its jurisdiction and is not likely to destroy or adversely modify any of those species' critical habitat. Each agency's biological opinion also concluded that the planning rule would set forth a system for land use plans that would further the conservation purposes of the Endangered Species Act under section 7(a)(1).

Copies of the biological assessment, its addendum, and the biological opinions are in the project record and can be viewed online at: *http://www.fs.usda.gov/planningrule.*

Response to Comments

The following is a description of specific comments received on the proposed rule, responses to comments, and changes made in response to comments. Each comment received consideration in the development of the final rule. In addition, following the publication of the PEIS, the Department received comments on the PEIS and the preferred alternative. These comments were also considered by the Department in the development of the final rule, and any changes made in response to those comments are described below. A response to comments on the draft EIS and the proposed rule may be found in the response to comments appendix of the EIS located online (see **ADDRESSES**).

General Comments

The Department received the following comments not specifically tied to a particular section of the 2011 proposed rule.

General Comments on Rulemaking Effort

Comment: Use of public forums for rule development and meeting locations. A respondent was critical of the public forums, as the forum they attended was full of private sector representatives and not members of the public. Another respondent felt there were not enough public meetings held on the East Coast. A respondent felt after scoping, the proposed rule was developed ''behind closed doors.'' The respondent felt the meetings on the proposed rule were not opportunities to discuss specific rule wording.

Response: The public engagement effort prior to development of the proposed rule was the most extensive, transparent and participatory process ever used to develop a proposed planning rule. The Department began by using the Notice of Intent (NOI) to solicit initial public input, rather than going out with an already developed proposal. This decision was made in recognition of the level of public interest in this rule-making effort, and in a desire to build a proposed rule based on public input. The Department received 26,000 comments on the NOI. Following the NOI, the Department hosted a science forum, 4 national roundtables, and 9 regional roundtables which reached 35 locations around the country, using an independent facilitator to run the roundtables and capture public feedback.

The purpose of the public forums before publication of the proposed rule was to openly and transparently discuss possible content of the proposed rule. Participants in the meetings were invited to suggest specific topics and specific wording during the sessions. Materials and summaries from the roundtables were posted online. Many roundtables used video teleconferencing or Webcasts to provide for participation by members of the public unable to attend in person. This use of technology also provided opportunities for the public to participate from their local Forest Service office. The Agency also hosted a blog site for people to engage in dialogue and provide feedback, as well as participate remotely in the national roundtables. More than 3,000 members of the public participated in these sessions and provided important feedback that the Agency used in developing the proposed rule.

After the proposed rule was published, the Agency hosted 28 regional public forums and one national public forum to answer questions and help the public understand what was in the proposed rule. These sessions were attended by more than 1,350 people and reached 72 satellite locations across the country. These forums were intended to help the public submit informed comments during the comment period for the proposed rule, but the Agency did not accept public comments directly at the forums because of the need to have a consistent way of accepting and recording comments.

After the public comment period closed, the Agency used the more than 300,000 comments received to inform development of this final rule.

Comment: Proposed rule commenting process. A respondent felt there was no convenient way for the everyday person to provide comments on the proposed rule.

Response: Multiple avenues for the public to submit comments on the proposed rule were provided, including submitting comments electronically via the respondent's choice of two Web sites, or submitting comments using mail or fax. Information on how to submit comments was posted on the Forest Service Web site, distributed at public meetings, and published in the **Federal Register** notice. Additionally, interested parties could sign up for a listserv that provided updates via email.

Comment: Lack of responses. A respondent felt the 26,000 comments received during the comment period for the notice of intent (NOI) to develop a

new planning rule meant the Department must undertake further efforts to ensure the public is sufficiently involved in the planning process and further ensure that actions taken as a result of the rule are supported and understood by the public.

Response: In addition to the 26,000 comments received in response to the NOI, the Department engaged more than 3,000 people around the country in public forums to receive input between the NOI and the proposed rule, and received more than 300,000 public comments during the 90-day comment period for the proposed rule. After publication of the final rule, public participation in planning at the unit level is mandated by § 219.4, which requires the responsible official to offer meaningful opportunities for public involvement and participation early and throughout the development of a land management plan or plan revision. The Agency is also exploring ways to engage more broadly with the public to implement this final rule.

Comment: Cooperating status for rulemaking. Some respondents expressed concern that their requests for cooperating agency status were not granted by the Department.

Response: The National Environmental Policy Act (NEPA) allows for cooperating agency status for States, local governments, and Tribes with jurisdiction or special expertise for the development of an environmental document. Several States or local governments requested cooperating agency status. However, a national rule requires a broader look beyond an individual State's or local government's expertise. The Agency also took a unique and unprecedented collaborative and open approach in reaching out to the public, governments, and Tribal entities in developing the rule. Therefore, requests for cooperating agency status during development of the planning rule were not granted. The Department recognizes the valuable role of local and State governments and Tribes in the planning process and provided multiple opportunities for their involvement throughout the country during the collaboration efforts for the planning rule, in addition to the formal public comment periods.

Comment: Oral comments. Several respondents felt oral comments during the public forums on the proposed rule should have been allowed.

Response: When applicable, the Administrative Procedures Act directs that agencies provide an opportunity for written comment, but allows agencies the discretion whether or not to allow oral presentation of data or views. The Forest Service hosted open public forums in Washington, DC, and across the country to answer questions about the proposed rule during the public comment period. The Forest Service held these forums to help the public understand the content of the proposed rule. The Forest Service did not, however, accept written formal public comments at the forums or provide an opportunity to record oral comments, due to the anticipated volume of public comments, to ensure proper documentation and consideration of all comments, and in the interest of efficiency and accuracy in accepting and reviewing comments. All comments on the proposed rule and DEIS had to be submitted in writing during the 90-day comment period by postal system, fax, or one of two Web sites.

Comment: Personal comments. A respondent expressed concern that their scoping comments were not incorporated into the proposed rule.

Response: No rule can satisfy the entire spectrum of opinion. The final rule seeks to balance different, and often competing, public needs and perspectives on planning into a process that is practical, workable, based on science, and reflective of overall public and Agency values and input.

Comment: Incorrect or missing address for submission of comments, phone contact, and Web site utility. Some respondents expressed confusion on why the Department did not provide an email address for comments to be sent to. Others expressed frustration that the contact phone number was published incorrectly in the DEIS, and expressed a desire to submit comments or ask questions by phone. Some wanted a better sitemap on the Forest Service planning Web site to help navigation through the site.

Response: Instead of an email address, the Department provided the addresses of two Web sites the public could choose from to submit comments, in addition to mail or fax options. Because of the volume of anticipated comments, the Department concluded that comments submitted via a Web site would be more efficient to manage than an electronic mail in-box, and would reduce costs and the risk of human error. In addition, comments are more efficiently and rapidly placed in the record and made available for public inspection when submitted via a Web site rather than email.

After being made aware of the incorrect phone number published in the DEIS, the Department corrected the contact information immediately. The Administrative Procedure Act requires agencies to ''give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation'' (5 U.S.C. 553(c)). Due to the anticipated volume of public comments, and in the interest of efficiency and accuracy in accepting and reviewing comments, the Department did not accept comments over the telephone. It is not standard practice to accept telephone comments. Opportunities to provide comment were amply provided through the respondent's choice of two Web sites, mail or fax.

The planning rule Web site does contain a site map link on the left-hand menu on the main page. The Department appreciates feedback on our Web design and seeks to continuously improve our Web presence.

Comment: Verification comments received. Some respondents wanted to verify that their comments on the planning rule were received.

Response: Respondents are able to verify that their comments were received by reviewing the public reading room for the planning rule at *http://contentanalysisgroup.com/fsrd/*. To ensure transparency, comments submitted during the comment period were posted to the reading room for public review.

Comment: List serv. A respondent felt the Department should use a listserv to keep the public apprised of the status of the planning rule.

Response: A planning rule listserv was announced in June 2010, and has been used since then to communicate with the public. Members of the public may request to be added to the planning rule listserv on the planning rule Web site, or directly at *http://www.fs.fed.us/news/pr-listserv-subscribe.html*.

Comment: Requests for extension of the comment period. Some respondents requested an extension of the comment period because some members of the public were not able to participate in Agency meetings addressing the proposed rule. Other respondents requested an extension of the comment deadline because of the late release of a scientific review. Some respondents said that the public did not have enough time to comment on the science review before the comment period closed.

Response: The Department went through extraordinary lengths to facilitate the ability of the public to understand and comment on the proposed rule and proposed environmental impact statement. In fact, the Administration identified this rule as a flagship for open government

within the U.S. Department of Agriculture. The Department published in the **Federal Register** a notice of intent to propose a new rule and prepare its accompanying environmental impact statement on December 18, 2009, and took public comment on that notice for 60 days. The proposed rule was informed by approximately 26,000 comments to the notice of intent, a science forum, regional and national roundtables held in 35 locations with over 3,000 people in attendance, national and regional Tribal roundtables, 16 Tribal consultation meetings, Forest Service employee feedback, and over 300 comments posted to the planning rule blog. Throughout that process, the Agency shared a clear timeline with the public, including our intent to publish the final rule by the end of 2011.

The Department considered all the public input, science, and the Agency's expertise to develop the proposed rule and draft environmental impact statement (DEIS). The proposed rule and notice of availability for the DEIS were published in the **Federal Register** and included a 90-day comment period ending on May 16, 2011. A 90-day comment period was used because of the importance of the proposed planning rule. This was 30 days more than the Agency's customary comment period for rulemaking and is 45 days more than the review and comment period for draft environmental impact statements required by National Environmental Policy Act regulations.

The Department reached well beyond its normal practices to provide the public with information to assist in the public comment phase of this rulemaking. During March and April, 2011, after the notices were published in the **Federal Register**, the Forest Service hosted 29 national and regional public forums to provide stakeholders with information about the proposed rule and respond to questions. The forums were attended by almost 1,350 members of the public and reached 74 locations across the country through video and teleconferencing. The National Forum was held within 3 weeks of the opening of the comment period and a video of the forum and forum materials were posted on the planning rule Web site. The regional forums were also held early in the comment period. While the forums were designed to assist the public in understanding the proposed rule and foster informed comments, it was not necessary for any member of the public to attend a forum to develop and submit comments. The Forest Service ensured that the planning rule Web site contained background information on the proposed rule as well as summaries of the various collaboration and public involvement activities held during the preparation of the proposed rule. Also, the DEIS was posted on that Web site, as published in the **Federal Register** notification. In order to proactively facilitate commenting, the Forest Service provided multiple options for members of the public to submit comments: two Web sites, by hard copy mail, and by facsimile.

In addition, the Department contracted with a neutral third party to arrange an independent review of the DEIS by respected and well known scientists outside of the Forest Service to ensure that the science behind the proposed rule and environmental analysis is current, relevant, accurate, and appropriately applied. In order to ensure the integrity and independence of the review process, the identity of the reviewers and the content of their individual analysis were kept confidential by the third party, until the review was completed. In keeping with our open and transparent process, the Agency committed to make the reviews in their entirety public and did so within 3 business days of receiving them. The Agency posted the reviews on the Internet on April 26, 2011. The summary of the reviews and each independent review can be found on the Internet at *http://www.fs.usda.gov/planningrule*. Neither requesting the review nor sharing the result of the review was legally required. The Forest Service considered the science reviews, along with public comments, in preparing the final programmatic environmental impact statement (PEIS) and final rule.

The Department believes the public had sufficient time to review these materials and consider them when commenting on the proposed planning rule. The Department decided not to extend the 90-day comment period because extra time had been provided for comments beyond the customary practices and an unprecedented amount of information and access to the Agency employees to assist the public in understanding that information was provided to the public via Web site and public meetings.

Comment: External science review and Federal Advisory Committee Act. Some respondents were concerned that the external science review of the DEIS violated the Federal Advisory Committee Act (FACA) because they believed the Agency set up an advisory committee but did not follow the FACA requirements. Some respondents were concerned that the Agency did not follow the National Forest Management Act (NFMA) requirements in setting up a committee of scientists.

Response: The external science review of the DEIS did not violate FACA. FACA applies when a Federal agency establishes, controls, or manages a group that provides the Agency with consensus advice or recommendations. The external science review of the DEIS was conducted by seven non-Federal scientists, each of whom separately conducted an independent evaluation of whether appropriate scientific information, content, and rigor had been considered, analyzed, and synthesized in the DEIS. These scientists did not operate as a group; they were not established, controlled or managed as a group by the Agency; and they did not provide the Agency with consensus advice or recommendations. Accordingly, the external science review was not subject to FACA's requirements.

A committee of scientists was not required for this rulemaking effort under the NFMA: a committee of scientists was required only for the 1979 planning rule, and that committee terminated upon promulgation of that regulation. The NFMA states that the Secretary may, from time to time, appoint similar committees when considering revisions of the regulations, but the Secretary need not do so (16 U.S.C. 1604(h)(1)).

Comment: External science review and public comment. Some respondents were concerned that science review meetings of the external reviewers were not open to the public, and that the documents considered and produced were not available to the public. Some respondents were concerned that the Agency did not make the reviews public when the proposed rule was published for comment on February 14, 2011.

Response: There were no ''science review'' meetings held by the external reviewers. The Agency did not provide the external reviewers with any documents that were not available to the public. Neither the public nor the Department knew the identities of the reviewers, nor was there interaction between Department personnel and the reviewers during the review phase. It was only after the reviews were completed, during the public comment phase, that the Department learned the identities of the reviewers and the substance of their reviews. Within 3 business days of the Department's receipt of that information, each of the reviews (unedited), the contractor's summary of the reviews, and the identities of the reviewers were made public. The reviews were not available in February because the reviewers

received the DEIS for review at the same time as the rest of the public.

Comment: External science review and the rule. Some respondents were concerned that the scientists reviewed the rule and not the DEIS, as appeared evident from their reviews.

Response: The basic charge to the science reviewers was to evaluate how well the proposed planning rule's draft environmental impact statement (DEIS) considered the best available science. The contractor gave each science reviewer three key questions to address, regarding scientific caliber, treatment of uncertainty, and comprehensiveness of the DEIS. The reviewers were not asked to review the proposed planning rule or to comment on the alternatives. However, the text of the proposed planning rule and alternatives was included in the appendices of the DEIS that was posted online and made available to the public as well as the science reviewers. Some of the reviewers chose to provide feedback on the proposed rule and alternatives, although they were not asked to comment on those parts.

Comment: External science reviewers. Some respondents were concerned that the background of the reviewers did not include expertise that they felt was important to include, including mining, timber, or recreation. Some suggested that the reviewers were biased in their reviews.

Response: The Department contracted with RESOLVE to administer the science reviews to ensure the independence of the reviews. RESOLVE is a non-partisan organization that serves as a neutral, third-party in policy decisionmaking. One of RESOLVE's specialties is helping to incorporate technical and scientific expertise into policy decisions. The Agency provided the contractor with a draft of the DEIS and required it to select the reviewers and provide their responses to the Agency.

Comment: External science review and CEQ documents. Some respondents commented that the CEQ report from 1982 should not be used because it is too old. Also, some respondents suggested that other references used in the DEIS were too old to use.

Response: The references to which the comment referred were the ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' which was published in the **Federal Register** in 1981 (46 FR 18026 (March 23, 1981)) and the April 30, 1981 memorandum from the Executive Office of the President on scoping. Both are current and still relevant; see the CEQ Web site on NEPA guidance at *http://ceq.hss.doe.gov/nepa/regs/guidance.html.* Furthermore, scientific literature from decades ago may still be relevant and even considered the best science that is available on some topics. Some classic literature from well known scientists still is used frequently (for example, Pickett et al. 1978) and was used in the DEIS.

Comment: Some respondents commented that a concerted effort be made to address the issues raised by the science reviewers.

Response: The planning rule team considered and responded to the comments made by the science reviewers, along with other comments submitted by the public. The issues raised in the reviews informed the final PEIS, along with the other feedback received during the public comment period.

Comment: Some respondents were concerned that only the Science Review summary was posted online.

Response: The Science Review report included a summary of the science review and the full and unedited reviews of each of the science reviewers. The report was prepared by RESOLVE and was posted on the Forest Service Web site without any changes or omissions.

General Proposed Rule Comments

Comment: Degree of compliance or restriction. Some respondents said the rule should provide more discretion and flexibility to develop a forest plan by reducing the use of ''shalls'' and ''musts.'' Other respondents felt phases ''take into account'' and ''consider'' should be removed and replaced with more prescriptive terminology as these terms left implementation largely to the discretion of the responsible official.

Response: The wording in the final rule was chosen to reflect the degree of structure the Department decided as appropriate for various aspects of the rule. The Department's goal in creating the final rule was to create an implementable framework for planning along with a structure and set of requirements for plan components and other plan content that would support the purpose of the final rule. In addition, the Department allows flexibility for plans to reflect the different unique circumstances across the National Forest System (NFS), including in response to best available scientific information, public input, and information about changing conditions at the unit level. The Department believes that the final rule strikes a good balance.

The Department recognizes that there may be significant differences in circumstances across the NFS that make specific national standards unworkable or not reflective of the best available scientific information for a given plan area. The final rule balances the need for national consistency with the need for local flexibility to reflect conditions and information on each unit. Additional direction will be included in the Forest Service Directives System, and a new requirement was added to § 219.2 that requires the Chief to establish a national oversight process for accountability and consistency of planning under this part.

Comment: Advocacy for a particular outcome or regulatory wording. Some respondents expressed general support for or opposition to the proposed rule. Among the items respondents supporting the proposed rule listed are the following: the use of larger ecological regions to provide context for forest, grassland and prairie units; cooperation between the Agency and adjacent governmental entities in planning and plan revision processes; public participation opportunities in the decision making process; the approach on ecological sustainability, watershed restoration and protection, and recognition of ecosystem services. Supportive respondents also were in favor of the emphasis on recreational uses and users; the streamlining and simplifying of the planning process the use of active management techniques; the continued emphasis on multiple use purposes including economic impacts and benefits; the use of best available science; and the appropriate use of regulations and management strategies to mitigate climate change effects. Those respondents expressing a general opposition to the proposed rule felt the way it was written and the requirements it contained were vague, complex, unrealistic, and needed clarification. They felt it would invite litigation; would not provide adequate protection for wildlife and resources; or would limit public access, use, rights, and participation. Some felt the proposed rule was inappropriate because they felt it allowed for continued timber, livestock, mining, and special interest groups' use; wasted tax dollars; would harm economic benefits for rural communities; failed to incorporate the multiple use mandate; failed to include sound science in planning and measurable tools for management; failed to incorporate and analyze Tribal interests and activities; allowed too much discretion to the responsible official; failed to give recreational uses

a greater priority; or failed to address cumulative effects these regulations would cause. Additionally, they expressed concerns over inclusion of climate change requirements. Some respondents expressed endorsement of comments submitted by other organizations or individuals, or referred to attachments submitted in support of their comments.

Response: The Department has reviewed all of these comments and enclosures, and appreciates the degree of public interest in the proposed rule. Where changes have been made in the final rule, these discussions can be found in the following section-by-section discussions. Responses to these comments and their relationship with the supporting final programmatic environmental impact statement (PEIS) can be found in Appendix M of the final PEIS.

Comment: Preservation of the national forests for future generations. Some respondents stated a desire for the rule to mandate stronger standards to ensure wildlife and wildlife habitats are healthy and resilient; for greater forests protections, and better integration of environmental, economic, and/or social sustainability into future plans and future generations. Some wanted inclusion of guidelines for responsible/sustainable recreation, more restrictions on mining and logging activities, and provisions to limit access to preserve land.

Response: The Department agrees that the preservation of our national forests and grasslands is vital to meet the needs of present and future generations. These comments were reviewed and changes are discussed in the section-by-section responses below. The final rule sets the stage for a planning process that can be responsive to the desires and needs of present and future generations of Americans for the multiple uses of NFS lands. The final rule does not make choices between the multiple uses of a plan area. The unit plans developed under the final rule will provide guidance for future projects and activities.

Comment: General action to protect national forests and grasslands. Some respondents expressed the need for the Forest Service to protect and not destroy the national forests. They expressed the importance of protection for wildlife, diverse ecosystems, riparian areas, priority watersheds, aquatic resources, clean drinking water, endangered species, climate change and air pollution, access for socioeconomic purposes, cultural and traditional resource use, and the natural beauty of the land. They suggested strengthening the wording of the proposed rule for forest protection, compliance, and consistency; inclusion of protection of access to land for recreation; and allowing natural processes to occur. They felt an effective planning rule will reflect the aspirations of diverse communities.

Response: The Department has revised the proposed wording on sustainability, diversity of plant and animal communities, multiple uses, and timber requirements as well as wording in other sections of the final rule to reflect public comments and better ensure the needs of present and future generations. See discussions under the section-by-section response to comments.

Comment: References to individual forests, projects, and individuals. Some respondents commented on issues important to them, but not related to this rulemaking effort. Examples of such concerns include the use of DDT, Millennium Ecosystem Assessment, issues with rental housing, sustainable living, a tornado in southeast Tennessee, a vital wildlife crossing in Montana, Willamette National Forest timber harvest levels, and a suggested wolf/gorilla/elephant/chimpanzee/lion/giraffe sanctuary.

Response: These and other similar comments have been determined to be outside the scope of the development of a planning rule, because they discuss aspects unique to specific forests, grasslands, or municipalities. Many of the concerns raised would be more properly addressed in specific forest and grassland plans themselves, or in the subsequent decisions regarding projects and activities on a particular national forest, grassland, prairie, or other administrative unit, or may be outside the scope of NFS planning.

Comment: Wilderness evaluation procedures. Several respondents felt ''sights and sound'' should be removed Forest Service directives as a criterion for wilderness inventories.

Response: Criteria for the evaluation of areas for wilderness recommendations are in Forest Service directives, which are in the process of being revised. There will be an opportunity for public comment on the directives before they are finalized. The Department encourages members of the public to provide comment on issues specific to the directives during their revision.

Comment: Changes to other Forest Service regulations. Some respondents commented about which resource uses or activities should be supported or not supported by the Department on NFS lands. They requested requiring, changing, or eliminating regulations for specific activities. These activities included, but are not limited to, NEPA implementation, grazing, mining, logging, road construction and maintenance, special use permits, hunting, certain recreational activities, trail use conflicts, wildland fire suppression, fuels management, educational opportunities, cultural and historic resources, as well as protections for wild horses and burros.

Response: The Department agrees the issues raised are important. However, these comments have been determined to be outside the scope of development of a planning rule. The final rule is intended to provide overall direction for how plans are developed, revised, and amended and for required plan components and other plan content. The final rule and alternatives found in the supporting final PEIS do not provide regulatory direction for the management of any specific resource, except for the NFMA timber requirements. Agency regulations for specific uses can be found in other sections of 36 CFR parts 200–299, which govern management of the national forests, grasslands, and prairie. For example, part 212 regulates administration of the forest transportations system (roads and trails), part 222 regulates range management, including wild horses and burros, and part 223 regulates the sale and disposal of NFS timber. Additional direction may be found in individual plans or in project or activity decision documents. Those communities, groups, or persons interested in these important issues can influence plan components, plan monitoring programs, or subsequent projects or activities by becoming involved in unit planning efforts throughout the process, and by submitting comments on the Forest Service Directives System during opportunities for public comment.

Comment: Funding and staffing levels. Some respondents suggested increased funding and staffing for the enforcement of protection and mitigation standards; the collection of fees from and licensing requirements for users; bonding to ensure restoration activities; sustainable funding for fuel reduction activities; and the retention or creation of specific Agency positions.

Response: These comments have been determined to be outside the scope of the development of a planning rule. The U. S. Congress determines Agency funding levels under its budgetary process. Staffing issues are more properly addressed by specific forest and grasslands, or regional and national offices.

Comment: Transparency and collaboration. Some respondents wanted the public process of land management planning to be kept clear and transparent. Others commented that in addition to transparency, the specific science being used should be shared. Some respondents were concerned that collaboration would result in too much input from local interests and groups. A respondent stated there is no clear definition of collaboration in the DEIS. Another respondent felt the public participation requirements will not result in collaboration and the Forest Service staff would still be doing all of the planning work.

Response: The Department agrees the public process for land management planning must be clear and transparent. Section 219.3 of the final rule requires the responsible official to document how the best available scientific information was used to inform the assessment, plan decision, and design of the monitoring program. Such documentation must: identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered. This requirement will provide transparency and an explanation to the public as to how the best available scientific information was used to inform how the responsible official arrived at important decisions. Section 219.14 includes additional requirements for the plan decision document to increase transparency and explain the rationale for decisionmaking.

Section 219.4 of the final rule lists the minimum specific points during the planning process when opportunities for public participation will be provided, and includes direction to provide meaningful opportunities for public engagement and share information with the public in an open way. To meet these requirements, the responsible official must be proactive in considering who may be interested in the plan, those who might be affected by a plan or a change to a plan, and how to encourage various constituents and entities to engage, including those interested at the local, regional, and national levels. All members of the public will be provided opportunities to participate in the planning process. Section 219.16 provides requirements for public notification to ensure that information about the planning process reaches the public in a timely and accessible manner.

Section 219.19 of the final rule includes definitions for participation and collaboration. Because the make-up and dynamics of the communities surrounding each planning area differ, and because the level of interest in decisionmaking may vary, the final rule provides the responsible official with the flexibility to select the public participation methods that best fit specific planning needs.

Land management planning for NFS lands falls under Forest Service authority and is a responsibility of the Agency. As such, Agency employees are responsible for the preparation of the actual planning documents. Section 219.5(b) states that interdisciplinary teams will be established to prepare assessments; new plans, plan amendments, plan revisions, and unit monitoring programs. However, under § 219.4, the public will have numerous opportunities to participate in the process and contribute to the content of those documents.

Comment: Tribal activities. Some respondents felt the rule should support Tribal activities on NFS land because of important Tribal historical, cultural, sacred areas located there; should facilitate the Tribes' exercise of treaty hunting, fishing and gathering rights; and should require partnering with Tribal entities in the planning process.

Response: The final rule recognizes and does not change the unique government-to-government relationship between the United States and Indian Tribes. The final rule recognizes and does not modify prior existing Tribal rights, including those involving hunting, fishing, gathering, and protecting cultural and spiritual sites. The rule requires the Agency to work with federally recognized Indian Tribes, government-to-government, as provided in treaties and laws, and consistent with Executive orders when developing, amending, or revising plans. The final rule encourages Tribal participation in NFS planning. Further, the rule recognizes the responsibility of Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests. Nothing in the final rule should be construed as eliminating public input or Tribal consultation requirements for future projects. The final rule requires consideration of cultural and historic resources, ecosystem services including cultural services, areas of Tribal importance, and habitat conditions needed for public uses such as hunting, fishing and subsistence, in addition to input from Tribes and Alaska Native Corporations.

Comment: Compliance with Federal laws and regulations. Some respondents raised concerns over compliance with Federal laws governing the management of the national forests. Some examples cited include the National Heritage Preservation Act, the Organic Act, the General Mining Act of 1872, the Wilderness Act, the Endangered Species Act of 1973 (ESA), the Alaska National Interest Lands Conservation Act (ANILCA), and the Tongass Timber Reform Act (TTRA). Some were concerned with the influence of court decisions on the scope of the rule.

Response: All alternatives in the final PEIS are faithful to and require compliance with all laws governing the Forest Service, including ANILCA, TTRA, and the other laws identified by respondents. This is reaffirmed in the final rule, § 219.1(f), which states that plans must comply with all applicable laws and regulations—some, but not all, of which are mentioned as examples.

The Secretary has clear authority to promulgate the final rule, and the final rule does not conflict with existing law and policy. The foundation for any exercise of power by the Federal Government is the U.S. Constitution. The Constitutional provision that provides authority for management of public lands is the Property Clause (Article IV, Section 3). The Property Clause states that Congress has the power to dispose of and make all needful rules and regulations respecting land or other property belonging to the United States. Using this authority, Congress entrusted the Secretary of Agriculture with broad powers to protect and administer the National Forest System by passing laws, such as the Organic Administration Act of 1897 (the Organic Act), the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), and the National Forest Management Act of 1976 (NFMA).

The duties that Congress assigned to the Secretary include regulating the occupancy and use of National Forest System lands and preserving the forests from destruction (16 U.S.C. 551). Through the MUSYA, Congress directed the Secretary to administer the National Forest System for multiple use and sustained yield of renewable resources without impairment of the productivity of the land (16 U.S.C. 528–531), thus establishing multiple-use as the foundation for management of national forests and grasslands. The statute defines ''multiple use'' broadly, calling for management of the various uses in the combination that will best meet the needs of the American people (16 U.S.C. 531). Under this framework, courts have recognized that the MUSYA does not envision that every acre of National Forest System land be managed for every multiple use, and does envision

some lands being used for less than all of the resources. As a consequence, the Agency has wide discretion to weigh and decide the proper uses within any area. (*Wyoming* v. *USDA,* 661 F.3d, 1209, 1267–1268 (10th Cir. 2011); *Perkins* v. *Bergland,* 608 F.2d 803, 806–807 (9th Cir. 1979); and *City & Cnty. of Denver* v. *Bergland,* 695 F.2d 465, 476 (10th Cir. 1982)). In passing the MUSYA, which directs the Forest Service to administer the national forests for ''sustained yield of the several products and services obtained therefrom.'' Congress also affirmed the application of sustainability to the broad range of resources the Forest Service manages, and did so without limiting the Agency's broad discretion in determining the appropriate resource emphasis and mix of uses.

The NFMA reaffirmed multiple use and sustained yield as the guiding principles for land management planning of National Forest System lands (16 U.S.C. 1600, 1604). Together with other applicable laws, the NFMA authorizes the Secretary of Agriculture to promulgate regulations governing the administration and management of the National Forest Transportation System (16 U.S.C. 1608) and other such regulations as the Secretary determines necessary and desirable to carry out the provisions of the NFMA (16 U.S.C. 1613). These laws complement the longstanding authority of the Secretary to regulate the occupancy and use of the National Forest System (16 U.S.C. 551). Forest Service regulations governing subsistence management regulations for public lands in Alaska under the ANILCA are found at 36 CFR part 242, and changes to those regulations are outside the scope of the development of a planning rule.

Some of the Agency's past decisions have been challenged in court, leading to judicial decisions interpreting the extent of Forest Service discretion, or judgment, in managing National Forest System lands. Courts have routinely held that the Forest Service has wide discretion in deciding the proper mix of uses within any area of National Forest System lands. In the words of the Ninth Circuit Court of Appeals, the Agency's authority pursuant to the MUSYA ''breathes discretion at every pore.'' (*Perkins* v. *Bergland,* 608 F.2d 803, 806 (9th Cir. 1979)).

Comment: Regulatory Flexibility Act (RFA) compliance. A respondent questioned whether this rulemaking is in compliance with the RFA and the rule's capacity to respond to the needs of small governments.

Response: The rule has been considered in light of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1986 (5 U.S.C. 601 et seq.), as documented in the ''Forest Service Planning—Proposed Rule: Opportunities for Small Entities Report'' (09/22/2010). The Department has determined that the rule will not have a significant economic impact on a substantial number of small business entities as defined by the RFA. Therefore, a full regulatory flexibility analysis is not required. The Department recognizes a large number of small businesses use, extract, or otherwise benefit from access to forest resources. The background information provided in the ''affected environment'' in the ''Efficiency and Effectiveness'' section of Chapter 3 in the PEIS describes contributions of NFS lands to small rural and wildland dependent communities, including contributions to jobs and income.

The rule imposes no requirements on small or large entities, nor does it impose requirements or costs on specific types of industries or communities. Rather, the proposed rule sets out a planning process that is designed to provide more opportunities for all affected parties to collaborate in all phases of planning. These opportunities will increase capacity to consider the needs and desires of small entities and reduce the potential for adverse economic impacts. For example, under the final rule, requirements for considering ecosystem sustainability and contributing to social and economic sustainability should facilitate restoration activities and help sustain economic opportunities linked to local or rural communities. Further discussion of compliance with RFA is found in this document under the heading *Proper consideration of small entities.*

Comment: Cooperation beyond NFS boundaries. Some respondents were concerned that the ''all lands'' approach is not within the Forest Service's authority.

Response: The final rule provides the framework for the development, amendment, or revision of land management plans for national forests, grasslands, prairies, or other administrative units of the NFS. It does not provide the Forest Service with authority to make management decisions for lands that are not NFS lands or activities that are not occurring on NFS units. The Department recognizes that conditions, resources and the management of NFS lands can influence, or be influenced by, the ecological, social and economic conditions and management of non-NFS lands. In recognition of this interaction, the final rule requires the responsible official to look beyond the unit boundary and develop an understanding of management issues on the plan area within the context of the broader landscape, and coordinate with and encourage participation of other relevant land or resource managers. These requirements are found in § 219.4 (public participation), § 219.6 (assessment), § 219.8 (sustainability), § 219.9 (diversity), and § 219.10 (multiple use) of the final rule.

Specific requirements that were brought up by respondents, such as consultation or coordination with the U.S. Fish and Wildlife Service for species listed under the Endangered Species Act of 1973 or with State Air Quality Boards for air quality management under the Air Quality Act, are addressed elsewhere in Agency regulation and policy. The final rule does not include or reiterate existing direction provided elsewhere.

Comment: Public input on subsequent planning directives. Some respondents felt the development of the planning directives should be open to public comment.

Response: It is the intent of the Department that the Agency continue to move forward with the open and collaborative approach taken to developing the proposed and final rules. The Agency will provide a public comment period for the planning directives.

Efficiency and Effectiveness Comments on the Proposed Rule

Comment: Process. A respondent said there are too many mandates in the rule for the responsible official to follow, thus making the proposed rule burdensome and difficult to implement. Another respondent felt the amount of process requirements and paperwork in the proposed rule would slow down the planning process.

Response: The final rule uses an adaptive management framework that will facilitate an efficient and implementable planning process. Overall, there are fewer procedural requirements in this final rule than were required by the 1982 planning procedures, and the Agency expects that individual plans will take less time and cost less money to complete. There are a number of analysis and procedural requirements under the 1982 Planning Rule that will no longer be required under the final rule, which will save considerable time, effort, and money. The 1982 planning rule places a great deal of emphasis on using economic analyses to find the solution to planning

problems and challenges. However, the final rule emphasizes public participation and science. Examples of requirements from the 1982 rule not included in the final are: planning criteria, required benchmark alternatives as part of the analysis of the management situation, the projections of demand using both price and non-price information, alternative criteria including Resources Planning Act Program alternative, present net value analysis, comparison of final plan to maximizing present net value alternative, identification of the management intensity for timber production for each category of land which results in the largest excess of discounted benefits less discounted costs, vegetation management practices chosen for each vegetation type and circumstances, and projections of changes in practices for at least four decades.

The framework will facilitate more collaboration with the public and an efficient amendment process. The rule allows administrative changes to plan content other than plan components to help the responsible official adapt to changing conditions, while requiring the responsible official to notify the public.

Comment: Significance of the rule. Some respondents felt that the Forest Service fails to address the rule as ''significant'' under E.O. 12866;

Response: The proposed rule was designated as significant by the Office of Management and Budget and, therefore subject to the Office of Management and Budget review. The Agency reviewed this proposed rule under the Department procedures and Executive Order (E.O.) 12866 issued September 30, 1993, as amended by E.O. 13563 on Regulatory Planning and Review (76 FR 3821 (Jan. 21, 2011)). The Agency prepared two Cost Benefit Analysis reports (Jan. 25, 2011 for the proposed rule, Nov. 17, 2011 for the final rule). The reports discuss the regulatory impact analysis requirements associated with E.O. 12866 and 13563 and OMB circulars. In comparison to the ''no action'' alternative, which would continue to use the 1982 procedures currently allowed under the transition provisions of the 2000 rule, the final rule is not considered an economically significant rule.

Comment: Cost-benefit analysis. Some respondents felt that the Forest Service did not account for a sufficient range of costs and benefits, including the costs, benefits, and economic impacts resulting from implementation of revised or new plans.

Response: The analysis in the ''Efficiency and Effectiveness'' section of the DEIS and final PEIS focused primarily on evaluations of programmatic planning efficiency. Additional details about the potential for specific planning costs and cost effectiveness to change under the final rule is provided in the final PEIS and Appendix A of the Cost Benefit Analysis Report (Nov. 17, 2011) for the final rule. Although overall planning costs for the Agency under the new rule are not projected to be substantially different from the 1982 rule, the projected cost per plan is expected to be lower than under the 1982 rule, the time it takes to revise a plan is projected to be shorter, and it is expected that more plans will be revised in a 15-year period. In addition, it is anticipated that units will have greater capacity to maintain the currency and reliability of plans to meet the objectives of the MUSYA, the NFMA, and the planning rule (§ 219.1(b)/(c)), thereby improving the quality of plans and therefore the efficiency of the planning process.

Comment: Economic impacts such as minerals. Some respondents felt that the Forest Service failed to assess economic impacts that reflect renewable and non-renewable resource sectors (for example, minerals) as well as other sector-specific impacts.

Response: Economic impacts in terms of numbers of jobs and labor income supported by NFS lands, by program, are provided for 2009 in Appendix M of the final PEIS, accounting for direct, indirect, and induced effects. Though economic impacts are not estimated, Appendix C in the Cost Benefit Analysis report for the final rule (2011) provides a limited qualitative discussion of potential indirect effects related to timber, rangeland, and recreation opportunities under baseline conditions. Jobs and income for minerals activity have been included in baseline impact analysis, recognizing that minerals management is administered jointly between the Department of the Interior and the Forest Service. Impacts of the final rule to jobs within specific industry sectors as compared to the other alternatives in the PEIS have not been evaluated as these impacts cannot be determined in the absence of on-the-ground project activity at the unit level.

Comment: Economic benefits of monitoring and ecosystem services. Some respondents felt that the Forest Service should identify benefits from comprehensive monitoring and provision of ecosystem services.

Response: The programmatic benefits of planning tasks or requirements such as comprehensive monitoring (§ 219.12(b)), development of plans to sustain multiple uses (§§ 219.1(b) and 219.10), and accounting for ecosystem services when guiding unit contributions to sustainability (§ 219.8(b)) are accounted for in the discussion of contributions to overall planning efficiency in the ''Efficiency'' section of Chapter 3 of the final PEIS as well as the ''Cost Benefit Analysis'' for the final rule (2011).

As identified by the definition of ecosystem services in § 219.19 of the final rule, benefits from provision of ecosystem services are from provisioning services (for example, timber, forage, clean water, and so forth), regulating services (for example, water filtration, soil stabilization, carbon storage, and so forth), supporting services (for example, nutrient cycling, pollination and so forth), and cultural services (for example, spiritual, heritage, recreational experience, and so forth).

As noted in the Cost Benefit Analysis for the final rule in the ''Efficiency and Effectiveness Impacts'' section, the programmatic benefits of comprehensive monitoring include improved capacity to gather information and reduce uncertainty for a number of integrated and broader-scale conditions, trends, drivers, and stressors—including capacity to detect effects of management within unit boundaries as well as stressors beyond unit boundaries that affect (or are affected by) unit conditions and action. Emphasis on coordination between unit and broader-scale monitoring is expected to help reduce redundancy and ensure information is complementary and consistent.

Comment: Collaboration costs. Some respondents felt that the Forest Service did not properly identify that collaboration is not always efficient or cost-effective, may not result in planning efficiency, and that its use should be based on risk assessments.

Response: Collaboration and public participation costs are projected to increase from approximately $1 million annually under the 1982 rule provisions, to $11 million annually under this final rule. This increase reflects the requirements in the final rule for public participation opportunities at various stages of planning. The final rule also states that outreach and collaborative processes should be used where feasible and appropriate (§ 219.4(a)). The Department recognizes that gains in effectiveness and planning efficiency from collaboration may vary across units and be reflective of existing collaborative capacity. The Agency realizes collaboration cannot guarantee a

successful planning process; however, the Department and the Agency believe that the increased investment in public participation will likely result in a more effective and ultimately more efficient planning process, by building support early in the process. Details on assumptions relevant to the consideration of the costs of collaboration can be found in the final PEIS section on Efficiency in Chapter 3.

Comment: Cost of collaboration, diversity, and litigation. Some respondents felt that the Forest Service omitted costs associated with amendments, litigation, involvement by non-Federal participants, and requirements related to viability and diversity so that these are not accurately reflected or underestimated. Some respondents also felt that the Forest Service projections about planning efficiency and cost effectiveness gains are incorrect, particularly when considering viability requirements, litigation, and use of collaborative processes.

Response: As noted in § 219.13 of the final rule, the requirements for amendments are simpler than requirements for plan development or revision. The final rule allows amendments to be proposed without completing an assessment. As a consequence, the amount of resources associated with amendments is expected to be substantially less than that required for plan development or revision in many cases. Amendments allow for plans to be changed more quickly to respond to changing conditions on the ground than plan revisions.

The Department expects that the adoption of new approaches under the final rule for addressing species viability and diversity within plan components, while recognizing local land and unit capabilities and limits, will increase the feasibility as well as the effectiveness of responding to species and ecosystem diversity, sustainability and recovery needs. Further it is expected the final rule will increase overall planning efficiency for both plan management planning and project-level analysis.

Estimates of the Agency's costs do not account for litigation costs. The costs of litigation are not included in the estimates of annual average Agency costs in the ''Efficiency and Effectiveness'' section in Chapter 3 of the final PEIS. The sources of information used to estimate planning costs, including past cost benefit analyses completed for previous planning rules, did not include litigation costs. Much of the litigation related to planning occurs at the project level, and it is difficult to separate out litigation costs for land management planning from other Agency expenses. Though litigation costs are not included in the efficiency analysis, it is expected that the pre-decisional objection process contained in subpart B of the final rule and the investments in public participation will lower litigation costs compared to the former post-decisional appeal process and fewer opportunities for public input under the 1982 rule procedures.

Comment: Efficiency analysis during plan revision. Some respondents felt it important that shifts in resources in the planning process should not adversely affect or preclude analysis of impacts and effects. They further emphasized that analysis of effects including efficiency analysis are still needed to evaluate plan alternatives. Some respondents felt the rule should outline a planning process that reduces costs of planning and should require that plan alternatives be economically efficient. A respondent suggested that the Agency keep the goal of ''maximizing net public benefits'' from the 1982 planning procedures because the respondent believes that goal is necessary to insure consideration of economic and environmental aspects of renewable resource management. The respondent suggested the planning rule require evaluation of economic efficiency by a full accounting of all costs and benefits (especially non-market) using dollars and present net value.

Response: The Department believes that the framework for adaptive management provided in the final rule is efficient, effective, and will reduce the cost and time needed for development, revision, and amendment of individual plans. The final rule provides direction that the planning process and plan components and other plan content should be within the Agency's authority and the fiscal capability of the unit (§ 219.1(g)).

Analyses will focus on outcomes and analysis of impacts and effects. Analyses will in no way be eliminated or discouraged during the planning process under this new rule. Under the NEPA process during plan revisions and plan amendments, responsible officials will evaluate potential tradeoffs among alternatives as they relate to ecological, social, and economic sustainability and environmental effects.

The Department has chosen to emphasize a rule that supports ecological, social, and economic sustainability as the primary goal for management of NFS lands. The final rule does not include requirements to demonstrate that plans will maximize net public benefits or require valuation of economic efficiency or require present net value analysis as the 1982 rule did. The Department believes the focus should be on collaboration, science, and sustainability, rather than the extensive analysis that was done under the 1982 rule procedures. The Department decided the purpose and applicability of the final rule (§ 219.1) is to produce plans under which the Forest Service will manage NFS lands to sustain multiple uses in perpetuity while maintaining long-term health and productivity of the land. Plans are intended to guide management of NFS lands so they are ecologically sustainable and contribute to social and economic sustainability while providing people and communities with a range of benefits, consistent with MUSYA and NFMA. Under the final rule, responsible officials have the discretion to decide what analysis is useful to inform the public about the effects of plans, plan amendments, and plan revisions.

Comment: Diverting of funds from projects. Some respondents felt that the rule must weigh the resources devoted to planning against the need to provide a foundation for management. In other words, excessive planning costs divert funds away from land management and projects.

Response: Overall, the cost and time of completing an individual plan, revision, or amendment is expected to be less than that needed using the 1982 rule procedures. Under the final rule the Department: (1) Applies flexibility within a clearly defined national-level framework, and (2) requires plans to be developed in a more cooperative context with both community and scientific involvement, thereby building stakeholder trust. In addition, as compared to the 1982 rule, the final rule changes the planning process and reallocates resources to improve the currency, reliability, and legitimacy of plans. This attention to building support early and throughout the process is intended to improve the effectiveness of plans and the Agency's ability to implement projects developed under plans.

Comment: Non-market values. Some respondents felt that the rule should require the need to determine non-market values to comply with NFMA requirements to consider economic aspects of various systems of renewable resources.

Response: The NFMA requires a planning rule to insure consideration of the economic and environmental aspects of the various systems of renewable resource management (16

U.S.C. 1604(g)(3)A). The rule requires consideration of economic aspects in the requirements for an assessment and when developing plan components. However, the NFMA does not require the responsible official to determine non-market values or to quantify non-market benefits. Because of the difficult nature of quantifying and valuing non-market goods and services, the Department has decided not to require those calculations as a part of planning under the final rule. The rule requires plan components to contribute to economic sustainability, which includes consideration of market and non-market benefits. Additionally, in a number of sections, the rule requires consideration of ecosystem services and multiple uses, including provisioning, regulating, and cultural services, all of which involve numerous non-market goods and services (for example, Assessment—§ 219.6(b); Social and economical sustainability—§ 219.8(b); and Multiple use—§ 219.10(a)). These requirements, in combination with public participation early and throughout the planning process (§ 219.4), are expected to improve Agency capacity to acknowledge the relative values of both market and non-market goods and services. Under NEPA requirements, the responsible official will carry out effects analyses for significant issues and the environmental documents will discuss the comparative benefits and tradeoffs associated with non-market ecosystem services.

Comment: Pilot testing. One respondent noted that the rule should be pilot tested on a sample of units.

Response: The Agency intends on phasing in the implementation of the new rule by starting several plan revisions in 2012. This initial phase of implementation will provide opportunities for the Agency to adapt to and refine directives and technical advice for planning under the new rule. Units selected for the initial phase of implementation of the final rule represent a broad spectrum of conditions and are geographically representative. The final rule is intended to provide a flexible planning framework that allows for continuous learning and improvement in implementation.

Comment: Budget shortfalls. Some respondents felt that the rule should contain guidance for planning in the event of budget shortfalls.

Response: Uncertainties at all levels of decisionmaking, due to changing conditions outside the Agency's control as well as budget allocations, will affect implementation. These uncertainties also influence anticipated outcomes of the rule (see Chapter 3 of the final PEIS, ''Staged Decisionmaking and Environmental Analysis''). It is not appropriate to give guidance about what planning activities may be reduced in the event of budget shortfalls in the national planning rule, since budgets, staffing, program emphasis, and planning needs differ among the units. However, the final rule does provide direction that the planning process and plan components and other plan content should be within the Agency's authority and the fiscal capability of the unit (§ 219.1(g)).

Comment: Budget expectations. Some respondents felt that the rule should require estimates of budget expectations in analysis of efficiency and effectiveness, and plan alternatives.

Response: The final rule recognizes potential financial constraints by requiring the responsible official to ensure that the planning process, plan components, and other plan content be within the fiscal capability of the unit (§ 219.1(g)). In the context of developing alternative plan components, § 219.7(e)(1)(ii) of the rule states that ''Objectives should be based on reasonably foreseeable budgets.'' Also the final rule sets out the requirements for developing plan monitoring program within the financial and technical capabilities of the Agency (§ 219.12(a)(4)(ii)). The effects of plan alternatives such as budgetary effects will be disclosed when preparing an environmental impact statement for each new plan or plan revision.

Comment: Secured appropriations. Some respondents felt that a lack of secured appropriations for planning rendered the rule ineffective. Some respondents felt that future budgets are unlikely to provide full funding for planning.

Response: If severe reductions or elimination of funding for land management planning were to occur, it would delay or reduce the Agency's ability to amend and revise plans. It is important to note that the estimated costs for the new rule (Table 6 in the final PEIS) are within the historic range of aggregate planning, inventory, and monitoring annual budgets (1995–2010).

Comment: Economic analysis for plan revisions. Some respondents felt that the rule should require the NEPA analysis for the plan to include a fiscal analysis of each alternative's implementation and mitigation costs and require that the cost of inspections, enforcement, and monitoring be included in the plan NEPA analysis. Several respondents felt that the planning rule should include a requirement for explicit disclosure of a variety of costs and benefits of Agency actions to more accurately compare plan alternatives and plan components. Some respondents felt that the planning rule must require the estimates of present net value (PNV) for plan alternatives and projects and include all costs and benefits. Some respondents felt that the planning rule must require that the dollar cost of impacts on non-timber industries be estimated and included in estimates of PNV.

Response: Section 219.5(a)(2)(i) of the final rule states that a new plan or plan revision requires preparation of an environmental impact statement. The NFMA gives considerable discretion to the Agency when considering physical, economic, and other pertinent factors. The Department does not want the planning rule to prescribe specific processes for assessing and evaluating economic efficiency. Cost-benefit analyses, or net present value estimation, are not required when evaluating plan alternatives; however, such an analysis (quantitative and/or qualitative) may be useful in some cases to satisfy the NEPA objectives (42 U.S.C. Sec 4331, 101 and 102(2)) and to demonstrate fulfillment of MUSYA goals (for example, ''management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people;'' (16 U.S.C. 531(a))). The Forest Service handbook for NEPA (FSH 1909.15, chapter 20, section 22.32) states that if a cost benefit analysis is being considered for a proposed action (for example, proposed plan revision), it must be incorporated by reference or appended to the environmental impact statement as an aid in evaluating the environmental consequences. The Forest Service Handbook (FSH 1909.15.section 22.32) as well as NEPA regulations (40 CFR 1502.23) state that for purposes of complying with the [NEPA], the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. The Handbook and NEPA regulations also state that an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, that are likely to be relevant and important to a decision. Those considerations and factors may include a variety of quantified or qualitative descriptions of costs and benefits that are linked to significant issue determinations for a particular forest plan. The Department requires that land management plans will be

within the fiscal capability of the unit (§ 219.1(g)). The rule requires that objectives be based on reasonably foreseeable budgets (§ 219.7(e)(1)(ii)) and that the monitoring program be within the financial and technical capabilities of the Agency (§ 219.12(a)(4)(ii)). Clarifications about disclosure of costs and benefits, as well as use of cost-benefit (or PNV) analysis are more appropriately included in the Agency directives.

Comments: Collaboration costs. Many respondents supported public participation opportunities in the decisionmaking process. Some respondents felt collaboration will not be cost effective. Some felt that coordination, as mandated by law, is effective and will save time and expense in planning, implementation, and management. They said increased costs for collaboration are foreseeable. Some respondents felt the assumptions that collaboration will reduce monitoring costs and bring broader support and resolution of issues with their critics were faulty. They felt the final PEIS should explain how collaboration will lead to cost savings and document savings expected from each alternative.

Response: The Department believes that involving the public early on through a participatory, open, and meaningful process is the best way to approach planning. The final rule sets out a planning process that is designed to provide more opportunities for the public to collaborate with the Agency and to become more involved in all phases of planning, including monitoring, assessment, and development of alternatives for land management plan revisions or amendments. Section 219.4 of the final rule requires the responsible official to engage the public in early and meaningful opportunities for participation during the planning process and to coordinate with other public planning efforts, including State and local governments. However, the final rule gives the responsible official discretion to tailor the scope, scale, and types of participation opportunities to be congruent with the need and level of interest, subject to the requirements of section 219.4. Collaborative processes would be used where feasible and appropriate.

The final PEIS does not demonstrate that collaboration will lead to Forest Service cost savings in planning. Because of the public participation and collaboration throughout the planning process, the Department expects that the cost for collaboration and engaging the public during the planning process would be higher than that under the 1982 procedures. However, it is anticipated that overall planning efficiency will be improved as other planning activities such as analyzing and revising plan components are anticipated to be streamlined. It is also expected that increased participation and collaboration throughout the planning process will increase support for eventual plan implementation.

Comment: Jobs and income. Some respondents felt that the proposed rule could have a significant effect on jobs, labor income, production, and competition of a particular resource during plan revision and plan amendment.

Response: The Department recognizes that plans developed, revised, or amended under the final rule will guide projects that could in turn affect distribution of employment, income, and payments to local governments. Impacts to jobs within specific industry sectors due to the final rule compared to the other alternatives have not been evaluated in detail as these impacts cannot be determined in the absence of on-the-ground project activity at the unit level. Direct effects on the levels of goods, services, and uses to which NFS lands contribute are the end-results of on-the-ground projects or activities.

The effects of plan proposals as well as proposed projects will continue to be evaluated in accordance with NEPA; impacts to employment, income, and payments will likewise continue to be evaluated as appropriate to the need to address plan or project-specific significant issues. The Department does not want the planning rule to prescribe specific processes for assessing and evaluating economic effects. Such direction, guidance, advice, or approaches for effects analysis in general are found in the Agency directives (for example FSM 1970 and FSH1909.17).

Comment: Site-specific project costs. Some respondents felt that the Agency incorrectly assumes that the site-specific project costs are not affected by the proposed rule.

Response: The Agency did not assume that the site-specific project costs are not affected by the proposed rule. However, the proposed rule cost and benefit analysis did not estimate the effects of the rule on site-specific projects developed under land management plans, because site-specific project costs are a function of unknown future site-specific plan or project proposals occurring under new, revised, or amended plans under the final rule; it is, therefore, not possible to estimate or characterize changes in project-specific costs.

Comment: Least burden to society. Some respondents felt the Forest Service should develop the rule in a way that imposes the least burden on society, businesses, and communities.

Response: The Department believes that the final rule supports management of the NFS to contribute to social and economic sustainability. The rule does not directly regulate individuals, individual businesses, or other entities such as local or State governments. Impacts to small entities are addressed in the Regulatory Flexibility Analysis (as summarized in the Regulatory Certifications section of the preamble for the final rule).

Comment: Costs of cumulative regulations. Some respondents felt the Forest Service should consider the costs of cumulative regulations.

Response: The potential effects of the rule in combination with other broad Agency actions and strategies (for example, roadless rules, strategic plans and other Agency goals, NEPA procedures, transition to implementing the final rule, management planning direction by other agencies, and collaboration) are presented in the ''Cumulative Effects'' section of the final PEIS.

Comment: Costs to States (Federalism). Some respondents felt the Forest Service incorrectly concludes that the rule will not impose direct or compliance costs on States (that is, Federalism).

Response: Executive Order 13132 (that is, Federalism) establishes requirements the Federal Government must follow as it develops and carries out policy actions that affect State or local governments. The Department concludes that the rule would not impose compliance costs on the States (or local governments) and would not have substantial direct effects on the States.

Section-By-Section Explanation of the Final Rule

The following section-by-section descriptions are provided to explain the approach taken in the final rule to NFS land management planning.

Subpart A—National Forest System Land Management Planning

Section 219.1—Purpose and Applicability

This section of the final rule describes the purpose of the rule and its applicability to units of the NFS. This section affirms the multiple-use, sustained-yield mandate of the Forest Service, and states that the purpose of this part is to guide the collaborative

and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS. The NFMA requires the Agency to have a planning rule developed under the principles of the Multiple-Use Sustained-Yield Act of 1960 (MUSYA). The planning rule sets requirements for land management planning and content of plans and applies to all units in the NFS.

The requirements in the final rule should increase Agency and plan area capacity for adapting management plans to new and evolving information about stressors, changing conditions, and management effectiveness. The Department's intent is for responsible officials to use the planning framework to keep plans and management activity current, relevant, and effective.

Section 219.1—Response to Comments

Many comments on this section focused on consistency with MUSYA, compliance with or applicability of valid existing rights, treaties, and applicable laws, and the cost of the process for implementing the rule. The Department modified the wording of the proposed rule to move a reference to ''ecosystem services'' from paragraph (a) of this section to paragraph (c); add at paragraph (c) ''clean air'' as a benefit provided by ecosystem services and replace the term ''healthy and resilient'' with ''ecological integrity;'' move direction about the Forest Service Directives System previously in paragraph (d) of this section in the proposed rule to § 219.2(b)(5); and make other clarifications for readability. These changes are not changes in requirements; they are just clarifications and reorganizations.

The Department added direction at paragraph (g) of this section to ensure that the planning process, plan components and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit. In the proposed rule we had similar wording in §§ 219.8 through 219.11. Adding this requirement in paragraph (g) is a change because the requirement now applies more broadly to the process and content requirements of the final rule.

Comment: Ecosystem services. Some respondents objected to the use of ''ecosystem services'' in § 219.1(b) and throughout the rule. One respondent felt the term diluted the congressionally honored and sanctioned ''multiple use'' mission of the national forests.

Response: The use of the term ''ecosystem services'' has been removed from § 219.1(b), added to § 219.1(c), and revised throughout the final rule; however, the final rule retains reference to ''ecosystem services.'' The final rule states that plans must ''provide for ecosystem services and multiple uses'' instead of ''provide for multiple uses, including ecosystem services'' as it was stated in the proposed rule. The Department believes this revised wording is consistent with the MUSYA, which recognizes both resources and services. The MUSYA requires the Forest Service is to ''administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom.'' (16 U.S.C. 529). The Act defines ''multiple use'' as ''the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services'' (16 U.S.C. 531(a)). The Department believes MUSYA anticipated changing conditions and needs, and the meaning of ''several products and services obtained'' from the national forests and grasslands incorporates all values, benefits, products, and services Americans know and expect the NFS to provide. Resources like clean air and water are among the many ecosystem services these lands provide.

Comment: Objective of planning. Some respondents felt the MUSYA refers expressly to five tangible objectives for forest management (recreation, range, timber, watershed, wildlife and fish, and wilderness), and does not include intangibles such as ''spiritual sustenance.'' They felt intangibles should be removed from objectives.

Response: The Department believes the mandate under the NFMA and MUSYA is not exclusive to a single resource or use, and that sustained yield applies to all multiple use purposes, including outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. Development of balanced plans for national forests and grasslands is a complex undertaking, and often there are diverse opinions on the desired conditions and objectives set in these plans. The rule sets up a process so individual forests and grasslands are managed with a balanced approach to best meet the needs of present and future generations of Americans. The Department recognizes Americans expect a range of benefits and services from the National Forest System, which can include both tangible objectives and intangible benefits. Under § 219.4, the final rule sets forth an open process for public collaboration, participation, and coordination to inform desired conditions and objectives for NFS lands. The words ''spiritual sustenance'' in § 219.1(c) of the proposed rule have been changed to ''spiritual…benefits'' in this final rule because the word ''sustenance'' was confusing.

Comment: Valid existing rights. A respondent felt the rule should require plans to expressly state that their provisions cannot affect valid existing rights established by statute or legal instrument.

Response: Whether the plan expressly states it or not, a land management plan cannot affect treaty rights or valid existing rights established by statute or legal instruments. For clarity, the final rule acknowledges this fact in § 219.1(d).

Comments: Inclusion of other laws. Some respondents requested that the list of laws at § 219.1 include the ANILCA, the Alaska Native Claims Settlement Act, the FLPMA of 1976, the General Mining Law of 1872, the National Heritage Preservation Act, the Tongass Timber Reform Act, amongst others.

Response: The list of laws in § 219.1 is not intended to be a complete list of laws and regulations requiring Agency compliance. The Department did not choose to include an exhaustive list of applicable laws and regulations, as the Agency is obligated to comply with all applicable laws and regulations regardless of whether it is referenced in the text of the final rule. All plans and planning decisions must comply with applicable laws and regulations.

Comment: Use of fiscal capability. Some respondents felt the MUSYA does not allow the fiscal capability or economic analysis to limit management as discussed in §§ 219.10 and 219.11 of the proposed rule, while others felt these concepts should be applied to all requirements.

Response: Congress determines the annual fiscal allocation to the Agency. The Department concludes that responsible officials must constrain the development of management direction within the plan and planning process within a unit's expected fiscal capability. The Department came to this conclusion because if a responsible official develops a plan beyond a unit's fiscal capability, then management towards the plan objectives and thus plan desired conditions will not be realistic or possible. The Department removed the phrase ''and the fiscal capability of the unit'' from § 219.10 and § 219.11, and added at § 219.1(g) that

the responsible official shall ensure that the planning process, plan components and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit. This requirement at § 219.1(g) applies to all sections of the rule, including sections 219.8, 219.9, 219.10, and 219.11.

Section 219.2—Levels of Planning and Responsible Official

Planning occurs at three levels—national strategic planning, NFS unit planning, and project or activity planning. Section 219.2 of the final rule describes these levels of Agency planning, identifies the responsible official, and describes specific attributes and requirements for unit-level planning. This section also provides the basic authorities and direction for developing, amending, or revising a plan. In addition, it identifies the responsibilities of the Chief for oversight, leadership, and direction.

Some people wanted to see very detailed requirements in the rule, such as monitoring methods and protocols, while others emphasized the need to keep the rule simple, so it would endure and could be implemented across different landscapes within the NFS. This section ensures that the Agency will establish additional needed details in the Directives for effective implementation of the planning rule, while allowing rule wording to remain relevant even as conditions change.

Section 219.2—Response to Comments

Many comments on this section focused on the level of the responsible official, the appropriate scale for planning, and consistency of plans across the NFS. The Department modified the wording from the proposed rule to address concerns raised by the public and other regulatory agencies that more specific requirements were needed to ensure consistent implementation of the rule. The Department moved wording formally in section 219.1 of the proposed rule to this section and added paragraph (b)(5) that requires the Chief:

(i) To establish direction for NFS land management planning under this part in the Forest Service Directives System (what was formerly § 219.1(d) in the proposed rule);

(ii) To establish and administer a national performance oversight and accountability process to review NFS land management planning under this part; and

(iii) To establish procedures in the Forest Service Directives System (Directives) to guide how data on various renewable resources, as well as soil and water will be obtained to respond to 16 U.S.C. 1604(g)(2)(B).

The addition of the oversight requirement in (ii) is a minor change in requirements in response to the comments received. The other changes are not changes in requirements, they are just clarifications.

Comment: Level of responsible official and consistency with regional or national programs. Some respondents felt the proposed change from regional forester to forest supervisor for the level of responsible official would make the plan more responsive to local situations. Others felt this change would result in inconsistencies across unit boundaries, limit collaborators, and reduce the accountability provided by a higher level responsible official. Several respondents felt the discretion given to local responsible officials in the proposed rule could lead to individual forest and grassland level plans that are inconsistent with neighboring unit plans and with regional or national programs.

Response: The responsible official will usually be the forest or grassland supervisor, who is most familiar with the resources, issues, and the people relevant to and interested in the unit. However, § 219.2(b)(3) provides the option for higher-level officials to act as the responsible official for a plan, plan amendment, or plan revision across a number of plan areas. Regardless of what level they are, the responsible official must develop, amend, or revise plans within the framework set out by this final rule and is accountable for compliance with the rule and the multitude of relevant laws and policies. To ensure compliance, the final rule wording identifies in § 219.2(b) the Chief as responsible for leadership in carrying out the NFS land management planning program, establishment of planning direction, and administration of a national oversight process for accountability and consistency.

There are also a number of places in the final rule that call for coordination with other staff in the Agency, including the appropriate research station director. The Department anticipates that the regional forester and regional office planning and resource specialists will continue to be involved and provide an additional level of oversight, including reviewing draft and final products developed during the planning process and participating in the development of those products. Regional office engagement will help to provide consistency in interpretation and implementation of the planning rule and other Agency planning requirements on units within the region.

The final rule includes other requirements at § 219.4 for public participation and coordination with other planning efforts. The final rule also requires in § 219.15 that other resource plans be consistent with the plan components. The Department anticipates that the final rule will be implemented in the context of a mosaic of other Agency programs, for example, the Climate Change Roadmap and Scorecard, the Watershed Condition Framework, and the Sustainable Recreation Framework. The Department expects that these programs and requirements will be mutually supportive and will contribute to good land management.

Comment: Scale of planning. Some respondents expressed different opinions about the scale of planning. Some suggested larger or smaller scales than the proposed administrative unit level. One respondent felt the rule should consider a level of planning by resource. Some respondents felt the rule should require use of the U.S. Geologic Survey 5th field hydrologic unit as the minimum size needed to conduct ecological coarse-filter assessments.

Response: The final rule allows planning at the most appropriate scale to address issues and resource concerns specific to that unit. The final rule does set forth requirements to consider other scales while developing plans. Section 219.7(f)(1)(ii) requires the responsible official to describe the distinctive roles and contributions of the plan area within the context of a broader landscape. Section 219.7(f)(1)(i), specifically discusses priority watersheds. Section 219.7(d) requires the use of management or geographic areas for a smaller scale geographic context and identification of management requirements that may be needed at the smaller scale. The final rule also provides that two or more responsible officials may undertake joint planning for their units.

Planning at the resource level would not comply with the NFMA requirements for interdisciplinary approach to achieve integration of all resources to achieve integrated consideration of physical, biological, economic, and other sciences to develop one integrated plan.

Requirements for broader-scale assessments and assessments for each individual watershed are not included in the final rule. Adding these requirements would add more preliminary steps to planning that may further delay completion of plan revisions or amendments and may not

be necessary for the planning process. The assessments envisioned in the planning rule are focused on gathering and evaluating existing information relevant to the plan or the specific plan area.

The 1982 rule required the preparation of a regional guide and a planning process for the development of that guide. The final rule does not include a requirement for regional planning. After several years of developing and using regional guides, the Agency found that they added an additional and time-consuming layer of planning that often delayed progress of unit planning. Regional plans also tended to remain static and did not change as new information or science became available.

Comment: Relationship of plan decisions to project-level plans and decisions. Several respondents felt the relationship between plan decisions and subsequent project-level decisions was unclear. A respondent felt the rule should explicitly state a programmatic decision is being made for the planning unit.

Response: The final rule sets the framework for the development, amendment, and revision of unit plans: The requirements set forth in the final rule are for plans, not for projects or activities that are developed under the plan. Section 219.15 requires projects and activities carried out under the plans developed under the final rule to be consistent with the plans. Unit plans may establish constraints on projects and identify possible activities; however, plans do not authorize activities or projects. Forest Service NEPA procedures must be followed when developing, revising, or amending plans. In addition, the Forest Service NEPA procedures must be followed for proposed site-specific projects or activities developed under the requirements of the unit plan. Section 219.15(d) of the final rule identifies how project and activities must be consistent with plan components.

Comment: Repeating of laws and regulations. Several respondents felt proposed § 219.2(b)(2) should clearly state plans ''may reference, but should not repeat'' laws, regulations, and so forth.

Response: The final rule does not prohibit referencing laws, regulations, or Forest Service directives if the responsible official feels that doing so will add clarity.

Section 219.3—Role of Science in Planning

This section requires that the responsible official use the best available scientific information to inform the planning process and plan decisions, and provides requirements for documenting the use of the best available scientific information (BASI). The intent of this requirement is to ensure that the responsible official uses BASI to inform planning, plan components, and other plan content, that decisions are based on an understanding of the BASI and that the rationale for decisions is transparent to the public. The Department also expects that this requirement will increase the responsible official's understanding of risks and uncertainties and improve assumptions made in the course of decisionmaking.

Section 219.3—Response to Comments

Many people provided comments on this section of the proposed rule. Most comments focused on whether or not to include a requirement for use of the BASI, discretion about how science should be used, and the potential procedural burdens created by this requirement. The Department modified the wording of the proposed rule as follows: (1) To clarify how scientific information is to be used in the planning process; (2) to clarify the level of discretion the responsible official has in using scientific information; and (3) to manage the potentially burdensome requirements for documentation.

The Department clarified how BASI will be used in the planning process; changing the wording from ''the responsible official shall take into account the best available scientific information,'' to ''the responsible official shall use the best available scientific information to inform the planning process.'' This clarification is consistent with the Department's intent as described in the preamble to the proposed rule. This clarification is in response to public comments expressing concern that the proposed rule wording would allow the responsible official to ignore best available scientific information. This wording makes clear that the responsible official must use the BASI to inform the process and decisions made during the planning process.

The Department also modified the requirement that the responsible official ''determine what information is the most accurate, reliable, and relevant to a particular decision or action'' to a requirement that the responsible official ''determine what information is the most accurate, reliable, and relevant to the issues being considered.'' This change focuses the requirement on the issues being considered, because the underlying issues form the basis for decisionmaking, and are the appropriate focus for the requirement to ensure that the responsible official uses scientific information to inform plan-related decisions.

The Department eliminated paragraphs (a), (b), and (c) of § 219.3 of the proposed rule. The remaining paragraph was modified to require the responsible official to document how the best available scientific information was used to inform the assessment, the plan decision, and the monitoring program. Changing these requirements is responsive to public comments about the process associated with meeting the requirements of this section.

Comment: Best available scientific information. A respondent felt the term ''best available scientific information'' used in the proposed rule is value laden and implies judgment that cited scientific information is potentially superior to other scientific information on the topic. This respondent felt using the term would put responsible officials in the position of choosing one scientist over another. Additionally, the concern was expressed that the lack of a clear definition of ''best available scientific information'' in the rule could allow a responsible official to use poorly constructed or subjective information to inform planning decisions. Still other respondents felt the proposed rule was unclear on who should determine what the best available scientific information is.

Response: The Department decided to retain the term ''best available scientific information'' (BASI) from the proposed rule, and to require that such information be used to inform the assessment, the planning process, and plan components and other plan content, including the monitoring program. The responsible official must determine what information is the most accurate, reliable, and relevant with regard to the issues being considered. In some circumstances, the BASI would be that which is developed using the scientific method, which includes clearly stated questions, well designed investigations, and logically analyzed results, documented clearly and subjected to peer review. However, in other circumstances the BASI for the matter under consideration may be information from analyses of data obtained from a local area, or studies to address a specific question in one area. In other circumstances, the BASI could be the result of expert opinion, panel consensus, or observations, as long as the responsible official has a reasonable basis for relying on that information.

The Department recognizes often there is uncertainty in science, and

there may be differing or inconclusive scientific information. Different disciplines, including the social and economic sciences as well as ecologic science, may provide scientific information that is the best available for the issues being considered. Gathering a range of scientific information and acknowledging potential uncertainties is critical to adequately inform the responsible official as well as the public during the planning process.

The Agency already has a fundamental legal requirement to consider relevant factors, including the relevant scientific information, and explain the basis for its decisions. The Department included this section in the rule, with its explicit requirements for determining and documenting the use of the best available scientific information, to inform the planning process and to help to ensure a consistent approach across the National Forest System.

To respond to comments about the level of documentation for individual units, the requirements for documentation were changed from the proposed rule. The Department eliminated paragraphs (a), (b), and (c) of § 219.3 of the proposed rule, and replaced them with the requirement that the responsible official document how the best available scientific information was used to inform the assessment, the plan decision, and the monitoring program. Section 219.14(a)(4) requires that the plan decision document must document how the best available scientific information was used to inform planning, plan components, and other plan content, including the monitoring program. The remaining paragraph was modified to require the responsible official to document how the best available scientific information was used to inform the design of the monitoring program, rather than in every monitoring report, because the monitoring results are scientific information. In addition, the new documentation requirements call for the responsible official to explain the basis for the determination, and explain how the information was applied to the issues considered.

The Forest Service Directives System will contain further detail on how to document the use of the best available scientific information, including identifying the sources of data such as peer reviewed articles, scientific assessments, or other scientific information. In addition, the Forest Service Directives System will contain further detail on the Forest Services' information quality guidelines. Direction about science reviews may be found in Forest Service Handbook 1909.12—Land Management Planning, Chapter 40—Science and Sustainability.

The final rule is consistent with USDA policy that requires agencies to meet science quality standards when developing and reviewing scientific research information and disseminating it to the public. Also, the final rule is consistent with the recent Executive Order 13563 (2011) that states ''when scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate.'' Responsible officials will rely upon the USDA Office of the Chief Information Officer guidance to determine when the Office of Management and Budget (OMB) Information Quality Bulletin on Peer Review applies. USDA guidelines are found at *http://www.ocio.usda.gov/qi_guide/index.html.*

Comment: Weight of scientific information. Some respondents felt the proposed rule allowed science to be weighed more heavily than other relevant information. Some respondents felt the proposed rule allows decisions to be made based on politics or special interests rather than science. Some respondents felt the proposed rule requirement for the best available science to be taken into account was not strong enough, and suggested the rule require decisions to conform to the best science. Other respondents felt the proposed rule made use of science mandatory rather than discretionary.

Response: The Department never intended that the responsible official could have the discretion to disregard best available scientific information (BASI) in making a decision. To clarify the Department's intent, the final rule requires the responsible official to use the BASI to inform the planning process rather than take BASI into account. While the BASI must inform the planning process and plan components, it does not dictate what the decision must be: BASI may lead a responsible official to a range of possible options. There also may be competing scientific perspectives and uncertainty in the science. Furthermore, scientific information is one of the factors relevant to decisionmaking. Other factors include budget, legal authority, local and indigenous knowledge, Agency policies, public input, and the experience of land managers.

Comment: Funding for BASI. Some respondents felt the requirements to use the best available scientific information were going to be too financially burdensome. Other respondents suggest the term should be removed from the rule as it would only create delays and legal challenges.

Response: The Agency is already required to take relevant scientific information into account in decisionmaking. The Agency already has a fundamental legal requirement to consider relevant factors, including relevant scientific information, and explain the basis for its decisions.

This section is not intended to impose a higher standard for judicial review than the existing ''arbitrary and capricious'' standard. The requirements of this final rule section are also separate from those of the Council on Environmental Quality's NEPA regulations, (40 CFR 1502.22(b)), which in some circumstances require the responsible official to seek out missing or incomplete scientific information needed for an environmental impact statement, unless the costs of doing so are prohibitive. This final rule section does not change that requirement. The requirements in section 219.3 are focused on ensuring the responsible official uses the BASI that is already available to inform the planning process. Thus, while an assessment report or monitoring evaluation report may identify gaps or inconsistencies in data or scientific knowledge, the final rule does not impose the affirmative duty that the CEQ regulation applies to EISs—that is, to engage in new studies or develop new information, or to document that the costs of seeking new information are prohibitive.

Including this section in the rule, with its explicit requirements, for determining and documenting the use of the BASI to inform planning the planning process, will help to ensure a consistent approach across the National Forest System that will lead to more credible and supportable plan decisions.

Comment: Transparency of science used. Some respondents felt an addition of a requirement for the disclosure of what science was being used would enhance transparency.

Response: Section 219.3 of the final rule requires the responsible official to document how the BASI was used to inform the assessment, plan decision, and design of the monitoring program. Such documentation must: identify what information was determined to be the BASI, explain the basis for that determination, and explain how the information was applied to the issues considered. This requirement will provide both transparency and an explanation to the public as to how BASI was used by responsible officials to arrive at their decisions.

Comment: Risk, uncertainty, and the precautionary principle. A respondent

stated the words ''risk'' and ''uncertainty'' found throughout the preamble and DEIS are missing from the rule itself. The respondent felt the rule should include wording about risks and uncertainties and require techniques for assisting responsible officials in evaluating risks and uncertainties. Some respondents felt the rule should adopt the ''precautionary principle'' in planning on the NFS to account for uncertainty. One respondent also felt the wording ''lack of full scientific certainty shall not be used as a reason for postponing a cost-effective measure to prevent environmental degradation'' should be added.

Response: The Department concludes that the adaptive management framework of assessment, revision or amendment, and monitoring in this final rule provides a scientifically supported process for decisionmaking in the face of uncertainty and particularly under changing conditions. The intent of this framework is to create a responsive planning process and allows the Forest Service to adapt to changing conditions and improve management based on new information. Monitoring provides the feedback for the planning cycle by testing assumptions, tracking relevant conditions over time, and measuring management effectiveness.

The assessment report will document information needs relevant to the topics of the assessment and the best available scientific information that will be used to inform the planning process.

The science of risk management is rapidly evolving. To require specific techniques or methodologies would risk codifying approaches that may soon be outdated. The responsible official will inform the public about the risks and uncertainties in the environmental impact statements and environmental assessments for plans, plan revisions, and plan amendments.

Comment: Climate change and climate science. Some respondents felt the rule should require use of climate change science in decisionmaking. Others felt the rule should address and implement regulations for mitigation of climate change while others felt the rule should not address climate change.

Response: The rule sets forth an adaptive land management planning process informed by both a comprehensive assessment and the best available scientific information. Section 219.6(b)(3)–(4) requires responsible officials to identify and evaluate information on climate change and other stressors relevant to the plan area, along with a baseline assessment of carbon stocks, as a part of the assessment phase. Section 219.8(a)(1)(iv) requires climate change be taken into account when the responsible official is developing plan components for ecological sustainability. When providing for ecosystem services and multiple uses, the responsible official is required by § 219.10(a)(8) to consider climate change. Measureable changes to the plan area related to climate change and other stressors affecting the plan area are to be monitored under § 219.12(a)(5)(vi). Combined with the requirements of the Forest Service Climate Change Roadmap and Scorecard, these requirements will ensure that Forest Service land management planning addresses climate change and supports adaptive management to respond to new information and changing conditions.

Section 219.4—Requirements for Public Participation

This section of the final rule requires the responsible official to provide meaningful opportunities for public participation throughout the planning process. It gives direction for providing such opportunities, including for outreach, Tribal consultation, and coordination with other public planning efforts. The intent of this section is to emphasize the importance of active public engagement in planning and to provide direction for the responsible official to take an active, modern approach to getting public input, including recognition of the need for accessibility of the process and engagement of all publics, the responsibility for Tribal consultation, and engagement with other land managers as part of an all lands approach. The outcomes of public participation can include a greater understanding of interests underlying the issues, a shared understanding of the conditions on the plan area and in the broader landscape that provide the context for planning, the development of alternatives that can accommodate a wide range of interests, and the potential development of a shared vision for the plan area, as well as an understanding of how and why planning decisions are made. Engaging the public early and throughout the process is expected to lead to better decisionmaking and plans that have broader support and relevance.

Section 219.4—Response to Comments

Many comments on this section focused on the requirements for the kinds and level of participation opportunities and outreach, coordination with local and State governments and planning efforts, and Tribal consultation. This section was reorganized and new paragraph headings were assigned to increase clarity. Wording affirming that the Forest Service retains decisionmaking authority and responsibility for all decisions was moved from the definition of collaboration of the proposed rule to paragraph (a) of this section. The Department also listed State fish and wildlife agencies, and State foresters in paragraph § 219.4(a)(1)(iv) as illustrative examples of relevant State agencies.

The Department modified the wording about trust responsibilities in § 219.4(a)(2) that was designated at § 219.4(a)(5) of the proposed rule. The proposed rule said: the Department recognizes the Federal Government's trust responsibility for federally recognized Indian Tribes. The final rule says: the Department recognizes the Federal Government has certain trust responsibilities and a unique legal relationship with federally recognized Indian Tribes. This change was made to ensure accurate recognition of the relationship between the Federal Government and federally recognized Tribes.

The Department deleted the phrase, ''to the extent practicable and appropriate,'' from the end of paragraph § 219.4(b) for coordination with other public planning efforts, in response to public comment. The change is intended to make clear that the requirements for coordination with other public planning efforts have not been reduced from previous rules. However, this change is not intended to require the Agency's planning efforts to tier to, or match the timing of other public planning efforts. These changes are not changes in requirements, they are clarifications.

Comment: Specific requirements for public engagement. Some respondents felt that the rule should allow responsible officials to have the discretion to determine public outreach methods, while others felt the rule should contain specific method and process requirements for public engagement because vague requirements could result in courts second-guessing whether the public participation was sufficient. Others felt the public participation opportunities held during planning need to be flexible and accommodate the people living and working in the area. Others requested specific recreation clubs and organizations be added to proposed § 219.4(a)(2). A respondent felt the responsible official should be required to identify other non-traditional means

of engagement and to identify in advance the participation of specific populations in each area with historical and traditional connections to the land, including forestry workers, their associations, and specific communities who retain or wish to retain historic connections to the land. Some respondents felt individuals and organizations engaged in forest planning should be limited to either economic stakeholders or those with an existing interest in forest management as the Forest Service cannot make individuals or groups with no interest or economic stake in national forests participate in forest planning, regardless of the effort the Agency puts into targeted scoping.

Response: The rule requires the responsible official to engage and encourage participation by a diverse array of people and communities throughout the planning process. This includes those interested at the local, regional, and national levels and covers all groups and organizations that are interested in the land management planning process. The Department recognizes the need to engage a full range of interests and individuals in the planning process. The national forests and grasslands belong to all Americans and not just those who have economic or previously expressed interest. The Department concluded it was important for the final rule to recognize that opportunities for public participation in the planning process must be fair and accessible, while recognizing and taking into account the diverse interests, responsibilities, and jurisdictions of interested and affected parties. The final rule does not require participation from any specific group. The rule also allows flexibility in the methods of offering opportunities for engagement, recognizing that the best way to engage will vary at different times and in different places. The responsible official has the discretion to determine the scope, timing, and methods for participation opportunities necessary to address local, regional, and national needs, while meeting the requirements of § 219.4.

The planning procedures established for land management planning in the Forest Service Directives System will also provide further direction to ensure consistent implementation of the requirements of the final rule.

Comment: Clarification on collaborative process. Some respondents felt the rule should clarify when a collaborative process would or would not be ''feasible and appropriate.'' A respondent felt the rule should ensure public participation occurs when forest plans are revised and amended. Some respondents felt their local Forest Service office is already collaborating with the public and that the proposed rule would discourage the unit from continuing with methods already working locally.

Response: This final rule contains a balanced approach that requires the responsible official to engage a diverse array of people and communities throughout the planning process. Participation opportunities must be provided throughout all stages of the land management planning process, including during plan revision and amendment.

The CEQ publication *Collaboration in NEPA—A Handbook for NEPA Practitioners* at: *http://ceq.hss.doe.gov/ntf/Collaboration_in_NEPA_Oct_2007.pdf,* describes a spectrum of engagement, including the categories of inform, consult, involve, and collaborate. Each of these categories is associated with a set of tools, from traditional activities such as notice and comment on the inform end of the spectrum, to consensus building, or a Federal advisory committee on the collaborative end of the spectrum. Because the term ''collaboration'' is often associated with only those activities on one end of the public engagement spectrum, the Department chose to retain the term ''public participation'' in the final rule to make clear that the full spectrum of tools for public engagement can be used in the planning process. Every planning process will involve traditional scoping and public comment; in addition, the responsible official will determine the combination of additional public participation strategies that would best engage a diverse set of people and communities in the planning process.

The final rule absolutely provides the flexibility to support the use of already working processes, including existing collaborative processes. Because the make-up and dynamics of the communities surrounding each planning area differ, and because the level of interest in decisionmaking may vary, based on the scope and potential impact of the decision being contemplated, the responsible official needs the flexibility to select the public participation methods that would best meet the needs of interested people and communities. The wording ''feasible and appropriate'' provides the responsible official the flexibility needed to develop effective participation opportunities, including using existing opportunities for collaboration.

Planning procedures established in the Forest Service Directives System will provide further guidance and clarification for how the public participation requirements of the final rule will be implemented.

Comment: Time and cost of public involvement. Some respondents felt the proposed public participation requirements are cumbersome and unrealistic in regards to time and cost and the ability for individuals to fully participate. Others felt the public participation requirements would not result in a more efficient planning process.

Response: The final rule directs the responsible official to take the accessibility of the process, opportunities, and information into account when designing opportunities for public participation, precisely because individuals may vary in their ability to engage, including in how much time and money they have to spend on participating in the process. Likewise, the final rule directs the responsible official to consider the cost, time, and available staffing when developing opportunities for public participation that meet needs and constraints specific to the plan area. This is to ensure that the process is feasible and efficient. In addition, § 219.1(g) requires that the planning process be within the authority of the Forest Service and the fiscal capability of the unit.

However, the rule does place a strong emphasis on developing opportunities early and throughout the planning process, with costs of planning projected to be redirected toward collaboration, assessment, and monitoring activities and away from development and analysis of alternatives, as compared to the 1982 procedures. The public participation requirements are expected to improve plans and increase planning efficiency in a variety of ways. Collaborative efforts during the early phases of planning are expected to result in improved analysis and decisionmaking efficiency during the latter stages of planning; lead to improved capacity to reduce uncertainty by gathering, verifying, and integrating information from a variety of sources; reduce the need for large numbers of plan alternatives and time needed for plan revisions; potentially offset or reduce monitoring costs as a result of collaboration during monitoring; improve perceptions regarding legitimacy of plans and the planning process; increase trust in the Agency, and potentially reduce the costs of litigation as a result of receiving public input before developing and finalizing decisions. Overall, it is the Department's

view that investment in providing opportunities for public engagement will lead to stronger and more effective and relevant plans.

Comment: Undocumented knowledge. A respondent felt the planning process should take into account other forms of knowledge besides written documentation, and this knowledge should be shared with all interests and individuals throughout the planning process.

Response: The Department recognizes that other forms of information besides written documentation, such as local and indigenous knowledge and public experiences, should also be taken into account. Opportunities for the public to provide information during the assessment phase will help the responsible official to capture other forms of knowledge, and to reflect that information in the assessment report that will be available to the public. This section of the final rule requires the responsible official to encourage public participation, thus sharing knowledge, ideas, and resources. In addition, paragraph (a)(3) of this section requires the responsible official to request information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites.

Comment: Participation requirements accountability. Some respondents felt the rule should contain measures ensuring the responsible officials meet the public participation requirements.

Response: To ensure accountability in implementation for all of the requirements in the final rule, the Department added § 219.2(b)(5) requiring the Chief to administer a national oversight process for accountability and consistency of NFS land management planning. In addition, the planning procedures established in the Forest Service Directives System will provide further guidance and clarification for how the public participation requirements of the final rule will be implemented.

Comment: Decisionmaking authority. Some respondents felt the rule must disclose the Forest Service retains full decisionmaking authority.

Response: While § 219.4 of the rule commits the Agency to public participation requirements and encourages collaboration, by law the Forest Service must retain final decisionmaking authority and responsibility throughout the planning process. Paragraph (a) of this section has been modified to include the sentence ''The Forest Service retains decisionmaking authority and responsibility for all decisions throughout the process,'' which was previously in the definition for collaboration in the proposed rule.

Comment: Specific requirements for youth, low-income, and minority populations. Some respondents supported requirements to engage youth, low-income and minority populations, and advocated including additional requirements. One respondent felt that references to youth, low-income, and minority populations should be removed. A respondent felt the rule should integrate elements related to equitable recreation access for youth, low-income, and minority populations into the assessment, planning, and monitoring elements of the rule.

Response: Many people discussed the need for the Forest Service to make a stronger effort to engage groups and communities that traditionally have been underrepresented in land management planning. This is reflected in the requirement that responsible officials encourage the participation of youth, low-income populations, and minority populations in the planning process and in the requirements to be proactive and use contemporary tools to reach out to the public and consider the accessibility of the process to interested groups and individuals. The Department recognizes the need to engage a full range of interests and individuals in the planning process and the responsibility to promote environmental justice. To encourage wide-ranging participation, the final rule retains the requirement for the responsible official to seek participation opportunities for traditionally underrepresented groups like youth, low-income populations, and minority populations.

The Department added requirements in §§ 219.8 and 10 to take into account opportunities to connect people with nature when developing plan components to contribute to social and economic sustainability and for multiple uses, including recreation, in addition to the requirements for outreach to youth, low-income, and minority populations included in this section. Specific issues regarding recreation access on a unit will be addressed at the local level during the planning process.

Comment: Predominance of local or national input. Some respondents felt the proposed § 219.4 did not place enough emphasis on input from the local community, while others felt the proposed collaboration process would result in too much input from local interests and groups. Other respondents felt the public participation process needs to be all-inclusive, including at the local, State, and national levels and should be directed at the general public and not focus on participation from specific segments of the population. Other respondents felt the proposed rule only provides participation opportunities for State and local governments. A respondent felt comments or recommendations by a local Board of Supervisors should be given equal consideration as to those comments received from State and Federal agencies.

Response: Section 219.4(a)(1)(iv) of the final rule clarifies the responsible official's duty for outreach to other government agencies to participate in planning for NFS lands, including State fish and wildlife agencies, State foresters, and other relevant State agencies, local governments including counties, and other Federal agencies. However, a successful planning process must be inclusive in order to adequately reflect the range of values, needs, and preferences of society. All members of the public would be provided opportunities to participate in the planning process. Section 219.4(a) of the final rule lists specific points during the planning process when opportunities for public participation would be provided. To meet these requirements, the responsible official must be proactive in considering who may be interested in the plan, those who might be affected by the plan or a change to the plan, and how to encourage various constituents and entities to engage. Responsible officials will encourage participation by interested individuals and entities, including those interested at the local, regional, and national levels.

Comment: Coordination with State and local governments. Some respondents felt the proposed rule downplayed requirements to coordinate with State and local governments and that public participation is elevated over coordination. Other respondents felt State wildlife agencies should specifically be coordinated with when designing and implementing plans, on-the-ground management activities, monitoring, and survey design. Some respondents felt the rule should use the wording from § 219.7 of the 1982 planning rule regarding coordination with State and local governments. Others felt wording from Alternative D of the DEIS should be included. Some respondents felt forest plans should be written in partnership with the States in which the national forest or grassland is located. A respondent supported the review of county planning and land use policies and documentation of the review in the draft EIS as stated in proposed § 219.4(b)(3). Several

respondents noted the 1982 planning rule at § 219.7(b) requires county governments to be given direct notice of forest plan revisions and oppose the proposed elimination of the requirement in the proposed rule. A respondent stated input from local governments is required by NFMA's mandate for coordination with local agencies that acknowledges the contributions and responsibilities unique to local agencies, including planning responsibilities for the private lands that fall under the ''all lands'' umbrella.

Response: Many of the coordination requirements of the 1982 planning rule have been carried forward into § 219.4(b)(1) and (2) of the final rule. Section 219.4(b)(3) clarifies requirements for coordination efforts.

Under § 219.4(a), the final rule requires the responsible official to encourage participation by other Federal agencies, Tribes, States, counties, and local governments, including State fish and wildlife agencies, State foresters and other relevant State agencies. The final rule also requires the responsible official to encourage federally recognized Tribes, States, counties, and other local governments to seek cooperating agency status in the NEPA process for planning, where appropriate, and makes clear that the responsible official may participate in their planning efforts.

Under § 219.4(b) of the final rule, the responsible official must coordinate planning efforts with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments. The Department deleted the phrase, ''to the extent practicable and appropriate,'' from the end of paragraph § 219.4(b), in response to public comment. This change is not intended to require the Agency's planning efforts to tier to, or match the timing of other public planning efforts. It was made to make clear that the requirements for coordination with other public planning efforts have not been reduced from previous rules.

The requirement for coordination from the 1982 rule to identify and consider other information is found in § 219.6(a) of the final rule. Section 219.6(a) of the final rule requires consideration of relevant information in assessments of other governmental or non-governmental assessments, plans, monitoring evaluation reports, and studies. The final rule does not adopt the coordination requirements of Alternative D of the DEIS because the coordination requirements are part of the species viability requirements of Alternative D. The final rule does require the responsible official to coordinate to the extent practicable with other Federal, State, Tribal, and private land managers having management authority over lands relevant to a population of species of conservation concern (§ 219.9(b)(2)(ii)). To discuss the role of the Forest Service unit in the broader landscape, final rule §§ 219.4(a)(1), 219.6(a), 219.7(c)(1), and 219.12(a) require coordination with other levels and deputy areas within the Agency as well as the public, appropriate Federal agencies, States, local governments, and other entities throughout the planning process. The final rule recognizes that participants have different roles, responsibilities, and jurisdictions, which the responsible official will take into account in designing opportunities for participation. The final rule does not adopt the requirement of the 1982 rule to meet with a designated State official and representatives of Federal agencies and local governments because people can often collaborate together without a face-to-face conference. The Department expects responsible officials to effectively engage States, Tribes, and local officials and other representatives in collaborative planning processes.

Comment: Commitments to and consistency with local plans. Some respondents felt the rule needs a stronger commitment to local government plans, including statewide forest assessments and resource strategies. Some respondents felt proposed § 219.4(b)(3) wording ''nor will the responsible official conform management to meet non-Forest Service objectives or policies'' should be removed because it may contradict with the purpose of coordinating with local government. Others felt the primary goal of coordination should be achieving consistency between Federal and local plans within the legal mandates applicable to all entities. Some respondents felt the analysis must document there is no superior alternative to a proposed plan or action as required by NEPA.

Response: When revising plans or developing new plans, under § 219.4(b) the responsible official must review the existing planning and land use policies of State and local governments, other Federal agencies, and federally recognized Tribes and Alaska Native Corporations, where relevant to the plan area, and document the results of the review in the draft EIS. Section 219.4(b) requires that review to consider a number of things, including opportunities for the unit plan to contribute to joint objectives and opportunities to resolve or reduce conflicts where they exist. The review would consider the objectives of federally recognized Indian Tribes, and other Federal, State, and local governments, as expressed in their plans and policies, and would assess the compatibility and interrelated impacts of these plans and policies. In addition, responsible officials in the assessment phase are required to identify and consider relevant existing information, which may include relevant neighboring land management plans and local knowledge. This information may include State forest assessments and strategies, ecoregional assessments, nongovernmental reports, State comprehensive outdoor recreation plans, community wildfire protection plans, public transportation plans, and State wildlife action plans, among others.

However, plans are not required to be consistent with State forest assessments or strategies or plans of State and local governments under the final rule. The Forest Service must develop its own assessment and plans related to the conditions of the specific planning unit and make decisions based on Federal laws and considerations that may be broader than the State or local plans. Requiring land management plans to be consistent with local government plans would not allow the flexibility needed to address the diverse management needs on NFS lands and could hamper the Agency's ability to address regional and national interests on Federal lands. In the event of conflict with Agency planning objectives, consideration of alternatives for resolution within the context of achieving NFS goals or objectives for the unit would be explored. The final rule does not repeat legal requirements found in public law, such as NEPA and NFMA, but § 219.1(f) would require plans to comply with all applicable laws and regulations.

Comment: Cooperating agencies for unit plan development. A respondent felt the rule should identify State, Tribal, and local governments as cooperating agencies. Other respondents asked why a Tribe would request cooperating agency status and what the benefit would be. Another respondent felt the role of State and local governments is compromised, because the propose rule allows a responsible official to decide when cooperating agency status would be allowed. A respondent noted the Forest Service should be willing to share information and not impose cost-prohibitive barriers to such information, and the proposed rule does not allow cooperating agency status for State and local governments,

because the process folds them into the public at large. Several organizations commented on the preferred alternative that the final rule should require responsible officials to grant cooperating agency status under NEPA to entities if federally recognized Tribes, States, counties, or local governments appropriately apply for such status.

Response: The responsible official will encourage federally recognized Tribes, States, counties, and other local governments to seek cooperating agency status where appropriate. The final rule does not preclude any eligible party from seeking cooperating agency status; rather, it provides direction to Forest Service responsible officials to encourage such engagement where appropriate. Cooperating agency status under NEPA is determined under the Council of Environmental Quality (CEQ) requirements for cooperating status (40 CFR 1501.6). Further guidance may be found at *http://www.fs.fed.us/emc/nepa/index.htm.* The final rule does not affect that process. For federally recognized Tribes, cooperating agency status does not replace or supersede the trust responsibilities and requirements for consultation also recognized and included in the final rule. Any request for cooperating agency status will be considered pursuant to the CEQ requirements and Agency policy.

Comment: Tribal consultation. Some respondents felt that Alaska Native Corporations should not be given the same status as federally recognized Indian Tribes, while another respondent felt that the final rule should recognize and provide for consultation with affected Alaska Native Corporations and Tribal organizations. Several Tribes and Alaska Native Corporations are concerned about keeping information confidential to protect sites from vandalism.

Response: The final rule acknowledges the Federal Government's unique obligations and responsibilities to Indian Tribes and Alaska Native Corporations in the planning process. The statute, 25 U.S.C. 450 note, requires that Federal agencies consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order 13175. While the final rule requires consultation and participation opportunities for Alaska Native Corporations, the Department engages in a government-to-government relationship only with federally recognized Indian Tribes, consistent with Executive Order 13175. Responsible officials will protect confidentiality regarding information given by Tribes in the planning process and may enter into agreements to do so.

Comment: Coordination with Tribal land management programs. Some respondents felt the responsible official should actively engage in coordination with Tribal land management programs and that the proposed rule weakens requirements to coordinate planning with Tribes. One respondent requested that the Tribal coordination provisions from the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712(b)) be included in the final rule.

Response: The final rule provides participation, consultation, and coordination opportunities for Tribes during the land management planning process, under § 219.4. This section also states at § 219.4(b) that the responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes and Alaska Native Corporations. A citation for 43 U.S.C. 1712(b) has been added to the final rule at § 219.4(b)(2). Participation in a collaborative process would be voluntary and would supplement, not replace consultation.

Comment: Government-to-government relationship. One respondent felt the proposed rule does not go far enough in identifying the unique government-to-government relationship between Tribes and the Forest Service.

Response: The Department recognizes the unique government-to-government relationship that the Federal Government has with Tribes, and has engaged Tribes throughout the rulemaking process. The final rule includes requirements for engaging Tribes during the land management planning process. At § 219.4(a)(2) the final rule states that the responsible official shall honor the government-to-government relationship between federally recognized Indian Tribes and the Federal Government, in accordance with Executive Order 13175. Additionally, § 219.4 requires that the responsible official provide opportunities for participation and consultation for federally recognized Indian Tribes and Alaska Native Corporations.

Section 219.5—Planning Framework

This section provides an overview of the framework for land management planning, and identifies what occurs during each phase. It also includes the requirement for the establishment of an interdisciplinary team for planning. This framework reflects key themes heard from the public, as well as experience gained through the Agency's 30-year history with land management planning.

The framework requires a three-part learning and planning cycle: (1) Assessment; (2) plan development, plan revision, or plan amendment; and (3) monitoring. This framework is science-based (§ 219.3), and provides a blueprint for an open and participatory land management process (§§ 219.4 and 219.16). It is intended to create a better understanding of the landscape-scale context for management and support an integrated and holistic approach to management that recognizes the interdependence of ecological resources and processes, and of social, ecological, and economic systems. The framework creates a structure within which land managers and partners will work together to understand what is happening on the land. It is intended to establish a responsive process that would allow the Agency to adapt management to changing conditions and improve management based on new information and monitoring, using narrower, more frequent amendments to keep plans current between revisions.

Section 219.5—Response to Comments

Many comments on this section focused on the need for more clarity in the framework. The Department made changes to § 219.5(a)(1) to describe the assessment and emphasize that the assessment process is intended to be rapid, and use existing information related to the land management plan within the context of the broader landscape. The Department removed the discussion about the preliminary need to change the plan from paragraph (a)(1) because the discussion has been removed from the assessment (§ 219.6) and discussed in paragraph (a)(2) of this section and in § 219.7. The Department removed the introductory text of paragraph (a)(2) of this section because it was redundant to paragraph (a)(2)(i) of this section and to § 219.7(b). Section 219.5(a)(2)(ii) was slightly modified to clarify that the first step to amend a plan is to identify a preliminary need to change the plan. Additional edits were made for clarity. The changes to this section are not changes in requirements, they are just clarifications.

Comment: Planning framework. Some respondents felt more clarity was needed on the three phases of the framework (assessment, development, and monitoring). Further clarity was sought on how the phases are interrelated.

Response: This section was included to provide clarity with regard to each phase of the framework and how they are interrelated. Detailed requirements and relationships for each phase are provided in other sections of the rule. In

addition to the descriptions of what occurs during each phase provided in this section, changes were made to §§ 219.6, 219.7 and 219.12 to make clear that information from each phase should be used to inform each of the other phases. In § 219.6, assessments are required for new plan development and plan revision, and a new list of topics for the assessment was included to more closely link the assessment requirements to the requirements for plan components and other plan content. The responsible official must identify and consider relevant information contained in monitoring reports during the assessment phase. These monitoring evaluation reports are developed in the monitoring phase as required in § 219.12(d), which requires that they be used to inform adaptive management. Section 219.7 requires the responsible official to review relevant information from the assessment and monitoring to identify a preliminary need for change and to inform the development of plan components and other plan content, including the monitoring program. In this way, the framework builds on information gathered and developed during each phase of the planning process and supports adaptive management for informed and efficient planning.

Comment: Resource exclusion. Some respondents felt the proposed rule allows too much discretion to the responsible official to exclude resources or uses of interest under the three phases of the planning framework.

Response: There are numerous opportunities throughout the process for the public to identify resources and uses that are of interest to them, along with information about those resources or uses relevant to the plan area. If a resource or use is identified as of interest, it will be considered during of the planning process. The responsible official must meet all the requirements contained in the final rule, including the requirement to identify resources present in the plan area and consider them when developing plan components for §§ 219.8 through 219.11, including for ecological sustainability, diversity, and multiple use.

Comment: Composition of planning interdisciplinary teams. Several respondents felt the rule should specify the composition of the interdisciplinary teams required under proposed § 219.5(b).

Response: The Department concluded that the responsible official should have the discretion to determine the disciplines, or areas of expertise, to be represented on the Agency interdisciplinary team for preparation of assessments; new plans, plan amendments, or plan revisions; and plan monitoring programs. Because planning efforts are based on an identified need for change, it would not be appropriate to require the same disciplines to be represented on every interdisciplinary team. Also, individual team members often have broad areas of expertise and may represent multiple disciplines.

Section 219.6—Assessments

This section sets out both process and content requirements for assessments. In the assessment phase, responsible officials will rapidly identify and evaluate relevant and existing information to provide a solid base of information and context for plan decisionmaking, within the context of the broader landscape. The final rule identifies and provides examples of sources of information to which the responsible official should refer, requires coordination and participation opportunities, and requires documentation of the assessment in a report to be made available to the public. This phase is intended to be rapid, and changes were made to the final rule to improve the efficiency of the assessment process. The Department expects the assessment required by the final rule will take about 6 months to complete.

The content of assessments will be used to inform the development of plan components and other plan content, including the monitoring questions, and to provide a feedback loop. The final rule narrows and clarifies the requirements for the content of plan assessments, to increase efficiency and provide a clearer link to the requirements for plan components and other plan content in the other sections of the final rule. During the assessment phase, the public will have the opportunity to bring forward relevant information. Gathering and evaluating existing, relevant information will help both the responsible official and the public form a clear base of information related to management issues and decisions that will be made later in the planning process.

Section 219.6—Response to Comments

Many comments on this section focused on concerns about the assessment phase in the proposed rule being too open ended, lengthy and costly, and/or not closely enough linked to the requirements for plan components and monitoring in the other phases of the framework. The Department determined that these concerns were valid, and made a number of changes to this section in response. The Department reorganized the section to clarify the process and direction for assessments.

In the introductory paragraph, the Department removed the description of what an assessment is, and provided a cross-reference to description of the assessment in § 219.5(a)(1). This change was made to avoid redundancy, and is not a change in requirements. Changes to the description of the assessment in § 219.5(a)(1) were made to focus on the use of existing information in a rapid process. This change reflects the intent for this phase as stated in the preamble to the proposed rule, and makes that intent clear in the final rule. Additional changes to reflect this focus were made throughout this section. These changes reflect the preamble discussion of the proposed rule about rapid assessments; therefore, these changes are clarifications based on public comments to make the assessment more efficient.

In paragraph (a) of the final rule the Department made several changes, including:

(1) Removed specific requirements for formal notification and encouragement of various parties to participate in the assessment (designated at § 219.6(a)(1) and (a)(2) of the proposed rule); these specific requirements were removed in response to public comments. Requirements for public participation and notification during this phase are still present in §§ 219.4 and 219.16. This is a change in requirements that is based on public comments to make the assessment more efficient.

(2) Moved the type of information to identify and consider from paragraph (b)(2) of this section of the proposed rule to paragraph (a)(1) in this section. The Department added public transportation plans and State wildlife data to the list of example documents to consider contained in paragraph (a)(1). The Department further clarified in this paragraph that relevant local knowledge will be considered if publicly available or voluntarily provided. These additions are not changes in requirements as they clarify the Department's intent.

(3) Changed the description of the report at paragraph (a)(3) from a set of reports to a single assessment report; changed discussion of additional information needs to clarify that they should be noted in the assessment report, but that new information need not be developed during the assessment phase; and changed the requirement from documenting how science was ''taken into account'' to how the best available scientific information was ''used to inform'' the assessment for

consistency with § 219.3. These changes reflect public comments on making the assessment phase more efficient, as well as public comments on § 219.3.

(4) Removed the requirement for the assessment to identify the need to change the plan from this section and added that requirement as an early step in the planning process in § 219.7. The Department moved the requirement to § 219.7 because after reading the public comments it was decided that identifying a need to change the plan in the assessment phase may cause confusion with the NEPA process. The planning rule continues to emphasize a ''need for change'' approach to planning but this now begins with a preliminary identification of the need to change the plan identified in the beginning of plan development (§ 219.7) within the formal NEPA process.

Paragraph (b) describes the content of assessments for plan development or plan revision. The Department added a specific listing of 15 topics that would be identified and evaluated relevant to the plan area, and removed the requirement in the proposed rule that the assessment report identify and evaluate information related to the substantive sections of the plan (§§ 219.7, 219.8, 219.9, 219.10, and 219.11). This change was made in response to comments that the assessment phase needed to be both more efficient and more narrowly and specifically focused on the information needed to form a basis for developing plan components and other plan content. These changes represent a change in requirements. Changes made to § 219.7 provide additional clarity to link the two phases.

One term in the list of 15 items may be unfamiliar to the reader: baseline assessment of carbon stocks. The final rule requires that the responsible official use existing information to do a baseline assessment of carbon stocks. Carbon stocks are the amount of carbon stored in the ecosystem, in living biomass, soil, dead wood, and litter. This requirement was included in response to public comments to ensure that information about baseline carbon stocks is identified and evaluated before plan revision or development, and to link this phase to the requirements of the Forest Service Climate Change Roadmap and Scorecard. The Department's expectation is that this information would be generated via implementation of the Roadmap and Scorecard prior to planning efforts on a unit, and that the assessment phase would use that information to meet the direction in § 219.6(b)(4). The Forest Service has developed a National Roadmap and Performance Scorecard for measuring progress to achieve USDA strategic goals (USDA Forest Service 2010d, 2010j). The roadmap describes the Agency's strategy to address climate change and the scorecard is an annual reporting mechanism to check the progress of each NFS unit.

The requirements for the assessment to identify distinctive roles and contributions and potential monitoring questions previously included in paragraph (b) were removed from this section of the rule because they implied there would be decisions in the assessment phase that should be made as part of the plan decision. Both requirements are still present in other sections of the final rule; therefore, the removal of these requirements from this section of the rule is a minor change.

At § 219.6(c) the Department removed requirements for plan amendments that were consolidated with requirements for plan amendments in § 219.13(b)(1) for clarity and to avoid duplication. In addition, the Department changed the word ''issue'' to ''topic'' to avoid confusion with the term ''issues'' as used in the NEPA process. These changes are not changes in requirements, they are just clarifications.

Comment: Assessment process. Some respondents felt the proposed assessment process should be removed from the rule as it is an added and potentially costly step to the planning process. They felt it would be more efficient and effective if assessments used to justify an amendment or plan revision were combined into one document for the proposed amendment or revision. They also felt the rule should provide more guidance and parameters for the decisionmaking occurring along with assessment reports. Other respondents felt the proposed rule requirements were vague on the nature of assessments and more standards or guidelines for determining proper time frames, content, and need for assessment is necessary. Others were concerned that the assessments should be more comprehensive, that too much discretion was given to the responsible official to determine what to include in the assessment, and the responsible official should be required to use, not just consider, the information.

Response: Section 219.6 of the final rule changes the requirements for assessments. A single document identifying and evaluating key information for a plan revision or amendment will serve as an important source to set the stage for planning in both the development of the plan and in the evaluation of environmental effects through an environmental impact statement.

The final rule stresses the assessment as an information gathering and evaluation process specifically linked to the development of plan components and other plan content, in the context of the broader landscape. The final rule requires information about the list of topics in § 219.6(b) to be identified and evaluated in the assessment. The inclusion of this list as opposed to the broader direction included in the proposed rule is intended to make the process both more efficient, and more clearly focused on the specific information needed to inform the development of plan components and other plan content as required by other sections of the final rule.

The requirement of the proposed rule to find a ''need to change'' during the assessment phase of planning has been removed to clarify that the assessment is not a decisionmaking process and does not require a NEPA document to be prepared. Changes to § 219.7 clarify that the responsible official must review material gathered during the assessment to identify a preliminary need to change the existing plan and to inform the development of the plan components and other plan content. The information may be used and referenced in the planning process, including environmental documentation under NEPA. However, the assessment report is not a decision document.

The responsible official is required to provide public participation opportunities to all interested parties during the assessment process, and must provide notice of such opportunities, as well as the availability of the assessment report. The public will have a formal opportunity to comment on information derived from the assessment later in the NEPA process of the plan development, amendment, or revision.

The Department decided to retain the flexibility provided in the proposed rule for the responsible official to determine when an assessment prior to plan amendment is needed, along with the scope, scale, process, and content for plan amendments, in order to keep the amendment process flexible. Amendments can be broad or they can be narrow and focused only on a subset, or even on a single one, of the topics identified in the list of 15 in the final rule, or on something not on the list. Or the amendment could take place while the information in the assessment done for the plan revision or initial development is still up-to-date, such that a new assessment would not be needed. The circumstances and

considerations for when a plan amendment assessment should occur are too variable to specify in the final rule.

Comment: Use of existing information. Some respondents felt the rule should clarify that the responsible official need only consider existing information during the assessment phase. The concern raised was that if a responsible official had to develop new information such as new scientific studies to fill gaps in the existing science, the planning process would be further delayed. Others expressed that limiting the assessment to rapid evaluation of existing information may result in lack of input from the public or actually be of little use when the Forest Service has very little information.

Response: The Department agrees the assessment phase needs to be efficient and effective. The Department focused the final rule on rapidly gathering and evaluating existing information on the topics identified in paragraph (b) of the final rule. The intent is for the responsible official to develop in the assessment phase a clear understanding of what is known about the plan area, in the context of the broader landscape, in order to provide a solid context for decision-making required during the planning phase. The Forest Service will use relevant existing information from a variety of sources, both internal to the Agency and from external sources. The responsible official is required to provide public participation opportunities to all interested parties during the assessment process. The Department concludes that engaging the public to inform the assessment report will help the responsible official and the interested public to develop a common base of information to use in the planning phase, increasing the legitimacy and integrity of future decisions.

Comment: Additional assessment considerations. Some respondents noted reasonably foreseeable conditions, stressors, and opportunities (for example forecasts for continued urbanization and ecological changes resulting from climate change) need to be considered when measuring present conditions, stressors, and opportunities. The respondents implied this information should be calculated and considered during the assessment phase of land management planning. Still others indicated there should be requirements for water quality, minerals, historic, social, economic, and other resources. Others mentioned the responsible official should be required to accept material submitted by universities, and should consider best available science.

Response: The list in § 219.6(b) includes the topics identified in these comments. The Department accepts that the list included in the final rule represents a focused set of topics relevant to the development of plan components and other plan content required in other sections of the final rule. The final rule requires that the best available scientific information be used to inform all phases of the planning process. Documents submitted by universities would be accepted by the Agency and considered as part of the assessment.

Comment: Annual regional evaluations. Some respondents indicated the proposed assessment process needs to provide for regular over-arching investigations of potential need to change issues above the individual forest level. Some suggested the final rule should provide for annual evaluations by each Forest Service region for developing information affecting broader-scale factors and how the information may indicate a need to initiate forest plan revisions or amendments.

Response: The final rule does not require annual evaluations of monitoring results by each region or for the broader-scale monitoring strategy. The three-part planning cycle of assessments, planning, and monitoring will provide a framework to identify changing conditions and respond with adaptive management. Broader-scale monitoring will help to identify and track changing conditions beyond the individual forest level. The final rule requires consideration of information from both the broader and plan scales of monitoring. This information would be described in the biennial plan monitoring report for each unit if applicable to plan area. Annual investigations and review, in addition to what is provided for in the rule, would be procedurally difficult and was deemed not necessary.

Comment: Assessments versus monitoring. Some respondents remarked that the rule needs to state the Agency cannot rely on one-time assessments in lieu of monitoring data.

Response: The Department does not intend for assessments to replace monitoring. The final rule requires monitoring and biennial monitoring reports. Results from monitoring will be considered when developing an assessment and during the planning phase, just as the information gathered during the assessment phase will inform the planning phase, including development of the monitoring program.

Comment: Assessments and performance. Some respondents pointed out that the rule should link the assessment process with the Agency's integrated management reviews to assess performance in implementation of plan priorities.

Response: While management reviews can be a tool to assess plan progress toward meeting the intended results, the final rule does not require management review be linked with the assessment process. Management reviews are part of the management process for all mission areas, and are broader in scope, looking at many issues. The final rule is limited in scope to the planning process to develop, amend, or revise plans.

Comment: Notification of scientists. Some respondents stated the proposed rule's requirement to encourage and notify scientists to participate in the process was unwieldy.

Response: The detailed notification requirements previously included in this section have been removed in order to make the process more efficient and clearer. However, the final rule still requires that the responsible official coordinate with Forest Service Research and Development, identify and evaluate information from relevant scientific studies and reports, provide participation opportunities to the public, and use best available scientific information to inform the planning process.

Comment: Public comment and participation on assessment reports. Some respondents felt the rule should provide the public with the opportunity to review, comment, and provide additional information during the assessment phase. Other respondents felt the proposed rule was not clear as to what role the public would play in determining the scope of the assessment. The desire was also expressed for the opportunity to appeal the development or use of the assessment report.

Response: The rule requires the responsible official to provide opportunities for the public to participate in and provide information for the assessment process. For a new plan or plan revision, the final rule specifies the minimum scope of the assessment. For a plan amendment assessment, the need for and scope of the assessment will be determined by the responsible official based on the circumstances. The assessment is an informational document, not a decision document; therefore, a formal comment period is not required. As such, an opportunity to appeal or object to an assessment report is not required by the final rule. Other opportunities for

formal comment and objection are provided in the rule for plan decisions.

Comment: Distinctive roles and contributions. Some respondents felt the requirement for assessments to identify ''distinctive roles and contributions of the unit within the broader landscape'' should be retained; while others felt it should be removed.

Response: The final removes this requirement from the assessment as it implies a decision that should be made when approving the distinctive roles and contributions of the unit as part of the other plan content (§ 219.7(f)). It is retained in the requirement for other plan content in § 219.7 of the final rule.

Comment: Assessments and plan components. A respondent suggested assessments should include development of plan components to meet the substantive requirements of other rule provisions such as water quality standards.

Response: Assessments do not develop plan components, but only gather and evaluate existing information that can be used later in the development of plan components.

Comment: Information gaps or uncertainties. Some respondents declared the rule should require a component in the assessment identifying information gaps or uncertainties.

Response: Section 219.6(a)(3) of the final rule requires the assessment to document in the report information needs related to the list of topics in paragraph (b) as part of the assessment report. Adding a requirement for the responsible official to document all information gaps or uncertainties could become burdensome and was inconsistent with the rapid evaluation of existing information.

Comment: Cumulative effects disclosure. Some respondents stated proposed § 219.6(b)(3) should specifically address the need to document cumulative effects to the condition of lands, water, and watersheds.

Response: The final rule does not add a cumulative effects requirement to the assessment. The assessment identifies and evaluates information on conditions and trends related to the land management plan. This will include influences beyond the plan area and influences created by the conditions and trends in the plan area. Cumulative effects analysis is part of the NEPA process and disclosed in the environmental documentation for planning or project decisionmaking.

Section 219.7—Plan Development or Plan Revision

This section sets out requirements for how to develop a new plan or revise an existing plan. This section has two primary topics: (1) The process for developing or revising plans and (2) direction to include plan components and other content in the plan. The intent of this section is to set forth a process for planning that reflects public input and Forest Service experience. The process set forth in the final rule requires the use of the best available scientific information to inform planning (§ 219.3), and requires public participation early and throughout the process (§ 219.4). By conducting an assessment using a collaborative approach before starting a new plan or plan revision, and by working with the public to develop a proposal for a new plan or plan revision, the Department expects that the actual preparation of a plan would be much less time consuming then under the 1982 rule procedures, and that plans will be better supported. These requirements incorporate the best practices learned from the past 30 years of planning, and the Department concludes these practices can be carried out in an efficient and effective manner.

This section also sets out requirements for plan components. These plan components are based on techniques widely accepted and practiced by planners, both inside and outside of government. The set of plan components must meet the substantive requirements for sustainability (§ 219.8), plant and animal diversity (§ 219.9), multiple use (§ 219.10), and timber requirements based on the NFMA (§ 219.11) as well as other requirements laid out in the plan. Except to correct clerical errors, plan components can only be changed through plan amendment or revision. Plan components themselves cannot compel Agency action or guarantee specific results. Instead, they provide the vision, strategy, objectives, and constraints needed to move the unit toward ecological, social, and economic sustainability

In addition to the plan components, this section includes requirements for other plan content. Other required plan content differs from plan components in that an amendment or revision is not required for changes to be made that reflect new information or changed conditions.

Section 219.7—Response to Comments

Many comments on this section focused on aspects of the plan component and NEPA requirements. The Department retains the 2011 proposed rule wording in the final rule except for minor changes and the following:

(1) At paragraph (c)(2)(i) of this section, the Department consolidated the requirement to identify a preliminary need to change the plan from § 219.6(a) and § 219.7(a). This change is not a change in requirement for the planning process, but moves this requirement from the assessment phase to the start of the planning phase. Also, in this paragraph, the Department modified the wording to make the link between the assessment and monitoring phases with the plan phase clearer: the final rule requires that the responsible official review relevant information from the assessment and monitoring to identify a preliminary need to change the plan and to inform the development of plan components and other plan content. This change reflects the intent of the Department as stated in the preamble to the proposed rule and responds to public comment. It is a change in requirement.

(2) At paragraph (c)(2)(ii) of this section, the Department added a requirement to consider the goals and objectives of the Forest Service strategic plan. The Department added this requirement to respond to public comments and to address the requirement of 16 U.S.C. 1604(g)(3) to specify guidelines for land management plans developed to achieve the goals of the ''Program.'' Today the ''Program'' is equivalent to the Forest Service strategic plan. This is an additional requirement to implement the NFMA.

(3) At, paragraph (c)(2)(v) of this section, the Department edited the wording regarding whether to recommend any additional area for wilderness to remove the confusing term ''potential wilderness areas.'' The paragraph was also edited to clarify that lands that may be suitable, as well as lands that are recommended for wilderness designation, must be identified. These changes clarify the proposed rule and respond to public comment.

(4) At paragraph (c)(2)(vii), the Department added a new requirement to identify existing designated areas other than wilderness or wild and scenic rivers, and determine whether to recommend any additional areas for designation. The changes make clear that if the responsible official has the delegated authority to designate a new area or modify an existing area, then the responsible official may designate such lands when approving the plan, plan revision, or plan amendment. Based on

public comment, the Department added this requirement to clarify the requirement of § 219.10(b)(1)(vi) of the proposed rule.

(5) At paragraph (c)(3) the Department added the requirement for the regional forester to identify species of conservation concern for the plan area in coordination with the responsible official in paragraph (c)(2) of this section. The Department added this requirement in response to public comment to provide more consistency and accountability in selecting the species of conservation concern. This is a new requirement.

(6) At paragraph (d) of this section, the Department clarified that management areas or geographic areas are required in every plan. This is a clarification of paragraph (d) of the proposed rule and reflects the Department's intent for the proposed rule. Under the proposed rule, inclusion of management and/or geographic areas was implied by paragraph (d); the change to the final rule makes clear that every plan must include management areas or geographic areas or both, to which plan components would apply as described in paragraph (e) of the final rule. The Department removed the provision of the proposed rule that stated every project and activity must be consistent with the applicable plan components, because § 219.15(b) and (d) also state this, and this statement would be redundant. These changes are not changes in requirements; they are clarifications.

(7) At paragraph (e)(1)(iv), the Department clarified the wording in the description of a guideline to respond to comments on the preferred alternative. The Department changed the word ''intent'' to ''purpose.'' The final wording is: ''a guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the *purpose* of the guideline is met.'' In addition, in the second sentence of paragraph (e)(1)(iv), Department added the words ''or maintain'' because guidelines, like standards, may be established to help achieve or maintain a desired conditions or conditions.

(8) At paragraph (e)(1)(v), the Department clarified that plans will include identification of specific lands as suitable or not suitable for various multiple uses and activities, in response to public comment on this section. It retains the wording that makes clear that the suitability of an area need not be identified for every use or activity, and adds clarifying wording stating that suitability identifications may be made after consideration of historic uses and of issues that have arisen in the planning process. This is a clarification of the proposed rule paragraph (d)(1)(v) to carry out the intent of the proposed rule.

Comment: Alternate plans. A respondent said wording contained in the 1982 rule at § 219.12(f)(5) requiring the Agency to develop alternatives to address public concerns should be restored.

Response: The rule requires preparation of an EIS as part of the plan revision process. The NEPA requires development of a range of reasonable alternatives in the EIS. Therefore, a duplicative requirement in the rule is not necessary.

Comment: Requests for revision. A respondent said there should be a process for others to request plan revisions. The responsible official would retain the option of determining whether such a request would warrant starting the assessment process.

Response: The public may request a plan revision at any time. The public does not need special process to make this request.

Comment: Combining multiple national forests under one plan. Some respondents felt a multi-forest plan would need separate tailored requirements for the different ecosystems, landscapes, landforms, forest types, habitats, and stream types that exist in each of the national forests affected.

Response: The final rule allows the responsible official the discretion to determine the appropriateness of developing a multi-forest plan, or a separate plan for each designated unit. Plan components would be designed as appropriate for those units to meet the requirements of the final rule, whether for a single or a multi-forest plan.

Comment: Environmental Policy Act compliance and plan development, amendment, or revision (NEPA). Some respondents felt plans should be as simple and programmatic as possible and that the preparation of an EIS for a new plan or plan revision is not appropriate. NEPA compliance should occur only at the project level. One respondent wanted a clear commitment for preparation of an EIS for forest plan revisions. Another respondent said categorical exclusions should be used for minor amendments, environmental assessments for more significant amendments, and EISs should be reserved for major scheduled plan revisions. A respondent said responsible officials should not be allowed to combine NEPA and planning associated public notifications (§ 219.16). A respondent said to please consider and discuss an efficient amendment process in the proposed rule. Another respondent proposed § 219.7(e)(1)(iv) be rewritten to clarify any aspect of any planning document are proposals subject to NEPA.

Response: The final rule requires the preparation of an EIS for plan revisions and new plans. Plan amendments must be consistent with Forest Service NEPA procedures, which require an EIS, an EA, or a CE, depending on the scope and scale of the amendment. Projects and activities will continue to be conducted under Forest Service NEPA procedures. The Department believes the NEPA analysis requirements are appropriate to inform the public and help responsible officials make decisions based on the environmental consequences. The requirements for public participation are described in § 219.4 and notifications in § 219.16. The Department retained the wording on combining notifications where appropriate to allow for an efficient amendment process while continuing requiring public notice.

The NEPA regulations at 40 CFR 1508.23 provides that a proposal ''exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.'' Not all aspects of planning and planning documentation fall under this definition, and the Department considers classifying every aspect of every planning document as a ''proposal'' subject to NEPA would be an unnecessary and burdensome requirement on the Agency.

Comment: Additional coordination requirements. Some respondents suggested additional coordination requirements for noxious weed management, reduction of the threat of wildland fire, assessment of existing aircraft landing sites, and guidelines to ensure project coordination across forest and grassland boundaries where discrepancies between individual unit plans may occur.

Response: The Department agrees the issues raised are important. The final rule does emphasize an all lands approach precisely to address issues like these. This emphasis is in each phase of planning: in the assessment phase, responsible officials are directed to identify and evaluate relevant information in the context of the broader landscape; in § 219.8, the final rule requires that the responsible official consider management and resources across the landscape; and in § 219.4 the responsible official is directed to

consider opportunities for the plan to address the impacts identified or contribute to joint objectives across jurisdictions. Section 219.12 provides a framework for coordination and broader-scale monitoring. However, the rule provides overall direction for plan components and other plan content, and for how plans are developed, revised, and amended. More specific guidance with regard to particular resources is properly found in the plans themselves, or in the subsequent decisions regarding projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. Those communities, groups, or persons interested in these important issues can influence plan components and plan monitoring programs by becoming involved in planning efforts throughout the process, including the development and monitoring of the plan, as well as the development of proposed projects and activities under the plan.

Comment: Scope of the responsible official's discretion. Some respondents raised concerns over the responsible official's discretion to determine conditions on a unit have changed significantly so a plan must be revised, because the proposed rule fails to define significant and does not include an opportunity for public involvement in this determination. Other respondents felt use of the terms ''consider'' and ''appropriate,'' as in proposed § 219.7(c)(2)(ii) are vague, too discretionary, and could mean the official would look at conditions and trends, but then fail to address them, leading to a poor assessment and planning.

Response: A primary goal of the new rule is to create a framework in which new information is identified and used to support adaptive management. The Department expects the new rule to facilitate, over time, the increased use of the amendment process to react more quickly to changing conditions. Placing overly prescriptive requirements in this section could inhibit the responsible official's ability to adaptively manage within the planning rule framework. Section 219.7(c)(2)(ii) in the proposed rule, now (c)(2)(iii) in the final rule, is simply intended as a process step to identify the relevant resources present in plan area for the purpose of developing plan components. This is not intended to be a new assessment, but is linked to the requirements for the assessment in section 219.6(b) of the final rule. Sections 219.8–219.11 contain the requirements for developing plan components to address those resources.

Plan Components

Comment: Plan component wording, standards, and guidelines. A respondent remarked that it was unclear if plans could meet the requirements in this section for plan components by including only one of each of the different kinds of plan components, or whether the Agency is making a binding commitment to include more than one standard, which the respondent believed to be more binding than desired conditions or guidelines.

Response: This section of the rule identifies what plan components are, and requires that every plan contain desired conditions, objectives, standards, guidelines, and suitability. The intent of the Department in the proposed rule was that the responsible official would determine the best mix of plan components to address the rule's substantive requirements. However, some respondents were concerned that the rule could be interpreted to require only one of each kind of plan component for every plan. Therefore, the final rule includes changes to the wording in sections 219.8–11 to require that plans include ''plan components, including standards or guidelines.''

Comment: Desired Future Condition plan component. A respondent felt desired future condition should be included as a plan component, as it is more than the sum total of the individual desired conditions for each of the important ecological, social, and economic resources on the forest and causes individual desired conditions to occur somewhat in sync.

Response: Plans under the rule will identify the forest or grassland's distinctive roles and contributions within the broader landscape and the desired conditions for specific social, economic, and ecological characteristics of the plan area. The Department believes those requirements, combined with the requirements for public participation and integrated resource management, will result in plans that reflect an overall vision for the future desired condition of the plan area as a whole.

Comment: Desired conditions. Some respondents stated defining a desired condition as specific social, economic, and/or ecological conditions may continue ecologically unsustainable social and economic practices leading to unsustainable outcomes. A respondent commented that States are responsible for setting fish and wildlife population objectives and the wording must be changed to prevent the Agency from taking on the role of the States. Other respondents wanted more direction on how the responsible official determines desired conditions.

Response: Desired conditions are a way to identify a shared vision for a plan area. In some instances, desired conditions may only be achievable in the long-term. At times, the desired conditions may be the same as existing conditions. Desired conditions may be stated in terms of a range of conditions. Other plan components would provide the strategy and guidance needed to achieve that vision. Plans must meet the requirements of §§ 219.8 through 219.11, including to provide for ecological sustainability. Projects and activities must be consistent with desired conditions as described in § 219.15. The Forest Service Directives System will describe how desired conditions should be written and developed.

States do have responsibilities for managing fish and wildlife, but the rule requires plans to include plan components for ecological conditions (habitat and other conditions) to maintain diversity of fish and wildlife species, as required by NFMA. Responsible officials will continue to coordinate with Federal, State, and local governments and agencies on other public planning efforts.

Comment: Procedures for analysis. Some respondents suggested that the final rule should include specific procedures for analysis. These include specific economic indicators for the economic analysis part of the planning process, the model paradigm for social and economic resources important to rural communities, and means of weighing relative values of multiple uses.

Response: Such guidance is not included in this final rule. Analysis methods and technical procedures are constantly changing; the planning rule would quickly be outdated if specific methods were mandated. Additional guidance with regard to social and economic resource analysis is more appropriate in the Forest Service Directives System, and revisions to the Forest Service directives will be available for public comment.

Comment: Objectives. Several respondents supported clear, measurable, and specific objectives to enhance transparency and accountability. Several respondents felt basing objectives on reasonable foreseeable budgets unduly constrains planning analysis. Another respondent thought a desired condition without objectives is completely meaningless.

Response: The rule uses objectives to support measureable progress toward a desired condition. Objectives will lead

to the development of a proactive program of work to achieve the desired condition by describing the focus of management in the plan area. Objectives will be based on achieving and monitoring progress toward desired conditions, and will be stated in measurable terms with specific time frames. Objectives based on budgets and other assumptions help set realistic expectations for achievement of plan objectives over the life of the plan and assist in building public trust in the Agency being able to make progress towards achieving desired conditions and objectives.

Comment: Goals. Several respondents felt goals should be mandatory because broad general goal statements describe how the desired future conditions will be achieved and create the overall framework for the other plan components. Others felt they should be optional. Another respondent suggested inclusion of a goal to connect youth, minority, and urban populations to the national forest or grassland to better assure required plan components incorporate and reflect the needs of diverse populations.

Response: The proposed wording for goals is unchanged in the final rule because the proposed optional use of goals allows responsible officials to determine whether or not they are a useful plan component in addressing the local situation. Inclusion of a goal for youth, minority, and urban populations is not required in the final rule because the final rule requires the responsible official to encourage participation of youth, low-income populations, and minority populations throughout the planning process, and to consider opportunities to connect people with nature as well as to contribute to social and economic sustainability when developing plan components. See §§ 219.4, 219.8(b), and 219.10(a).

Comment: Suitability for uses other than timber. Some respondents felt the rule should require suitability determinations for multiple uses. In addition to suitability for timber use as required under NFMA, a respondent felt suitability of lands for livestock grazing, fire suppression, energy developments, mineral leasing, and off highway vehicles should be required to meet the Act. Another respondent felt economics should be a part of the analysis and land suitability determinations. A respondent felt identification of lands where specific uses are not allowed is de facto regulation of those uses, and proposed § 219.2(b)(2) wording ''a plan does not regulate uses by the public'' appears inconsistent with NFMA direction regarding the identification of lands as suitable for resource management activities, such as timber harvest. In addition, the respondent stated this wording may be inconsistent with proposed § 219.7(d)(1)(v) wording that a ''plan may also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands.''

Response: Determining the suitability of a specific land area for a particular use or activity is usually based upon the desired condition for that area and the inherent capability of the land to support the use or activity. NFMA does not impose a requirement to make suitability determinations for all multiple uses. The NFMA requires that plans ''determine * * * the availability of lands and their suitability for resource management'' (16 U.S.C. 1604(e)(2).

The Department clarified the wording of paragraph (e)(1)(v) to make clear that plans will include identification of specific lands as suitable or not suitable for various multiple uses and activities, in response to public comment on this section; however, the Department decided not to require determinations in every plan for specific uses other than timber. The final rule retains the wording that makes clear that the suitability of an area need not be identified for every use or activity, and adds clarifying wording stating that suitability identifications may be made after consideration of historic uses and of issues that have arisen in the planning process. The responsible official will determine when to identify suitability for various uses and activities as part of the set of plan components needed to meet the requirements of §§ 219.8–219.11.

The identification of suitability is not de facto regulation of those uses. However, responsible officials may, and often do, develop closure orders to help achieve desired conditions. If a responsible official were to develop a closure order, that closure order is a regulation of uses and would prohibit or constrain public use and occupancy. Such prohibitions are made under Title 36, Code of Federal Regulations, Part 261—Prohibitions, Subpart B—Prohibitions in Areas Designated by Order. Issuance of a closure order may be made contemporaneously with the approval of a plan, plan amendment, or plan revision.

Comment: Suitability for mineral materials. Several respondents felt the determination of the suitability of lands for energy developments, leasing and extraction, mineral exploration, or mineral leasing must be required. Other respondents felt the rule should not imply the Agency has regulatory or administrative authority to determine which portions of NFS lands are suitable for mineral exploration and development as such a determination would be a de facto withdrawal not in accordance with existing laws.

Response: Responsible officials should not make suitability determinations for any resource such as minerals where another entity has authority over the disposal or leasing. Congress has given the Secretary of the Interior authorities over the disposal of locatable minerals (gold, silver, lead, and so forth) and leasable minerals (oil, gas, coal, geothermal, among others). The Secretary of Agriculture has authority over saleable minerals (sand, gravel, pumice, among others). The final rule or a plan developed under the final rule cannot make a de facto withdrawal. Withdrawals occur only by act of Congress or by the Secretary of the Interior through a process under 43 CFR 2300. The Forest Service minerals regulation at 36 CFR 228.4(d) govern how the Agency makes decisions about the availability of lands for oil and gas leasing, and those decisions are not suitability determinations. Decisions about availability of lands for oil and gas leasing under 36 CFR 228.4(d), have been made for most national forests and grasslands. Decisions about the availability of lands for oil and gas leasing under 36 CFR 228.4(d) are not plan components; however, availability decisions may be made at the same time as plan development, plan amendment, or plan revision; but that is not required.

Comment: Guidelines. One respondent noted the preamble for the proposed rule stated that guidelines are requirements, but felt guidelines should be optional. Another respondent felt the proposed rule eliminates the distinction between plan guidelines and standards, making guidelines legally enforceable standards with which all projects must comply. The respondent felt that making guidelines enforceable in the same way as standards eliminates what the respondent believed to be the Department's that guidelines are discretionary to provide management flexibility. One respondent policy advocated making guidelines binding, because if they are discretionary, why include them. Several respondents commented on the preferred alternative that the Department should remove the discretion to meet the rule's substantive mandates through either standards ''or'' guidelines by requiring ''standards *and* guidelines.''

Response: The final rule retains the proposed rule's distinction between

standards and guidelines. Under the final rule, standards and guidelines are both mandatory—projects and activities must be consistent with the applicable standards and guidelines. Consistency with a standard is determined by strict adherence to the specific terms of the standard, while consistency with a guideline allows for either strict adherence to the terms of the guideline, or deviation from the specific terms of the guideline, so long as the purpose for which the guideline was included in the plan is met (§ 219.15). This approach to guidelines allows for flexibility as circumstances warrant, for example, when there is more than one way to achieve the intended purpose, or new information provides a better way to meet the purpose, without lessening protections. Guidelines included in plans pursuant to this final rule must be written clearly and without ambiguity, so the purpose is apparent and project or activity consistency with guidelines can be easily determined.

The final rule retains the preferred alternative's wording of ''standards or guidelines'' throughout sections 219.8–219.11. While every set of plan components developed to meet a substantive requirement of the rule must include standards or guidelines, including both may not be appropriate in every circumstance.

Comment: Use of standards and guidelines to promote action. A respondent suggested standards and guidelines should be used to promote or mandate certain management actions, like managing suitable timberlands towards the desired future condition or reducing fuels around wildland-urban interface areas.

Response: The Department expects that the set of plan components developed in response to one or more requirements in the rule will facilitate management to move the unit towards one or more desired conditions. Standards and guidelines set out design criteria which are applied to projects and activities, but do not by themselves result in specific management actions taking place.

Comment: Mandatory standards. Some respondents stated the final rule must include measurable standards for specific resources such as climate change, species viability, sustainable recreation, valid existing rights, or watershed management, in order to implement the intent of the rule and to ensure consistency. Others were opposed to the use of standards and guidelines.

Response: The rule includes specific requirements for plan components in §§ 219.8 through 219.11. The final rule has been modified to clarify that ''standards or guidelines'' must be part of the set of plan components required by each of those sections. However, the Department does not agree there should be specific national standards for each of the resources or uses mentioned in the comment, because significant differences in circumstances across the National Forest System could make specific national standards unworkable or not reflective of the best available scientific information for a given plan area. The final rule balances the need for national consistency with the need for local flexibility to reflect conditions and information on each unit. Additional direction will be included in the Forest Service Directives System, and a new requirement was added to § 219.2 that require the Chief to establish a national oversight process for accountability and consistency of planning under this part.

Comment: Management areas and special areas. Some respondents indicated management areas and prescriptions should be required plan components and identification of areas with remarkable qualities for special designation should be required as part of the planning process.

Response: The final rule requires each plan to include management areas or geographic areas, allows for the plan to identify designated or recommended areas as management areas or geographic areas, allows the responsible official to identify or recommend new designated areas, and clarifies the term ''designated area'' under § 219.19, in response to public comment.

Comment: Potential wilderness area evaluation and management. Some respondents found the term ''potential wilderness area'' confusing or inadequate, and the wilderness evaluation process unclear or in conflict with congressional action.

Response: The final rule wording removes the term ''potential wilderness areas'' from the final rule in response to public comments. The wording in § 219.7 clarifies that the Agency will identify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System and determine whether to recommend them for wilderness designation. Section 219.10(b)(iv) wording has also been changed to clarify that areas recommended for wilderness designation will be managed to protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation. Direction for the evaluation process and inventory criteria is listed in Forest Service Handbook 1909.12—Land Management Planning Handbook, Chapter 70—Wilderness Evaluation. Chapter 70 is part of the Forest Service Directives System being revised following the final rule and the public is encouraged to participate in the upcoming public comment period for those directives. The wilderness evaluation requirement in the rule is not in conflict with the law. In addition, many State wilderness acts require the Forest Service to review the wilderness option when the plans are revised. The Utah Wilderness Act of 1984 is one example, Public Law 98–428. § 201(b)(2); 98 Stat. 1659.

Comment: Roadless area management and inventory. Some respondents noted that direction should be added to identify, evaluate, and protect inventoried roadless areas, and a requirement to remove these areas from lands suitable for timber production. Some respondents suggested inclusion of ''unroaded areas,'' as defined in § 219.36 of the 2000 planning rule, in evaluation of lands that may be suitable for potential wilderness and protocols for such evaluation be included in the rule. An organization commented on the preferred alternative that the Department should clarify that the intended starting point for the wilderness evaluation is a full inventory of all unroaded lands.

Response: Agency management direction for inventoried roadless areas is found at 36 CFR part 294—Special Areas, and plans developed pursuant to the final rule must comply with all applicable laws and regulations (§ 219.1(f)).

The wording of § 219.7(c)(2)(v) was changed in the final rule to clarify that areas that may be suitable for inclusion in the National Wilderness System must be identified as part of the planning process, along with recommendations for wilderness designation. This change makes clear that each unit will identify an inventory of lands that may be suitable as a starting point for evaluating which lands to recommend. Inventories of lands that may be suitable for inclusion in the National Wilderness Preservation System will be conducted following direction in Forest Service Handbook 1909.12—Land Management Planning Handbook, Chapter 70 Wilderness evaluation, which also includes criteria for evaluation. Chapter 70 is part of the Forest Service Directives System which will be revised following the promulgation of this rule. The public is encouraged to participate in the upcoming public comment period for those directives. It is currently Agency policy that unless otherwise provided by law, all roadless,

undeveloped areas that satisfy the definition of wilderness found in section 2(c) of the Wilderness Act of 1964 be evaluated and considered for recommendation as potential wilderness areas during plan development or revision (FSM 1923).

Comment: Time limit on Congressional action. A respondent suggested the rule should include a 10-year time limit for Wild and Scenic River or Wilderness recommendations to be acted upon by Congress or the Agency's recommendation is withdrawn.

Response: The Constitution does not grant the U.S. Department of Agriculture authority to set time limits on Congressional action. The Department decided it is not going to require responsible officials to withdraw any such recommendations.

Other Plan Content

Comment: Forest vegetation management practices. Some respondents requested clarification of proposed § 219.7(f)(1)(iv) phrase ''proportion of probable methods of forest vegetation management practices expected'' as it is unclear what type of management practices must be undertaken to successfully satisfy this requirement.

Response: Section 16 U.S.C. 1604(f)(2) of the NFMA requires plans to ''be embodied in appropriate written material * * * reflecting proposed and possible actions, including the planned timber sale program and the proportion of probable methods of timber harvest within the unit necessary to fulfill the plan.'' Therefore, under the final rule and Forest Service Directives System, the Department expects plans to display the expected acres of timber harvest by the categories, such as: regeneration cutting (even- or two-aged), uneven-aged management, intermediate harvest, commercial thinning, salvage/sanitation, other harvest cutting, reforestation, and timber stand improvement in an appendix. Examples of such exhibits are displayed in Forest Service Handbook 1909.12, Land Management Planning, Chapter 60, Forest Vegetation Resource Planning is available at *http://www.fs.fed.us/im/directives/fsh/1909.12/1909.12_60.doc.* The list of proposed and possible actions may also include recreation and wildlife projects. The final rule allows the list to be updated through an administrative change (§ 219.13(c)).

Comment: Distinctive roles and contributions. Some respondents said there is no legal requirement for identification of a forest or grassland's distinctive roles and contributions, and the requirement will bias and polarize the planning process in favor of some uses, products, and services and against others. Other respondents felt the unit's distinctive roles should be plan components requiring a plan amendment to change, or the wording strengthened to require assessment of underrepresented ecosystems and successional classes across the broader landscape.

Response: Under the public participation process, the Department believes the development of the distinctive roles and contributions, while not required by NFMA, will be a unifying concept helping define the vision for the plan area within the broader landscape. The preferred vision is expected to assist the responsible official in developing plan components for the multiple uses. However, projects and activities would not be required to be consistent with the plan area's distinctive roles and contributions, so the Department decided to keep this description as other plan content.

Comment: Additional plan components and content. Some respondents suggested additional required plan components like partnership opportunities, coordination activities, monitoring program, or specific maps.

Response: Plan components are the core elements of plans. Projects and activities must be consistent with plan components (§ 219.15), and an amendment or revision is required to change plan components. Plan components in the rule are usually reserved for ecological, social, or economic aspects of the environment, but the responsible official has discretion in developing plan components to meet the requirements of the final rule.

Some items like a monitoring program are included as other required content in the plan, but not as a required plan component. The final rule allows the responsible official to add other plan content for unit issues and conditions. Other plan content can be other information that may be useful to Forest Service employees when designing projects and activities under the plan components. The other content in the plan (§ 219.7(f)) differs from plan components in that an amendment or revision would not be required for changes to be made to reflect new information or changed conditions. Monitoring is not included as a plan component, so the monitoring program can be refined and updated without a plan amendment in response to new information or changing conditions. Listing of specific methods for partnership opportunities or coordination activities as part of the plan is optional content for a plan. The Department did not require specific maps as part of the final rule.

Comment: Priority Watersheds. Some respondents asked what process is used to identify priority watersheds and why priority watersheds are not a plan component. Some respondents noted the proposed rule requirement to identify priority watersheds for maintenance and restoration did not include specific criteria for selecting watersheds and did not prescribe what activities or prohibitions would occur in priority watersheds.

Response: Section 219.7(f)(1)(i) requires identification of priority watersheds for restoration. This will focus integrated restoration of watershed conditions. Setting priorities can help ensure that investments provide the greatest possible benefits. The Department realizes that priority areas for potential restoration activities could change quickly due to events such as wildfire, hurricanes, drought, or the presence of invasive species. Therefore, this requirement is included as ''other required content'' in § 219.7(f)(1)(i) rather than as a required plan component, allowing an administrative change (§ 219.13) to be used when necessary to quickly respond to changes in priority. Any changes would require notification.

The Department intends to use the Watershed Condition Framework (WCF), *http://www.fs.fed.us/publications/watershed/Watershed_Condition_Framework.pdf,* for identifying priority watersheds, developing watershed action plans and implementing projects to maintain or restore conditions in priority watersheds. However, the WCF is a relatively new tool that will be adapted as lessons are learned from its use, as new information becomes available, or as conditions change on the ground. Therefore, because the criteria for selecting watersheds may change in the future, it is not appropriate to codify such criteria in a rule. The adaptive management approach incorporated in the WCF provides the best opportunity and most efficient way to prioritize watersheds for restoration or maintenance. The Department expects that implementation of the final rule and the WCF will be mutually supportive.

Section 219.8—Sustainability

The requirements of this section of the final rule are linked to the requirements in the assessment (§ 219.6) and monitoring (§ 219.12). In addition,

this section provides a foundation for the next three sections regarding diversity of plant and animal communities (§ 219.9), multiple use (§ 219.10), and timber requirements based on the NFMA (§ 219.11). Together these sections of the final rule require plans to include plan components designed to maintain or restore ecological conditions to provide for ecological sustainability and to contribute to social and economic sustainability.

The requirements of this section, and all sections of the rule, are limited by the Agency's authority and the inherent capability of the plan area. This limitation arises from the fact that some influences on sustainability are outside the Agency's control, for example, climate change, national or global economic or market conditions, and urbanization on lands outside of or adjacent to NFS lands. Given those constraints, the Department realizes it cannot guarantee ecological, economic, or social sustainability. It is also important to note that plan components themselves do not compel agency action or guarantee specific results. Instead, they provide the vision, strategy, guidance, and constraints needed to move the plan area toward sustainability. The final rule should be read with these constraints in mind.

Additional requirements for contributing to social and economic sustainability are found in § 219.10 and § 219.11.

Section 219.8—Response to Comments

Many comments on this section focused on the concepts of ecological health, resilience and integrity, requirements for riparian area management, the relationship between social, ecological, and economic sustainability, and the requirements for social and economic sustainability. The Department reorganized this section to improve clarity, and made the following changes in response to public comment.

1. The Department changed the order of the wording of the introductory paragraph.

2. At paragraph (a)(1) of this section, the Department changed the caption ''Ecosystem plan components'' to ''Ecosystem Integrity.'' In addition, the Department replaced the phrase ''healthy and resilient'' to ''ecological integrity'' in this paragraph and throughout this subpart. The Department also modified additional wording of this section to reflect this change. This change responds to public concern about how to define and measure ''health'' and ''resilience.'' Ecosystem integrity is a more scientifically supported term, has established metrics for measurement, and is used by both the National Park Service and the Bureau of Land Management. Requirements included in this section, as well as in § 219.9 require plans to include plan components designed to ''maintain or restore ecological integrity.''

3. The Department modified the list of factors the responsible official must take into account when developing plan components at paragraph (a)(1)(i)–(v). The Department removed the term ''landscape scale integration'' and replaced it with a requirement for the responsible official to take into account the interdependence of terrestrial and aquatic ecosystems, the contributions of the plan area to the broader landscape, and the conditions of the broader landscape that influence the plan area. The Department also added a requirement to take into account opportunities for landscape scale restoration. The additional wording clarifies the Department's intent that the planning framework be designed to ensure that managers understand the landscape-scale context for management, and the interdependence of ecosystems and resources across the broader landscape.

The Department removed air quality from paragraph (a)(1) and added air quality to paragraph (a)(2). This change is in response to public comment that requested that air resources be treated in a similar manner to soil and water resources. Additionally, the paragraph was modified to add the term ''standards or guidelines'' to clarify here and in similar sentences throughout §§ 219.8 through 219.11 that standards or guidelines must be part of the set of plan components developed to comply with requirements throughout the rule. Except for the change for air quality, these changes to paragraph (a)(1) are not changes in requirements, because they reflect the Department's intent as stated in the preamble for the proposed rule, and provide additional clarity.

4. At paragraph (a)(2) of this section, the Department changed the caption ''Ecosystem elements'' to ''Air, soil, and water.'' This reorganized paragraph requires the plan to have plan components, including standards or guidelines, to maintain or restore the elements of air, soil, and water resources. The Department also changed the phrase ''maintain, protect, or restore'' of the proposed rule to ''maintain or restore'' here and throughout the final rule. This change is in response to public comment, and to make the rule consistent throughout the sections, and recognizes that the concept of protection is incorporated as part of how a responsible official accomplishes the direction to maintain or restore individual resources. These changes are not changes in requirements, they are clarifications.

5. At paragraph (a)(2) the Department reorganized the elements that plan components are designed to maintain or restore. The Department removed the provisions about terrestrial elements and rare plant communities from paragraph (a)(2); these items are now discussed in § 219.9(a) of the rule. At paragraph (a)(2)(iv) the Department combined the wording about aquatic elements and public water supplies of paragraphs (a)(2)(i) and (a)(2)(iv) of the proposed rule. The wording about water temperatures changes, blockages of water courses, and deposits was removed from this paragraph and is now more appropriately discussed with riparian areas at paragraph (a)(3)(i) of this section.

6. Paragraph (a)(3) adds specific requirements to the proposed rule to maintain or restore riparian areas. It provides that plan components must maintain or restore the ecological integrity of riparian areas, including ''structure, function, composition and connectivity,'' to make clear that the plan must provide direction for proactive management of riparian areas. Paragraph (a)(3) also sets out a list of elements relevant to riparian areas that must be considered when developing plan components to maintain or restore ecological integrity, and it changes the proposed rule's requirement for a ''default width'' for riparian areas to a requirement for a riparian management zone. These changes respond to public comment to provide more clear and specific direction for riparian areas. In addition, at paragraph (a)(3), the Department added a requirement to give special attention to the area 100 feet from the edges of perennial streams and lakes; and a requirement that plan components must ensure that no management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment that seriously and adversely affect water conditions or fish habitat shall be permitted within the zones or the site-specific delineated riparian areas. These requirements are carried forward from the 1982 rule. These additional requirements were added because public comments suggested the proposed rule was too vague or too open to interpretation with regard to minimum requirements.

7. At paragraph (a)(4), the Department added a requirement for the Chief to

establish requirements for national best management practices for water quality in the Forest Service directives and for plan components to ensure implementation of these practices. The public will have an opportunity to comment on these Forest Service directives. The Department added this requirement to respond to comments that the rule needed provisions to protect water quality and other comments about the use of best management practices.

8. At paragraph (b) of this section, the Department requires plan components to guide the unit's contribution to social and economic sustainability. The Department modified this paragraph to:

(i) Add reference to ''standards or guidelines,'' consistent with changes in other sections.

(ii) Remove wording about distinctive roles and contributions contained in the proposed rule, because the requirement is in § 219.7. This is not a change in requirements.

(iii) Add scenic character, recreation settings, and access in response to public comment about recreation. This change reflects the intent of the Department as stated in the preamble to the proposed rule.

(iv) Add a new requirement to take into account opportunities to connect people with nature to respond to public comments about the need to connect Americans, especially young people and underserved communities, with the NFS. This additional requirement adds specificity to the proposed rule direction to contribute to social sustainability and provide for ecosystem services as defined in the proposed rule.

(v) Make additional edits for clarity.

Comment: Maintain, protect, or restore. Some respondents did not understand why in some sections of the rule (such as § 219.9) the phrase ''maintain or restore'' was used and in other sections (such as § 219.8) the phrase ''maintain, protect, or restore'' was used. They questioned whether the two phrases were intended to mean different things or provide different levels of protection.

Response: The use of the two different phrases in the proposed rule was unintended. There was no intent to impart differing levels of protection or different requirements by the use of the two phrases. After review of the proposed rule and the preamble, it is apparent that the two phrases are used interchangeably and often inconsistently. To avoid future confusion, the phrase ''maintain and restore'' has been used consistently throughout §§ 219.8 and 219.9. The Department believes that ''protection'' is inherent in maintaining resources that are in good condition and restoring those that are degraded, damaged, or destroyed. The Department did not intend to imply that plan components would not ''protect'' resources where the word ''protect'' was not part of the phrase. Maintenance and restoration may include active or passive management and will require different levels of investment based on the difference between the desired and existing conditions of the system.

Comment: Best management practices and specificity for water sustainability. Some respondents felt the requirements for maintaining and restoring watersheds, sources of drinking water, and riparian areas of the proposed rule lacked the specificity necessary to consistently implement the rule. A respondent said the rule should reemphasize a commitment to maintaining water quality standards—through the limitation of uses incompatible with clean water, management for restoration of water quality, and the mandatory use of best management practices. One respondent suggested that plans may list best management practices that a project is required to adopt. Other respondents said the final planning rule should also require monitoring for water quality standard compliance and implementation and effectiveness of best management practices.

Response: Wording was added to § 219.8 of the final rule to clarify and add detail to the requirements for plan components for watersheds, aquatic ecosystems, water quality, water resources including drinking water resources, and riparian areas, in response to public comment.

Wording was also added to require that the Chief establish requirements for national best management practices (BMPs) for water quality in the Forest Service Directives System, and that plan components ensure implementation of those practices. The relevant directives (FSM 2532 and FSH 2509.22) are currently under development and will be published for public comment. At this time, the Department anticipates that the proposed directives will require the use of the national core BMPs (*National Core BMP Technical Guide,* FS–990a, in press).

The final rule does not require monitoring of implementation and effectiveness of best management practices, but does require monitoring of select watershed and ecosystem conditions, as well as progress toward meeting the plan's desired conditions and objectives.

These changes and the requirements in this and other sections reflect the intent as stated in the preamble of the proposed rule to place a strong emphasis on water resources and develop a framework that will support watersheds, aquatic ecosystems, and water resources throughout the National Forest System.

Comment: Riparian area management zone size. Some respondents felt the rule should include a minimum default width for riparian areas ranging from 100 feet to 300 feet or to the width of the 100 or 200-year flood plain. Without specific requirements, respondents felt there would be inconsistent implementation of the rule. Others preferred the riparian area default width vary depending on ecological or geomorphic characteristics approach used in the proposed rule.

Response: The Department added wording at § 219.8(a)(3) to require special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes. The Department decided to make this change to respond to public comment and retain the special attention provided in the 1982 rule, but decided not to require a minimum default width because the scientific literature states riparian area widths are highly variable and may range from a few feet to hundreds of feet. The final rule requires the responsible official to use the best available scientific information (§ 219.3) to inform the establishment of the width of riparian management zones around all lakes, perennial and intermittent streams, and open water wetlands. Plan components to maintain or restore the ecological integrity of riparian areas will apply within that zone, or within a site-specific delineation of the riparian area.

Comment: Management activities in riparian areas. Some respondents felt the riparian area guidance in the proposed rule represented a weakening of protection from the 1982 rule and wanted to see stronger national standards. They felt some management activities, like grazing and off-highway vehicle (OHV) use, should be prohibited or limited in riparian areas as they can be harmful to riparian area health. Others felt management activities in riparian areas should be left to only restoration efforts. Some respondents felt the riparian management requirements in the proposed rule were vague or too open to interpretation. Others felt the proposed rule may preclude active management within riparian areas.

Response: Section 219.8 has been revised in the final rule to address these concerns. The final rule requires the

responsible official to give special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes and further requires that plan components must ensure that no management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment that seriously and adversely affect water conditions or fish habitat shall be permitted within the riparian management zones or the site-specific delineated riparian areas. The Department expects projects and activities, including restoration projects, will occur in riparian areas. Plans may allow for projects and activities in riparian areas that may have short term or localized adverse impacts in order to achieve or contribute to a plan's desired conditions or objectives, so long as they do not seriously and adversely affect water conditions or fish habitat.

These requirements are similar to the requirements of the 1982 rule. They are in addition to the final rule requirements in § 219.8(a)(3) that plans must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain or restore structure, function, and composition. The changes to the proposed rule make clear that plans must provide for the ecological integrity of riparian areas in the plan area, and must include a set of plan components, including standards or guidelines, to do so. The responsible official must also take into account water temperature and chemical composition, blockages of water courses, deposits of sediment, aquatic and terrestrial habitats, ecological connectivity, restoration needs, and floodplain values and risk of flood loss when developing these plan components. These requirements are in addition to the requirements in § 219.8(a)(2) to include plan components to maintain or restore water quality and water resources, and the requirement in § 219.7(f) to identify priority watersheds for restoration or maintenance.

The Department believes that these requirements provide strong direction for proactive management (active and passive) of water resources beyond what was required in the 1982 rule, while allowing the responsible official to use the best available scientific information, public input, and information about local conditions to inform development of plan components in response to these requirements.

Comment: Sustainability and multiple use. Some respondents felt the proposed rule did not adequately recognize the importance of the multiple use mandate because the proposed rule at § 219.8 omitted any reference to multiple use.

Response: The proposed rule and the final rule both explicitly recognize multiple uses in § 219.8(b), with additional direction provided in § 219.10 with regard to management for multiple uses.

Comment: Maintain ecological conditions. Some respondents felt the proposed requirements to maintain or restore ecological conditions in §§ 219.8 and 219.9 would allow for the Agency to develop plan components maintaining current degraded ecological conditions.

Response: The intent of the rule is for plan components to maintain desired conditions, and restore conditions where they are degraded. However, the Department recognizes in some instances it may be impracticable or impossible to restore all degraded, damaged or destroyed systems that may be present in a plan area because of cost, unacceptable tradeoffs between other resource and restoration needs, or where restoration is outside the capability of the land or Forest Service authority. There are also degraded areas on NFS lands where the tools or methods are not currently available to effectively restore them to desired conditions. The Department recognizes that at times, management activities maintaining existing, less than desirable conditions in the short-term may be critical to preventing further degradation and for successful restoration towards desired conditions over the long-term. For example, the primary management emphasis in some areas may be controlling the spread of invasive species when eradication is not currently feasible.

Ecological Integrity

Comment: Integration of terrestrial and aquatic ecosystems. Some respondents felt the proposed rule was unclear in the requirement that the responsible official take into account the integration of terrestrial and aquatic ecosystems in the plan area when creating plan components to maintain or restore the health and resilience of terrestrial and aquatic ecosystems and watersheds in the plan area.

Response: The final rule adds clarifying wording to § 219.8. The word ''integration'' was changed to ''interdependence'' to better reflect the Department's intent, and new wording was added requiring the responsible official to consider contributions of the unit to ecological conditions within the broader landscape influenced by the plan area and conditions in the broader landscape that may influence the sustainability of resources and ecosystems, as well as opportunities for landscape scale restoration. These changes clarify the former requirement in the proposed rule and strengthen the planning framework by ensuring responsible officials understand the interdependence of ecosystems in the plan area, as well as the role and contribution of their units and the context for management within the broader landscape.

Comment: Invasive species. Some respondents felt the rule should have more explicit requirements on how invasive species management would be included in plans.

Response: It is clear that the introduction of invasive species to national forest and grassland ecosystems has had, and is continuing to have, profound effects on the ecological integrity of these ecosystems. The final rule explicitly addresses invasive species in § 219.6, which requires information about stressors such as invasive species to be identified and evaluated, and in corresponding requirements in §§ 219.8 and 219.10. Plan components are required to maintain or restore ecological integrity under §§ 219.8, taking into account stressors including invasive species, and the ability of the ecosystems on the unit to adapt. Plan components for multiple uses must also consider stressors, including invasive species, and the ability of the ecosystems on the unit to adapt.

Social and Economic Sustainability

Comment: Relationship between ecological, social and economic sustainability. Some respondents felt ecological sustainability should be prioritized over social and economic sustainability, whereas other felt that economic sustainability should be prioritized. Others felt NFS lands should be managed primarily for multiple uses that contribute to economic and social sustainability. Some respondents felt the proposed rule incorrectly prioritizes plan components by use of ''maintain or restore'' elements of ecological sustainability over the use of the term ''to contribute'' for social and economic sustainability. Some respondents expressed differing opinions about the relative importance of ecological, social, and economic sustainability in relation to multiple uses. A respondent felt social and economic sustainability should not be included in the rule, while another felt

ecological sustainability should not be included. Some respondents felt social, environmental, and economic considerations are not competing values but interdependent and all play a role in management. Some respondents disagreed with the concept that the Agency has more control over ecological sustainability than social and economic sustainability. Some respondents felt the proposed rule definition of sustainability was not clear.

Response: The MUSYA requires ''harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or greatest unit output'' (16 U.S.C. 531). Under this final rule, ecological, social, and economic systems are recognized as interdependent, without one being a priority over another. The rule requires the consideration of ecological, social, and economic factors in all phases of the planning process. However, the final rule recognizes that the Agency generally has greater influence over ecological sustainability on NFS lands than over broader social or economic sustainability, although it cannot guarantee sustainability for any of three. The Department recognizes that management of NFS lands can influence social and economic conditions relevant to a planning area, but cannot ensure social and economic sustainability because many factors are outside of the control and authority of the responsible official. For that reason, the final rule requires that the plan components contribute to social and economic sustainability, and provide for ecological sustainability, within Forest Service authority and the inherent capability of the plan area.

Ecological sustainability will help provide people and communities with a range of social, economic, and ecological benefits now and in the future. In addition, plan components will provide directly for a range of multiple uses to contribute to social and economic sustainability. The final rule includes a modified definition of sustainability by defining the terms ecological sustainability, economic sustainability, and social sustainability as part of the definition of sustainability.

Comment: Connecting people to nature. Some respondents felt the rule should contain wording to encourage a sense of value for public lands necessary in maintaining these lands for enjoyment by future generations. In an increasingly urbanized society, they felt access to NFS lands is necessary for people to visit, learn, recreate, and generate their livelihood.

Response: Section 219.8(b)(6) of the final rule requires the responsible official take into account opportunities to connect people with nature.

Comment: Cultural sustainability. Some respondents felt the rule should include management of cultural resources as a separate aspect of sustainability. A respondent felt proposed § 219.8(b)(4) should be expanded to include ''cultural landscapes.''

Response: The final rule does not create a separate aspect of sustainability for management of cultural resources, but does address cultural resources and uses. The definition in the final rule of ''social sustainability'' recognizes the ''relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities.'' In addition: Section 219.1(c) recognizes that NFS lands provide people and communities with a wide array of benefits, including ''cultural benefits.'' Section 219.4 requires opportunities for public and Tribal participation and coordination throughout the planning process. Section 219.4(a)(3) requires that the responsible official request ''information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites'' during consultation and opportunities for Tribal participation. Section 219.6(b) requires the assessment to include identification and evaluation of information about cultural conditions and cultural and historic resources and uses. Section 219.8 in the final rule recognizes cultural aspects of sustainability by requiring ''cultural and historic resources and uses'' be taken into account when designing plan components to guide contributions to social and economic sustainability. Section 219.10(b)(1)(ii) of the rule requires ''plan components * * * for a new plan or plan revision must provide for protection of cultural and historic resources,'' and ''management of areas of Tribal importance.'' The final rule also includes recognition of and requirements for ''ecosystem services,'' which include ''cultural heritage values.'' These requirements, in combination with the requirement that plan content include descriptions of a unit's roles and contributions within the broader landscape under § 219.7(e), ensure the cultural aspects of sustainability will be taken into account when developing plan components that guide unit contributions to social sustainability.

Comment: Local economies, communities, and groups. Some respondents felt the rule should require coordination with or participation of local communities. Some respondents felt the rule should recognize that how units are managed can greatly influence local communities and economies. Some respondents felt the rule should include maintaining ''vibrant communities.'' Some respondents felt the proposed rule preamble discussion about the Agency's relative influence over ecological as compared with social and economic sustainability was incorrect, as the Agency has more influence or impact on local communities than the preamble implied. A respondent felt the rule should consider all communities, not just local. A respondent felt the proposed rule inappropriately allows the Agency to dictate social and economic sustainability of local communities.

Response: Nothing in the final rule would dictate the social or economic sustainability of local communities—to the contrary, the rule recognizes that plans cannot dictate social or economic sustainability. However, the Department recognizes that management of NFS lands can influence local communities as well as persons and groups outside of these communities, and that some local economies may be more dependent on the management of the plan area and NFS resources than others. Section 219.4 requires the responsible official to engage local communities, as well as those interested at the regional and national levels, as well as to coordinate with other public planning efforts, including State and local governments, and Tribes. Section 219.6(b) requires in the assessment phase that responsible officials identify and evaluate existing relevant information about social, cultural, and economic conditions, benefits people obtain from the NFS planning area, and multiple uses and their contribution to the local, regional, and national economies. Section 219.8 requires that plans provide plan components to contribute to economic and social sustainability, and section 219.10 requires plans to provide for ecosystem services and multiple uses. Section 219.12 requires monitoring progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities. These requirements will help plans contribute to vibrant communities.

Comment: Specific processes for assessing social and economic

sustainability. Some respondents felt the final rule should include specific processes for assessing social and economic sustainability, such as analyzing the role of forest receipts (Federal revenues that are shared with states and counties) on local economies. A respondent felt the proposed rule required less involvement by social and economic experts than by other types of experts or scientists.

Response: The final rule provides a framework for plan development, amendment, and revision with sufficient flexibility to accommodate the continuously evolving range of social and economic conditions across the Forest Service administrative units. The final rule does not prescribe a specific process for assessing and evaluating social and economic sustainability, nor does it include descriptions of area boundaries for social and economic impact analysis. Such direction, guidance, or advice, is more appropriate in the Forest Service directives. The public will be given an opportunity to review and comment on any Forest Service Manual or Forest Service Handbook revision associated with land management planning. Social, economic, and ecologic experts are all welcome to participate in the planning process: This final rule does not discriminate or give more weight to one group or kind of expert over another.

Section 219.9—Diversity of Plant and Animal Communities

This section of the final rule fulfills the diversity requirement of the NFMA, which directs the Forest Service to ''provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section [of this Act], provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan'' (16 U.S.C. 1604(g)(3)(B)).

The final rule adopts a complementary ecosystem and species-specific approach to provide for the diversity of plant and animal communities and the long-term persistence of native species in the plan area. Known as a coarse-filter/fine-filter approach, this is a well-developed concept in the scientific literature and has broad support from the scientific community and many members of the public. This requirement retains the strong species conservation intent of the 1982 rule but with a strategic focus on those species that are vulnerable paired with a focus on overall ecosystem integrity and diversity. The final rule requires the use of the best available scientific information to inform the development of the plan components including the plan components for diversity. It also recognizes limits to agency authority and the inherent capability of the plan area.

The Department's intent in providing the requirements in this section is to provide for diversity of plant and animal communities, and provide ecological conditions to keep common native species common, contribute to the recovery of threatened and endangered species, conserve candidate and proposed species, and maintain viable populations of species of conservation concern within the plan area.

The premise behind the coarse-filter approach is that native species evolved and adapted within the limits established by natural landforms, vegetation, and disturbance patterns prior to extensive human alteration. Maintaining or restoring ecological conditions similar to those under which native species have evolved therefore offers the best assurance against losses of biological diversity and maintains habitats for the vast majority of species in an area, subject to factors outside of the Agency's control, such as climate change. The final rule recognizes the importance of maintaining the biological diversity of each national forest and grassland, and the integrity of the compositional, structural, and functional components comprising the ecosystems on each NFS unit.

The coarse-filter requirements of the rule are set out as requirements to develop plan components designed to maintain or restore ecological conditions for ecosystem integrity and ecosystem diversity in the plan area. Based upon the current science of conservation biology, by working toward the goals of ecosystem integrity and ecosystem diversity with connected habitats that can absorb disturbance, the Department expects that over time, management would maintain and restore ecological conditions which provide for diversity of plant and animal communities and support the abundance, distribution, and long-term persistence of native species. These ecological conditions should be sufficient to sustain viable populations of native plant and animal species considered to be common or secure within the plan area. These coarse-filter requirements are also expected to support the persistence of many species currently considered imperiled or vulnerable across their ranges or within the plan area.

For example, by maintaining or restoring the composition, structure, processes, and ecological connectivity of longleaf pine forests, national forests in the Southeast provide ecological conditions that contribute to the recovery of the red-cockaded woodpecker (an endangered species) and conservation of the gopher tortoise (a threatened species), in addition to supporting common species that depend on the longleaf pine ecosystem.

Similarly, maintaining or restoring shortgrass prairies on national grasslands in the Great Plains contributes to the conservation of black-tailed prairie dogs (regional forester sensitive species (RFSS) of the Rocky Mountain Region), mountain plovers (proposed threatened), and burrowing owls (RFSS), in addition to supporting common species that depend on the shortgrass prairie ecosystem. Maintaining or restoring watershed, riparian, and aquatic conditions in the national forests in the Northeast contributes to the conservation of the eastern brook trout (RFSS), in addition to supporting common species that depend on functioning riparian areas and aquatic ecosystems in the area.

The final rule would further require additional, species-specific plan components, as a ''fine-filter,'' to provide for additional specific habitat needs or other ecological conditions of certain categories of species, when the responsible official determines those needs are not met through the coarse-filter. The species for which the rule requires fine-filter plan components, when necessary, are federally listed threatened and endangered (T&E) species, proposed and candidate species, and species of conservation concern. If the responsible official determines that compliance with the coarse-filter approach is insufficient to provide the ecological conditions necessary to contribute to the recovery of federally listed threatened and endangered species, conserve species that are proposed or candidates to Federal listing, or maintain within the plan area a viable population of a species of conservation concern, then additional species-specific plan components that would do so are required, within Agency authority and the inherent capability of the land.

Species-specific plan components provide the fine-filter complement to the coarse-filter approach. For example, while coarse-filter requirements to restore longleaf pine ecosystems may provide most of the necessary ecological conditions for the endangered red-

cockaded woodpecker, additional fine-filter species-specific plan components may also be needed, for example, a plan standard to protect all known red-cockaded woodpecker cavity trees during prescribed burning activities. Examples for other species might include requiring proper size and placement of culverts to allow for aquatic organism passage on all streams capable of supporting eastern brook trout, or requiring closure devices on all cave and mine entrances to prevent the spread of white-nose syndrome to bat populations in the plan area.

Unlike the 1982 rule, the final rule explicitly acknowledges that there are limits to Agency authority and the inherent capability of the land. With respect to species of conservation concern (SCC), the responsible official may determine that those limits prevent maintenance or restoration of the ecological conditions necessary to maintain a viable population of a species of conservation concern within the boundaries of the plan area. The responsible official must then include plan components to maintain or restore ecological conditions within the plan area to contribute to maintaining a viable population of that species within its range. In doing so, the responsible official would be required to coordinate to the extent practicable with other land managers.

Examples of factors outside the control of the Agency could include: A species needing an area larger than the unit to maintain a viable population; non-NFS land management impacts to species that spend significant parts of their lifecycle off NFS lands; activities outside the plan area (for example, increasing fragmentation of habitat or non- and point source pollution often impact species and their habitats, both on and off NFS lands); failure of a species to occupy suitable habitat; and climate change and related stressors, which could impact many species and may make it impossible to maintain current ecological conditions. Other stressors, such as invasive species, insects, disease, catastrophic wildfire, floods, droughts, and changes in precipitation, among others, may also affect species and habitat in ways that the Agency cannot completely control or mitigate for.

In section 219.19, the Department defines native species as ''an organism that was historically or is present in a particular ecosystem as a result of natural migratory or evolutionary processes; and not as a result of an accidental or deliberate introduction into that ecosystem. An organism's presence and evolution (adaptation) in an area are determined by climate, soil and other biotic and abiotic factors.'' By defining species as ''was historically or is present in a particular ecosystem,'' the Department is not suggesting that historically native species that are no longer present must be reintroduced. The Department is recognizing that if such species were to return or to be reintroduced to the area, they would still be considered native.

In addition to developing, amending, and revising plans under the diversity requirements of this section, the final rule includes requirements for ecological sustainability in § 219.8, and in § 219.10 for providing for multiple uses including wildlife and fish, considering ecosystem services, fish and wildlife species, habitat and habitat connectivity, and habitat conditions for wildlife, fish, and plants commonly enjoyed and used by the public when developing plan components for integrated resource management. Requirements in the assessment and monitoring phases are also linked to and support the requirements of this section.

Section 219.9—Response to Comments

The Department received many comments on this section. People suggested a broad range of approaches, including reinstating the 1982 viability requirements; protecting and maintaining healthy habitats with no species specific provisions; increasing viability requirements; and mirroring the NFMA wording for diversity without including reference to viability. In addition, some people emphasized that there is a need to coordinate and cooperate beyond NFS unit boundaries for purposes of identifying and protecting critical habitat, migration corridors, and other habitat elements.

The Department also received many comments expressing concern or confusion over the relationship between the ecosystem diversity requirement in paragraph (a) and the species conservation requirement in paragraph (b) in this section of the proposed rule. In particular, there was concern over whether the complementary coarse-filter and fine-filter strategy described in the preamble and DEIS for the proposed rule was clearly expressed in the proposed rule wording itself. Additionally, there was a lack of understanding of how these two requirements would maintain both the diversity of plant and animal communities and the persistence of native species within the plan area as expressed in the preamble.

In response to public comments, the Department modified the proposed rule wording and made additions to it. The result is a final § 219.9 that has the same intent as the proposed rule but is clearer and will better effectuate the Department's approach to providing for diversity.

The Department added wording to the introduction to explain, as expressed in the preamble for the proposed rule, that plans adopt a complementary ecosystem (coarse-filter) and species-specific (fine-filter) approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. This combined approach for maintaining biological diversity over large landscapes is a well-developed concept in the scientific literature, and is generally supported by the science community for application on Federal lands.

Paragraph (a) was modified with the new heading of ''Ecosystem plan components,'' and subdivided into 2 parts. The new paragraph (a)(1) has a heading of ''Ecosystem integrity'' and includes the requirements of paragraph (a) of the proposed rule, consistent with the equivalent requirement in § 219.8(a). As in § 219.8 the ''health and resilience'' of the proposed rule was replaced with ''ecological integrity'' as described in the discussion of 219.8. The concept of ecological integrity is also being advanced by the U.S. Department of the Interior for National Park System lands. Having similar approaches to assessing and evaluating ecological conditions across the broader landscape will facilitate an all-lands approach to ecological sustainability.

The Department added a new paragraph ((a)(2)), which retains the proposed rule heading of ''ecosystem diversity.'' This paragraph includes new wording to make clear that the plan must include plan components to maintain the diversity of ecosystems and habitat types in the plan area. This change was made to explain, as described in the preamble to the proposed rule that plans provide for ecosystem diversity. As part of providing for this requirement, paragraph (a)(2) includes direction to provide plan components to maintain and restore key characteristics of ecosystem types (similar to requirements of proposed rule § 219.8(2)(i) and (ii)), rare native plant and animal communities (moved from proposed rule § 219.8(a)(2)(iii)), and diversity of native tree species (moved from paragraph (c) of proposed § 219.9). Both subsections of paragraph (a) direct that the responsible official include ''standards or guidelines'' in the set of plan components developed to meet these requirements.

The heading of paragraph (b) was changed from ''Species Conservation'' to ''Additional, species-specific plan components'' to clarify the fact that both the ecosystem plan components (coarse-filter) and the additional species-specific plan components (fine-filter) contribute to species conservation. Paragraph (b)(1) adds proposed species to candidate species as species to be conserved. The substance of paragraph (b) was modified in the final rule to make it clear that the plan components required by this paragraph are intended to complement and supplement the coarse-filter requirements, where necessary.

In response to comments on the preferred alternative, a change was made to the wording in § 219.9(b)(1) to clarify the Department's intent that the responsible official must make a determination as to whether additional, species-specific plan components are required. The final rule states that ''the responsible official shall determine whether or not the plan components required by paragraph (a) provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area.''

The ''if then'' statement in paragraph (b)(1) conveys the Department's expectation that for most native species, including threatened, endangered, proposed, candidate, and species of conservation concern, the ecosystem integrity and ecosystem diversity requirements (coarse-filter) would be expected to provide most or all of the ecological conditions necessary for those species' persistence within the plan area. However, for threatened, endangered, proposed, candidate, and species of conservation concern, the responsible official must review the coarse-filter plan components, and if necessary, include additional, species-specific (fine-filter) plan components to provide the ecological conditions to contribute to recovery of threatened and endangered species, to conserve proposed and candidate species, and to maintain viable populations of species of conservation concern in the plan area. As in many places in the final rule, paragraph (b) clarifies that the responsible official will include ''standards or guidelines'' in the set of plan components developed to meet these requirements. The word ''developed'' in this paragraph was changed to the word ''included'' to be consistent with similar construction in this and other sections that the plan will include plan components to meet various requirements.

Within paragraph (b)(1), the Department changed the requirement for ecological conditions to maintain ''viable populations of species of conservation concern'' (§ 219.9 (b)(3) of the proposed rule) to ''*a* viable population of *each* species of conservation concern'' (emphasis added). The change reflects the Department's intent from the proposed rule, but provides clarity in response to confusion about whether the proposed rule wording referred to populations of different species or multiple populations of the same species in the plan area, as well as concern that the proposed rule wording could be interpreted to mean that plans did not have to address every species of conservation concern. This clarification is consistent with the preamble of the proposed rule which discusses the agency's obligation in terms of maintaining ''a viable population of a species of conservation concern * * * to maintain the long-term persistence of that species.'' 76 FR 8493 (February 14, 2011).

As in the proposed rule, the ecosystem and species-specific requirements in the final rule are both limited by Forest Service authority and the inherent capability of the plan area. As in the proposed rule, the final rule provides an alternative standard for species of conservation concern if it is beyond the Forest Service's authority or the inherent capability of the plan area to provide ecological conditions to maintain a viable population of a species of conservation concern within the plan area. In such cases, the final rule requires that the responsible official document that determination (new requirement in the final rule) and include plan components, including standards or guidelines, to maintain or restore ecological conditions within the plan area to contribute to maintaining a viable population of the species within its range. The words ''to the extent practicable'' following the word ''contribute'' were removed from the final rule because they caused confusion and were unnecessary given other provisions of the rule, including Section 219.1(g). The final rule retains a modified requirement that in providing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, Tribal, and private land managers having management authority over lands ''relevant to that population,'' to reflect the need for a cross boundary approach to species conservation.

The Department added paragraph (c) to the final rule to modify and clarify the definition of species of conservation concern, formerly in section 219.19. The new wording clarifies that the species of conservation concern must be ''known to occur in the plan area,'' that the regional forester is the line officer who identifies the species of conservation concern, and the standard for that is ''the best available scientific information indicates substantial concern about the species' capability to persist over the long term in the plan area.''

The Department believes these revisions more clearly describe the application of the coarse-filter/fine-filter strategy for maintaining biological diversity as discussed in scientific literature and the PEIS. As plan components designed to meet these requirements are created and complied with, the broad spectrum of habitat and other ecological conditions necessary to support the diversity of plant and animal communities and the persistence of native plant and animal species would be expected through this complementary strategy.

Comment: Relationship between ecosystem diversity and species conservation. Some respondents felt the proposed rule was confusing in its description of the relationship between the ecosystem diversity requirement in proposed § 219.9(a) and the species conservation requirement in § 219.9(b). They felt the complementary coarse-filter/fine-filter strategy described in the preamble and DEIS was not clearly expressed in the proposed rule wording. Additionally, they felt it was unclear on how these two requirements would maintain the diversity of plant and animal communities and the persistence of native species within the plan area.

Response: In response to public comments, the Department clarified the proposed rule wording and made additions to the final rule. The coarse-filter/fine-filter approach used in the final rule and the modifications made to the proposed rule are explained in the introductory paragraphs of the response to comments on section 219.9.

Comment: Threatened, and endangered species. Some respondents felt the Department should consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on potential effects to threatened and endangered species as a result of the proposed planning rule. Others felt recovery plans are not legally enforceable documents; therefore, they are not mandatory for Federal agency adoption.

Response: Beginning in 2009 and continuing through the development of this planning rule and its accompanying PEIS, representatives from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service met regularly with the Forest Service to discuss ESA issues related to the rule. The three agencies worked together to identify the relevant issues and appropriate level of analysis associated with the final rule and environmental analysis, and have collaborated on a consultation process and on the biological assessment. The Agency requested consultation with these regulatory agencies in July 2011. Additionally, the Agency requested conferencing on the potential effects of the rule on all species proposed for Federal listing that currently occur on NFS lands and those that are candidates for Federal listing occurring on or are suspected to occur on NFS lands. The Agency completed consultation, as discussed in this preamble in the section with the caption of: *Compliance with the Endangered Species Act of 1973, as Amended.*

NFS lands are a major contributor to threatened and endangered species recovery plans and actions, maintaining habitat for such species as red-cockaded woodpecker, Canada lynx, bull trout, steelhead, and many other listed species. As part of the Forest Service mission, the actions needed to recover T&E species and maintain or restore critical habitats are a high priority. These species are at risk of extinction and are protected under the ESA. Under the ESA, the Forest Service is to carry out ''programs and activities for the conservation of endangered species and threatened species'' (16 U.S.C. 1536(a)(1)) and ''insure that any action authorized, funded or carried out by [it] is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [designated critical habitat]'' (16 U.S.C. 1635(a)(2)).

As did the proposed rule, the final rule requires that the plan include plan components to provide ecological conditions in the plan area necessary to contribute to the recovery of T&E species, using coarse-filter plan components and adding species-specific plan components where necessary. While the 1982 rule at section 219.19(a)(7) did have specific requirements for protection of T&E critical habitat, and required objectives to remove T&E species from listing, where possible, through appropriate conservation measures, the requirement in the final rule that requires plan components to provide ecological conditions to ''contribute to the recovery of'' T&E species is more comprehensive. The final rule recognizes that these species may not be viable or have a viable population at this time, and in many cases may rely on lands and conditions outside NFS boundaries and beyond Agency control. Thus an individual NFS unit rarely can fully meet the recovery needs of a listed species. Under this final rule, the Department anticipates that plan components, including standards or guidelines, for the plan area would address conservation measures and actions identified in recovery plans relevant to T&E species. When implemented over time, these requirements would be expected to result in plans that will be proactive in the recovery and conservation of the threatened, endangered, proposed, and candidate species in the plan areas. These requirements will further the purposes of § 7(a)(1) of the ESA, by actively contributing to threatened and endangered species recovery and maintaining or restoring the ecosystems upon which they depend.

The Forest Service frequently collaborates with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration (NOAA) in the development and implementation of recovery plans for many species. The Forest Service will continue to work with USFWS, NOAA, States, and other partners to conserve and recover federally listed plant and animal species. The responsible official may also contribute to other recovery actions, such as species reintroductions to increase species distribution and threatened and endangered species monitoring programs. In addition, the Agency will continue to evaluate effects of proposed management actions to T&E species or designated critical habitat. Consultation with the appropriate regulatory agency(s) will also occur at the plan development, amendment, or revision stage and again at the project stage, if they may affect any federally listed species or designated critical habitat. Additional guidance will be forthcoming on procedures for conducting ESA section 7(a)(1) conservation reviews of plans in the Forest Service directives.

Complementary sections of the final rule, §§ 219.3, 219.4, and 219.6, in combination emphasize: the role of science in preparing, revising, or amending a plan; collaboration, including coordination with other planning efforts; consideration of objectives of other agencies and entities; the encouragement of appropriate agencies and entities to participate in determining assessment needs and identify contributions of relevant broad-scale assessments and plans of other agencies and governments; and the incorporation of broad-scale monitoring to address questions that are more appropriately answered at scales beyond NFS boundaries. These processes, programs, and activities would be incorporated into future unit planning processes and plans, and as these plans are implemented, they will actively contribute to ESA goals.

Comment: Candidate and proposed species. Many respondents supported the proposed rule requirement to conserve species that are candidates for Federal listing. Other respondents questioned why the proposed rule requires candidate species conservation as these species have not received Federal protection under ESA, and this may lead to more petitions for species listings being filed in the future and further limit the management options of the Agency.

Response: The Department added definitions for ''candidate species,'' and ''proposed species,'' and ''conserve'' to § 219.19 of the final rule to clarify the definitions of these terms and to avoid misunderstanding. Under the ESA, candidate and proposed species do not receive the special legal protections afforded to threatened and endangered species. However, the Department believes it is important to develop plan components for those plant and animal species that are proposed or candidates for Federal listing that occur on NFS lands, in order to assist in their recovery such that a Federal listing is no longer required. Similar to T&E species, candidate and proposed species may not have a viable population that can be maintained in the plan area at this time. In the final rule, the Agency would provide coarse-filter, and where necessary, additional fine-filter plan components for ecological conditions that would conserve candidate and proposed species, reducing risks to those species and providing for the maintenance or restoration of needed ecological conditions.

Comment: Authority for viability. Some respondents felt the proposed rule's concept of species viability may be outside the Agency's authority to implement; they take the position that managing for species diversity and viability is the responsibility of State agencies, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service.

Response: The requirement, to ''provide for diversity of plant and animal communities'' as set forth under

§ 1604(g)(3)(B) of the NFMA, does not specifically reference the diversity or viability of particular species. It is a statutory requirement that there be a planning rule that provides for diversity. However, it is within the Department's authority to require that plans provide ecological conditions to maintain viable populations of species of conservation concern. The Department's ability to maintain the diversity of plant and animal communities is dependent on protecting the plant and animal species and the interactions and processes the species perform. The Department developed the final rule in recognition that many Agency plans, programs, and activities are important influences on providing the desired ecological conditions for plant and animal communities and native species on NFS lands. In accordance with the MUSYA, plans must also provide for multiple uses including wildlife and fish.

The provisions in this final rule are focused on providing the ecological conditions necessary to support the diversity and persistence of native plant and animal species. The final rule maintains and provides additional direction to work with State fish and wildlife agencies, other Federal agencies, as well as others, to conserve fish, wildlife, and plant habitats and populations on NFS lands and to contribute to shared goals, such as those provided in state wildlife action plans or in threatened or endangered species recovery plans. Requirements in §§ 219.4, 219.6, 219.10, and 219.12 of this final rule complement and support interagency collaboration on habitat and species conservation.

Comment: Species of Conservation Concern (SCC) and Viability. Some respondents felt the rule should include the following wording from § 219.19 of the 1982 rule: ''Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.'' Some felt this standard should be extended to plants and invertebrates as well as vertebrates, and not only to SCC. Some respondents felt the proposed rule weakens current protections for plant and animal species therefore, the rule needs inclusion of clear, strong requirements focused on protecting and maintaining all native species within a plan area. On the other hand several respondents felt the proposed requirement to maintain viability of SCC is too expensive and cumbersome to implement. They felt this requirement is unattainable and procedurally impossible to demonstrate. Some respondents were opposed to providing protections for species other than vertebrates as it could lead to the possibility of maintaining viable populations of invertebrates, fungi, microorganisms, and other life forms, which these respondents suggest is inappropriate and beyond the Agency's authority.

Response: The Department concludes that managing ecological conditions for species protection is well within the authority of the Forest Service to manage the NFS for multiple use, and that the requirements of this section are more strategic and implementable than the 1982 rule while providing strong requirements focused on maintaining diversity and the persistence of native species within the plan area. The 1982 rule required that ''habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area.'' There may be hundreds of vertebrate species on a particular plan area. For some vertebrate species there may be little scientific information about their life requirements and habitat relationships, even though they may be considered common and secure within habitats provided on a NFS unit. For other vertebrate species, the requirement to maintain viable populations in the planning area may be unattainable, for reasons outside of the Agency's control.

The final rule instead relies on current scientific literature to adopt the complementary ecosystem and species-specific approach described above in the introduction to this section, and to focus species-specific management attention on those species that are vulnerable. Ecosystem (coarse-filter) plan components are expected to provide the necessary ecological conditions for species that are common, with viable populations in the plan area and no reason for concern about their ability to persist in the plan area over the long term. For species that are known to be imperiled (threatened, endangered, proposed and candidate species), the final rule requires coarse-filter, and where necessary, fine-filter plan components to provide ecological conditions that contribute to recovery or conservation of the species, recognizing that there is likely not a viable population of such species in the plan area at the time of plan approval.

The final rule provides direction for a third category of species: species that are vulnerable within the plan area, but not federally recognized for purposes of the ESA. These are species known to occur in the plan area, for which the best available scientific information indicates a substantial concern about the species' capability to persist in the plan area over the long term. The Department called this category ''species of conservation concern.''

For this category of species, the final rule requires coarse-filter, and where necessary, fine-filter plan components to provide ecological conditions to maintain a viable population of such species within the plan area, where it is within Forest Service authority and the inherent capability of the land to do so. If providing the ecological conditions to maintain a viable population within the plan area is beyond Forest Service authority or the inherent capability of the land, then the final rule requires coarse-filter, and where necessary, fine-filter plan components to provide ecological conditions to contribute to maintaining a viable population of the species within its range. For example, if a unit is incapable of providing a sufficient amount of the ecological conditions necessary to maintain a viable population of a species of conservation concern within the plan area, then the responsible official must include plan components that provide the ecological conditions in the plan area necessary to contribute to a viable population of that species in the broader landscape. The rule requires the responsible official to work in coordination with other relevant land managers when developing such plan components.

Species of conservation concern, like the categories of common species and imperiled species, is not limited to native and desired non-native vertebrates (as in the 1982 rule); it may include any native plant or animal species that meets the definition. The Department has the authority to include requirements for species other than vertebrate species under the NFMA and the MUSYA. Non-vertebrate species can be federally recognized as threatened or endangered. In addition, in each NFS region, the regional forester has developed and maintained a list of regional forester sensitive species (RFSS) for over two decades. The RFSS list can include any native plant or animal species. RFSS are those plant and animal species identified by a regional forester for which population viability is a concern, as evidenced by: significant current or predicted downward trends in population numbers or density; or significant current or predicted downward trends in habitat capability that would reduce a species' existing distribution. RFSS are similar to SCC. The conservation and management of many RFSS has been a part of many land management

plans and projects and activities for decades.

The projected costs of carrying out the rule are found in the Regulatory Planning and Review section of the preamble and in the final PEIS supporting this final rule. These costs are not expected to be too expensive or cumbersome to be carried out by the Agency. Because these requirements adopt a scientifically supported approach, acknowledge that there are limits to Agency control, and focus management attention more strategically on ecosystem plan components that will provide for most species and where necessary on additional species-specific plan components for species that are vulnerable, the Department believes that the requirements of this section, combined with the requirements in other sections of the rule for public participation, assessment and monitoring, will result in a strong, more effective, efficient, and implementable framework for providing for species diversity and persistence.

Comment: Distribution of species or habitat. Some respondents raised concerns that the definition of a viable population and the requirements for species of conservation concern do not include the requirement that these species or habitats be ''well-distributed'' as is required in the 1982 rule and they feel that this omission results in a lessening of protection for species between the 1982 rule and this final planning rule.

Response: NFMA does not require that species or habitats be well-distributed within the plan area. The 1982 rule stated at § 219.19 that: ''Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area. For planning purposes, a viable population shall be regarded as one which has the estimated numbers and distribution of reproductive individuals to insure its continued existence is well distributed in the planning area. In order to insure that viable populations will be maintained, habitat must be provided to support, at least, a minimum number of reproductive individuals and that habitat must be well distributed so that those individuals can interact with others in the planning area.''

This final rule includes requirements to restore or maintain ecological conditions to support viable populations of species of conservation concern. It requires that the responsible official determine whether or not the plan components required by paragraph (a) ''provide the ecological conditions necessary to * * * maintain a viable population of each species of conservation concern within the plan area. If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area'' (§ 219.9(b)(1)). The rule defines a viable population as: ''A population of a species that continues to persist over the long term with *sufficient distribution to be resilient and adaptable* to stressors and likely future environments'' (§ 219.19) (emphasis added).

The intent behind both the 1982 provisions and the final rule provisions is the same: To provide habitat to maintain viable populations. However, there are a number of reasons for the Department's decision not to include the term ''well-distributed'' in the final rule and instead used the phrase ''with sufficient distribution to be resilient and adaptable.'' The term is not defined in the 1982 rule, has been inconsistently interpreted in plans, and has been applied in many different ways.

Importantly, the term ''well-distributed'' on its own is not clearly biological: Many people have interpreted the term in a geographical context as opposed to a biological context. This geographic interpretation has proven problematic at times, because the plan area is not an ecological boundary; it is an administrative boundary that may overlap completely or only partially with a species' natural ecological range. In addition, for some species, those areas of overlap may be changing in response to changing conditions.

Since 1982, we have learned more about what is important for a species to persist on the landscape, with an evolving understanding of important ecological concepts like resilience, connectivity, and adaptability, and of stressors such as climate change. For these reasons, instead of relying on the term ''well-distributed,'' the Department chose instead to include a more ecologically-based definition of a viable population, ''with sufficient distribution to be resilient and adaptable to stressors and likely future environments'' such that the population ''continues to persist over the long term.''

Combined with the requirement in section 219.3 to use the best available scientific information to inform the plan, this definition is intended to focus the development of plan components on providing ecological conditions where they will be most useful and important to the species, which may or may not lead to habitat that is evenly or ''well'' distributed across the plan area for every species. For some species, that may mean having the appropriate ecological conditions throughout the plan area. For others, it may mean focusing on a small portion of the plan area. For others, it may mean working to restore or provide ecological conditions for a species whose range is migrating in response to changing conditions. For still others, it may mean providing a corridor or corridors to connect habitat.

The change from ''well distributed'' to ''sufficient distribution to be resilient and adaptable'' is intended to clarify that we are using ''distribution'' in an ecological context to support species' long term persistence and to help increase consistency in implementation. The Department recognizes that the long-term security of species improves as distribution increases and habitat and other ecological conditions are maintained or improved. Whether distribution is ''sufficient'' will be evaluated in the context of what a population needs for resilience and adaptability such that it can continue to persist over the long term, considering the species' natural history, the ability of individuals to interact, historical distribution and potential future distribution, and recognizing that habitat and species distribution will be dynamic over time. The responsible official will use the best available scientific information to inform this evaluation. In making this evaluation, it is the Department's expectation that for the purposes of this subpart, the individuals of a species of conservation concern that exist in the plan area will be considered to be members of one population of that species. The responsible official would consider the distribution of individuals or groups that would support a viable population of that species in the plan area. Additional guidance will be included in the directives, which will be available for public notice and comment.

It is important to recognize that the requirements of § 219.9(b)(1) and the definition of viable population support and are part of a broader set of requirements in the final rule that are important for species conservation, including the requirements in §§ 219.8 and 219.9 to maintain or restore ecological integrity, including connectivity of ecosystems in the plan area; and the requirement in § 219.9(a) to provide a diversity of ecosystem types throughout the plan area.

Combined, the requirements in the final rule are expected to provide the

conditions that support the persistence of native species in the plan area and maintain the diversity of plant and animal communities. For these reasons, the Department believes that the set of requirements in the final rule is not a lessening of protection from the 1982 rule, and represents a science-based approach to species conservation.

Comment: Identification and definition of species of conservation concern. Some respondents felt the proposed rule was unclear on who the responsible official for identifying SCC was, what criteria would be used to identify SCC; and whether or not that criteria should be established in the planning rule. Some respondents offered suggested criteria for identifying SCC. Several respondents expressed concern the proposed rule provides too much discretion to the responsible official in deciding which species will receive protection.

Response: In response to these comments, the definition of species of conservation concern was moved from § 219.19 to a new paragraph (c) in this section and was modified. The Department changed the line officer who identifies the SCC for the plan area from the responsible official (normally the forest supervisor) to the regional forester in the final rule. The change was made to provide additional consistency and promote efficiency in identifying species of conservation on and among national forests and grasslands within a region. The broader-scale monitoring strategy will also be developed by the regional forester.

The final rule's definition of SCC makes the criterion for identifying such species narrower and more scientific than the definition in the proposed rule. The species must be ''known to occur in the plan area,'' and ''the best available scientific information'' must indicate ''substantial concern'' about the species' capability to persist over the long-term in the plan area.

Additional guidance for the identification of species of conservation concern will be included in the Forest Service Directives System, with an opportunity for public comment. The Department expects that State or Tribal lists of endangered, threatened, rare, endemic, or other classifications of species, such as those listed as threatened under State law; and other sources such as the NatureServe conservation status system may be used to inform the identification of SCC.

Comment: Circumstances not within Forest Service authority, consistent with the inherent capability of the plan area. Some respondents felt the rule needs to clarify what is meant by ''within Forest Service authority, and consistent with the inherent capability of the plan area,'' to provide consistency in their application and intent. Others felt use of these terms allowed the Agency to avoid responsibilities for maintaining the diversity of plant and animal communities and the persistence of native species within the plan area. Still others felt the rule should describe the types of circumstances that make the Agency's ability to meet the requirement for maintaining viable populations of species of conservation concern infeasible or impractical. Some respondents said the rule should provide more discretion and flexibility.

Response: The acknowledgment of limits to Agency authority and the inherent capability of the land do not ''allow'' the Agency to avoid responsibility for maintaining the diversity of plant and animal communities and the persistence of native species within the plan area. These limits exist whether they are acknowledged in the rule or not. The Department believes it is more transparent and effective to require a robust and scientifically supported approach to providing for the diversity of plant and animal communities and the persistence of native species within the plan area and openly acknowledge that there are some circumstances outside of Agency control, allowing responsible officials to adjust, adapt, and work more collaboratively with other land managers to protect species in the context of the broader landscape.

The ''inherent capability of the land'' is defined in § 219.19 of the final rule as: ''The ecological capacity or ecological potential of an area characterized by the interrelationship of its physical elements, its climatic regime, and natural disturbances'' Examples of circumstances where the plan area may lack the inherent capability to maintain a viable population of a species include where a plan area is not large enough to produce sufficient habitat on the unit or where, due to current or projected changes in climate, it would be impossible for the plan area to produce or maintain the required amount or quality of habitat conditions necessary to sustain a viable population of the species within the plan area. Additional examples of circumstances outside the Agency's control, including those that may be outside the Agency's authority or the inherent capability of the land, are discussed earlier in this document as part of the rational for non-selection of Alternative B (No Action).

There may also be circumstances where the plan area has the inherent capability over time to provide for certain ecological conditions, but cannot produce such ecological conditions within the lifetime of the plan: for example, where a species needs old growth or late successional habitat where there is none (for example, where bark beetle has killed all of the late successional stands in a plan area). The plan would include plan components to move the plan area towards providing that habitat in the future, but would not have the capability to produce it instantly.

Examples of circumstances not within the authority of the Agency include land use patterns on private lands within or adjacent to NFS units that fragment and reduce habitat for a species whose range extends well beyond the plan area, habitat loss or degradation along important migration routes or wintering grounds for a species who spends some of its life history on other lands or in other countries, or the influence of disease or invasive species.

Section 219.3 requires the use of the best available scientific information to inform the plan components required by this section, and § 219.14 requires the responsible official to document how the requirements of this section were met. Section 219.2 requires that the Chief establish a national oversight process for accountability and consistency. The Forest Service Directives System will include additional direction for implementing the requirements of this section, and will be available for public comment.

Comment: Diversity of tree and other plant species. Some respondents felt the rule is not protective enough of the diversity of tree and other plant species. Others felt the rule should have specific requirements for old growth and large, intact blocks of forest; leaving more snags and dead wood; reforestation guidelines that include diverse tree mixtures; and use of herbicides.

Response: The Department based the requirements of § 219.9(a)(2)(iii) on the NFMA.

The final rule requires in paragraph (a)(2)(i) and (ii) plan components to provide for key characteristics associated with terrestrial and aquatic ecosystem types and rare aquatic and terrestrial plant and animal communities, which may include old growth stands, meadows, snags, or other characteristics. These characteristics are similar to what was required in the proposed rule at § 219.8(2)(i) and (ii) and (iii)). More specific requirements were not included in the final rule, because these issues are best identified and determined at the forest or grassland level, reflecting ecosystems

and plant and animal communities on the unit. Further direction will be provided in the Forest Service Directives System and in individual plans.

Comment: Additional species comments. Some respondents felt the rule should include direction on species assessments, developing the coarse-filter, and disclosing specific environmental effects.

Response: The Department agrees the issues raised are important. The final rule is intended to provide overall planning direction applicable throughout the entire National Forest System. The type of guidance requested by these respondents is more appropriately found in the Forest Service Directives System and/or in the plans themselves or in the subsequent decisions regarding projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. Some of the requested guidance, such as how to do assessments for particular species, would not apply to planning throughout the entire System. Other types of guidance, instructing the Agency on how to carry out the rule's requirements, may be so detailed that if, included in the rule, may make it unmanageably long and complicated. Also, including instructions in the rule on how to carry out various planning tasks may tie the Agency to procedures even when it learns better ways to carrying out those tasks. The Department concludes that placing such direction in Forest Service directives, which can change more readily than a rule, or allowing the Agency to try out various ways to carry out the rule, is likely to result in more effective and efficient planning than including such detail in the final rule itself.

Comment: ''survey and manage.'' Several respondents requested the planning rule require ''survey and manage'' procedures currently employed in the Pacific Northwest under the Northwest Forest Plan. Several respondents said one foreseeable outcome could be court ordered service-wide requirements for ''survey and manage'' as they believe is currently mandated in the Northwest Forest Plan. One respondent believes by expanding the requirements for viability beyond vertebrates the Forest Service will be forced to use ''survey and manage'' procedures of the Northwest Forest Plan on a nationwide basis.

Response: The final rule does not require ''survey and manage'' procedures similar to those in the Northwest Forest Plan. ''Survey and manage'' is a Northwest Forest Plan program where, before ground disturbing projects can be approved, the Forest Service must inventory late successional and old structure stands for nearly 400 species including fungi, lichens, bryophytes, mollusks, and several vascular plants, arthropods and vertebrates. None of the species are listed under ESA, but little is known about them. The final rule requires an assessment of existing, relevant information, and the use of best available scientific information to inform plan components to meet the species and diversity requirements of the rule. The final rule clarifies that species of conservation concern must be known to occur in the plan area and that the best available scientific information must indicate substantial concern about the species' capability to persist over the long term in the plan area.

Section 219.10—Multiple Use

This section requires that plans provide for ecosystem services and multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area, through integrated resource management. The responsible official must consider a range of uses, resources, services, and opportunities relevant to the plan area when developing plan components to provide ecosystem services and multiple uses, along with reasonably foreseeable risks to ecological, social, and economic sustainability. In addition, this section includes specific requirements for plan components for a new plan or plan revision. This section builds on the requirements in § 219.8 for plans to provide for ecological sustainability and contribute to social and economic sustainability.

Section 219.10—Response to Comments

Many comments on this section focused on multiple use requirements, requirements for ecosystem services, recreation, cultural and historic resources, wilderness and wild and scenic rivers, and designated areas. In response to public comment, the Department made a number of changes to this section to clarify intent.

The Department rearranged the wording of the introductory paragraph of this section to clarify the intent of the Agency that plans must provide for ecosystem services and multiple uses. The Department removed the term ''fiscal capability'' from the introductory paragraph because direction about fiscal capability is now included in § 219.1(g), and to be consistent with §§ 219.8 and 219.9.

The Department modified the requirements of paragraph (a) to clarify the wording, make these requirements parallel to other sections of the rule, and to respond to public comments. The Department added a requirement to have plan components, including standards or guidelines, for integrated resource management to provide for ecosystem services and multiple uses in the plan area. This change is in response to public comment to clarify that plan components for integrated resource management are to provide for ecosystem services and multiple uses, and to require standards or guidelines as part of the set of plan components developed to comply with the requirements of paragraph (a). As in earlier sections, the Department also changed the phrase ''multiple uses, including ecosystem services'' to ''ecosystem services and multiple uses,'' consistent with the MUSYA (see response to comments for § 219.1). The Department added a definition of integrated resource management in § 219.19, reflecting the interdependence of ecological resources as well as economic, ecological, and social systems.

Paragraph (a)(1) to (a)(10) includes a list of elements the responsible official shall consider when developing plan components for integrated resource management to provide for ecosystem services and multiple uses in the plan area. The Department modified this list in response to public comments; some of these modifications are additional requirements. The Department modified the list as follows: In paragraph (a)(1), changed the term recreational values to recreation opportunities to make the wording consistent with other sections and with paragraph (b)(1), and added ''and uses'' to the end of the list in paragraph (a)(1) to recognize that the list includes both resources and uses and that there may be other resources and uses relevant to the plan area; in paragraph (a)(3), added the words ''appropriate placement of infrastructure'' to recognize that there may be new infrastructure needs or proposals in addition to the need for sustainable management of already existing infrastructure; in paragraph (a)(5), modified wording to emphasize that responsible officials, in addition to meeting the requirements in § 219.9 for diversity and species and providing for wildlife and fish as part of the earlier direction in § 219.10 and paragraph (a)(1), should specifically consider habitat conditions for species that are used or enjoyed by the public for recreational opportunities such as

hunting and fishing, or for subsistence, and added a requirement that the responsible official collaborate with other land managers in doing so; in paragraph (a)(6), dropped the wording in the proposed rule to consider ''the landscape context for management as identified in the assessment'' because it was redundant with modifications made to the requirements in § 219.7, and moved the text at proposed paragraph (a)(7) to the final paragraph (a)(6); moved the text from proposed rule paragraphs (a)(7), (8) and (9), with some modifications, to the final rule paragraphs (a)(6),(7), and (8); in paragraph (a)(9) in the final rule added a new requirement, to consider ''public water supplies and associated water quality,'' in recognition of the role that national forests and grasslands play in providing drinking water to nearly one in five Americans; and added a requirement at (a)(10), to require consideration of opportunities to connect people to nature, recognizing that plans should consider both the resources on the plan area and people's connection to them.

Paragraph (b)(1)(i) to (b)(1)(vi) sets forth a list of requirements for plan components for new plans or plan revisions, adding the requirement that the set of plan components developed to meet these requirements include standards or guidelines, consistent with similar changes in other sections. The Department modified the requirements of paragraph (b) to clarify the wording, make these requirements parallel to other sections of the rule, and to respond to public comments. In paragraph (b)(1)(i), the Department slightly modified the requirement to require that plans must provide for sustainable recreation, including recreation settings, opportunities, and access; and scenic character; and to make clear in this section that recreation opportunities may include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.

In addition, the Department modified paragraph (b) by: Changing the wording for protection of wilderness and management of areas recommended for wilderness to be clearer; adding a requirement for management of rivers ''determined suitable'' for inclusion in the Wild and Scenic River System; changed paragraph (b)(1)(vi) to be consistent with changes made to § 219.7(c)(2)(vii) that clarify that the responsible official may establish new designated areas as part of the plan; and made additional edits for clarity. Some of these are additional requirements to respond to public comment.

Comment: Inclusion of MUSYA, multiple use. Some respondents felt proposed § 219.10 does not specifically reference MUSYA. Other respondents felt that administering the NFS lands for multiple uses should not be included in the final rule. Some respondents requested the rule include specific uses.

Response: The Department made changes to this section to clarify that plans must include plan components to provide for multiple uses. The MUSYA has guided NFS management since it was enacted in 1960, and will continue to do so, regardless of whether it is specifically referenced in this section, or any other section, of the rule. The MUSYA expanded upon the original purposes for which national forests may be established and administered, which were identified in the Organic Administration Act: ''to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States.'' (Act of June 4, 1897 (16 U.S.C. 475)).

The MUSYA states that the Forest Service is to ''administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom.'' (16 U.S.C. 529). The Act defines ''multiple use'' as ''The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services * * *.'' (16 U.S.C. 531(a)).

The Department acknowledges and applies the MUSYA throughout the final rule. In the very first section of the final rule, § 219.1(b) states that the Forest Service manages the NFS to sustain the multiple use of its renewable resources in perpetuity while maintaining the long term health and productivity of the land, consistent with MUSYA. The rest of the sections in subpart A give additional direction on how to do that. The assessment phase and public participation will help the responsible official determine the range of ecosystem services and multiple uses provided by the unit. Section 219.10 requires plan components to provide for ecosystem services and multiple uses, using an integrated approach to resource management. These plan components will be informed by the assessment, public input, and the best available scientific information, as well as monitoring.

Comment: Ecosystem services and methods for assessing multiple use. Some respondents felt the proposed rule improperly expands the MUSYA's specified multiple use purposes to include ecosystem services, which the proposed rule defines as educational, aesthetic, spiritual, and cultural heritage values. Some respondents felt ecosystem services should be determined by research.

Response: The phrase ''multiple uses, including ecosystem services'' has been changed throughout the rule to ''ecosystem services and multiple uses.'' The Department believes this revised wording is consistent with the MUSYA, which directs the Agency to ''develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom'' (16 U.S.C. 529). MUSYA anticipated and provided for ''periodic adjustments in use to conform to changing needs and conditions.'' (16 U.S.C 531). ''Ecosystem services'' may be a relatively new term, but it is entirely within the scope of the Act to acknowledge that the ''several products and services obtained'' from national forests and grasslands incorporates the full range of values, resources, uses and benefits that these lands provide.

Research has provided insights into the ecosystem services to be obtained from the NFS. During the planning process, the assessment phase, public input, monitoring, and the best available scientific information will help the responsible official identify and develop plan components to provide for the ecosystem services to be obtained from each NFS unit.

Comment: Relationship of ecosystem services to other multiple uses. Some respondents felt proposed § 219.10 gave ecosystem services higher priority than other multiple uses.

Response: The final rule does not give ecosystem services higher priority than multiple uses. It provides an integrated resource management approach, where interdependent elements of sustainability are considered as a whole, instead of as separate resources or uses. The mix of plan components included in each plan will reflect local conditions in the broader landscape, the best available scientific information, and public input.

Comment: Procedures for economic analysis. Some respondents felt the rule should include specific economic indicators for the economic analysis, the model paradigm for social and economic resources, and means of weighing relative values of multiple uses. Some respondents suggested the

rule should include specific procedures for analysis of ecosystem services. Several respondents suggested the rule include specific methods for assessing multiple uses.

Response: The final rule does not include this type of guidance as it is more appropriate in the Agency's directives, because methods, models, and indicators will alter over time. Forest Service directives will be developed for the final rule, and members of the public will have the opportunity to comment on them. In addition, economic information and models represent one kind of best available scientific information that the responsible official must use to inform the planning process and plan components.

Comment: Identification of those providing multiple use information. Some respondents felt the rule should specify who should be included to provide information about multiple uses.

Response: Section 219.4 of the final rule requires the responsible official to provide opportunities for public participation in all phases of the planning framework. Section 219.3 requires the identification and use of the best available scientific information to inform the planning process. Section 219.6 requires identifying and evaluating existing information relevant to the plan area, including with regard to multiple uses. Monitoring will also provide information about multiple uses. Communities, groups, or individuals interested in these issues can provide input on plan components for multiple uses by becoming engaged in the public participation process required under this section.

Comment: Specific objectives, prohibitions, and inclusion of specific multiple uses and ecosystem services. Several respondents felt the final rule should establish specific objectives for resources and prohibitions of uses. Several respondents requested that the rule include specific uses. Some respondents were for and others against a rule requirement for specific ecosystem services. Some respondents felt the rule provides the responsible official with too much discretion over multiple uses and instead should prioritize multiple uses or require inclusion of specific multiple uses. Some respondents felt it was unclear if multiple uses listed in proposed § 219.10 would have priority over those not listed.

Response: The final rule recognizes that conditions on each plan area will vary. The final rule therefore focuses on providing a framework for sustainability and integrated resource management and requiring associated plan components, including standards and guidelines. Objectives for resources and constraints on uses will be established by the responsible official in the plans themselves, or in the subsequent decisions regarding projects and activities. Agency regulations at 36 CFR part 261 establish certain national prohibitions. The final rule provides a planning framework to be used on all units in the NFS. As part of the planning process, the final rule includes direction for the responsible official to identify, evaluate, and consider all relevant resources when developing plan components for ecosystem services and multiple uses. Section 219.6 includes general direction to identify and evaluate existing relevant information for ecosystem services and multiple uses, in addition to direction to identify and evaluate information about specific resources and uses such as air, soil, water, and recreation. Section 219.7 includes direction to develop a list of relevant resources as part of the plan revision or development process, building on the assessment and any additional information developed in the planning process. Sections 219.8–219.11 include requirements for some specific resources, in addition to the requirement in § 219.10(a) to consider all relevant resources and uses in developing plan components. Throughout, the responsible official will use the best available scientific information, and will be informed by public participation.

The final rule does not prioritize multiple uses; rather, it requires the responsible official to provide plan components for integrated resource management, based on the resources and uses relevant to the plan area. Specific direction or guidance for specific uses will be included in the Forest Service Directives System, the plans themselves, and/or in the subsequent decisions regarding projects and activities.

Comment: Mineral exploration and development. Some respondents felt that the Forest Service should establish specific, detailed requirements to address mining of mineral resources on NFS lands while some respondents felt the Forest Service fails to address delays and impediments to mineral exploration and development caused by the failure of the rule to address minerals consistent with applicable statutes.

Response: The planning rule does not impose requirements that would create inconsistencies with existing laws or regulations governing mineral exploration and development on Federal lands. Plans developed under the final rule must comply with all applicable laws and regulations (§ 219.1(f)). It is not expected that the rule will cause delays or impede mineral exploration and development on NFS units. Section 219.10(a) specifically recognizes mineral resources and directs the responsible official to consider mineral resources when developing plan components for integrated resource management for multiple use and sustained yield under the MUSYA. In addition, § 219.8 requires the responsible official take into account multiple uses that contribute to the local, regional or national economies.

Comment: Relationship of livestock grazing with ecological sustainability and other uses. Some respondents felt range resource activities should not be supported in the rule, while others felt it should be supported. Some respondents felt the rule should include more specific direction for livestock grazing.

Response: The final rule sets the stage for a planning process that is responsive to the multiple use desires and needs of present and future generations of Americans. Rangeland ecosystems are part of many units, and the MUSYA specifically provides that range is one of the multiple uses for which the national forests are managed. The appropriate level of grazing on a unit or other direction regarding range use in the plan area is best determined in individual plans and at the site-specific level, so that direction is appropriate to the conditions in the plan area.

Comment: Game species. Some respondents felt the rule should include requirements for species that are hunted, fished, or trapped, including recognition of their social and economic importance to sportsman, photographers, and other enthusiasts who enjoy viewing all wildlife. Several Indian Tribes and State game and fish departments said that certain species play a special role in contributing to social, cultural, and economic sustainability, and that plans should consider habitat for those species beyond what is required to provide diversity.

Response: The Agency recognizes the important role of NFS lands in providing the habitat for these species. Plan components designed to meet the ecosystem integrity and ecosystem diversity requirements of § 219.9, along with additional components where needed if the species is in the categories listed in § 219.9(b), will provide the habitat and other ecological conditions necessary to support these species.

Sections 219.6, 219.8 and 219.12 also recognize the importance of outdoor recreation opportunities and uses, including hunting and fishing. In addition, section 219.10 of the final rule retains the provision of the proposed rule that specifically requires consideration of habitat conditions for wildlife, fish, and plants commonly enjoyed and used by the public for hunting, fishing, trapping, gathering, observing, and subsistence. The final rule adds a provision that such consideration is to be done in collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments. This addition, combined with the requirements of §§ 219.4 and 219.6, should ensure appropriate consideration is given to species of importance to these groups and entities. The final rule is not intended to require that units maintain ecological conditions that meet all population goals of State agencies.

Comment: Recreational priority and opportunities. Several respondents felt recreation and its relationship with ecological sustainability deserves greater importance in the rule, including discussion of specific recreational opportunities under a separate section. Other respondents felt more specific requirements for recreational activities and opportunities should be included in the rule. Some respondents felt it was inappropriate to include recreational facilities with transportation and utility corridors as examples of infrastructure.

Response: The final rule recognizes the importance of recreation, both for its contributions to economic and social sustainability, and as an important use connecting people to the land. The high value placed on recreation has been a common theme throughout the public participation process leading to this final rule. Americans make over 170 million visits to national forests and grasslands each year. These visits provide an important contribution to the economic vitality of rural communities as spending by recreation visitors in areas surrounding national forests amounts to nearly 13 billion dollars annually. Recreation is also a critical part of social sustainability, connecting people to nature, providing for outdoor activities that promote long-term physical and mental health, enhancing the American public's understanding of their natural and cultural environments, and catalyzing their participation and stewardship of the natural world. Providing for sustainable recreation is one of the biggest challenges and opportunities facing the Forest Service, and land management planning is a critical process in meeting this need.

The final rule provides direction for sustainable recreation throughout the planning process. The final rule retains the term ''sustainable recreation'' to recognize that planning should identify, evaluate, and provide a set of recreational settings, opportunities and access for a range of uses, recognizing the need for that set to be sustainable over time. Ecosystem services include ''cultural services'' such as recreational experiences, and social sustainability recognizes the activities and traditions that connect people to the land. The rule recognizes and states in § 219.10 and the definition section in § 219.19 that recreational opportunities include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air. Examples include activities such as hiking, biking, hunting, fishing, horseback riding, skiing, off-highway vehicle use, camping, picnicking, bird and other wildlife watching, canoeing, kayaking, geocaching, recreational aviation, hang gliding, and many more. A detailed list was not included in § 219.10 so as not to inadvertently leave a recreation use out, and also in recognition that new recreational uses are always being developed.

In the assessment phase (§ 219.6), the responsible official must identify and evaluate existing information relevant to recreation settings, opportunities, and access, in addition to recreational infrastructure, benefits people obtain from the plan area and the contribution of multiple uses to the local, regional, and national economies. Section 219.8 requires the responsible official to take sustainable recreation and scenic character into account when developing plan components to contribute to social and economic sustainability.

Section 219.10 requires plan components to provide for multiple uses including outdoor recreation. In paragraph (a), responsible officials must consider aesthetic values, ecosystem services, recreation settings and opportunities, and habitat conditions specifically for species used and enjoyed by the public for recreational opportunities such as hunting, fishing, and wildlife observation. Responsible officials must also consider placement and management of infrastructure, including recreational facilities. It is appropriate to refer to such facilities as infrastructure because recreational facilities are fixed capital installations that enhance recreational experiences. These facilities include: campgrounds, roads, trails, backcountry airstrips, and drinking water and wastewater infrastructure. In paragraph (b), the final rule requires that plan revisions and new plans include plan components to provide for sustainable recreation; including recreation settings, opportunities, access; and scenic character. Section 219.12 requires monitoring for visitor use and progress toward meeting recreational objectives.

These requirements are in response to public comment and in recognition of the importance of recreation.

Comment: Objectives, standards and guidelines for sustainable recreation. Several respondents felt the rule should require the plan to identify objectives, standards and guidelines for sustainable recreation. A respondent felt the rule should use the term ''must'' instead of ''should'' with respect to identifying recreational settings, and desired conditions for scenic landscape character. Some respondents felt the proposed rule provision that the plan should identify desired conditions for ''scenic landscape character'' was too narrow; others felt it expanded Agency authorities beyond legal mandates.

Response: The requirement in § 219.10(b)(1)(i) is changed in the final rule; where the proposed rule provided that the plan ''should identify recreational settings and desired conditions for scenic landscape character,'' the final rule requires that a new plan or plan revision must include plan components, including standards or guidelines, to provide for sustainable recreation; including recreation settings, opportunities, and access; and scenic character. The term ''landscape character'' in proposed § 219.19 has been replaced in the final rule with ''scenic character'' to clarify what resource is being considered. The scenic resource falls under the Agency's multiple use and sustained yield mandate. ''Landscape character'' in the proposed rule was defined in terms of visual and cultural identity; ''scenic character'' is defined in the final rule in terms of scenic identity.

Comment: Use of land allocations. Some respondents felt the rule should require land allocations to allow the Agency to establish a recreation zoning system.

Response: Section 219.7(d) of the final rule requires management areas or geographic areas in every plan. A plan could include management areas based on recreation settings and opportunities.

Comment: Preservation easement. A respondent expressed concern the Agency is considering putting grazing allotments under a ''preservation easement.''

Response: ''Preservation easements'' were not proposed for inclusion in the

planning rule and are not included in the final rule.

Comment: Protection of cultural and historic resources. Several respondents felt the proposed rule would allow responsible officials to damage or destroy cultural and historic resources if done for the purpose of achieving other resources objectives. Some respondents felt specific direction for management of cultural and historic resources and uses should be added to the rule. Some respondents suggested that § 219.10(b)(1)(ii) include protection of the ''uses'' and ''cultural landscapes.'' Other respondents felt the rule should establish priorities between cultural and historic resources and other resource objectives.

Response: The Department considers cultural and historic resources to be very important for social sustainability as well as important economic contributors. Benefits of cultural and historic sites include: expanded knowledge and understanding of history; cultural and spiritual connections to our heritage; scientific data about past cultures or historical conditions and similar matters; and tourism that benefits rural economies. The final rule provides direction for cultural and historic resources throughout the planning process. The assessment phase requires identifying and evaluating information about cultural and historic resources and uses and areas of Tribal importance, in addition to ecosystem services, which include ''cultural services.'' Section 219.8 also requires the responsible official to take cultural and historic resources on the plan area into account when developing plan components to contribute to economic sustainability and social sustainability, which includes the traditions and culture that connect people to the land.

In § 219.10, paragraph (a) requires that the responsible official consider cultural and heritage resources, habitat conditions for species used and enjoyed by the public, and opportunities to connect people with nature, when developing plan components for integrated resource management to provide for ecosystem services and multiple uses, which include cultural and historic resources and uses. Paragraph (b) retains the requirement of the proposed rule that plan components must provide for the protection of cultural and historic resources. The use of the word ''protect'' is to ensure that the responsible official takes into account the effect a plan may have on cultural and historic values and provide for these resources, within the context of managing for multiple use purposes. It does not create a preservation mandate, but where actions might impair the resources or use, the Department expects that the responsible official would seek to avoid or minimize potential harm by following established procedures for cultural and historic resource management. The rule does not remove or change Agency obligations to meet the National Historic Preservation Act and other laws and Executive orders for the protection of these resources.

The final rule does not include more specific direction for cultural and historic uses or activities and does not establish priorities among the multiple uses. Additional process requirements and guidance are more appropriately located in Agency directives, land management plans, and projects or activities.

Comment: Non-Tribal indigenous rights. Several respondents stated the final rule should address the management of areas of importance for non-Tribal indigenous entities with pre-existing cultural and natural resources access, maintenance and use rights based on historical and documented claims to lands now managed by the Forest Service.

Response: Section 219.1(d) of the final rule states that the planning rule ''does not affect treaty rights or valid existing rights established by statute or legal instruments.'' Section 219.4(a) of the final rule requires the responsible official to provide opportunities for public participation, during which non-Tribal indigenous entities can inform the responsible official of areas of importance to them. Section 219.6(a)(1) requires the responsible official to identify and consider, ''relevant information, including local knowledge,'' and to identify areas of Tribal importance, as well as cultural and historic resources and uses. Section 219.10 requires plan components to provide for management of areas of Tribal importance. Specific issues of access and use will be addressed at the levels of unit planning or project or activity planning.

Comment: Spiritual sustenance. Some respondents felt the rule should not provide for spiritual sustenance, because there is no legal mandate for doing it. A respondent stated that the First Amendment prohibits ''making of any law respecting an establishment of religion.''

Response: Plans are not required to provide for spiritual sustenance. The final rule recognizes in § 219.1(c) and in the definition of ''ecosystem services'' that spiritual values is one of the benefits people derive from the NFS. To contribute to social and economic sustainability, plans must provide for ecosystem services and multiple uses as provided in this section. Managing NFS lands and resources such that they provide opportunities for spiritual benefits does not establish a religion, and no preference is given to one religion over another.

Comment: Management of wilderness areas and areas recommended for wilderness designation. Some respondents felt the rule should ensure wilderness protection is not extended to recommended wilderness areas so de facto wilderness areas are not created by the Agency. Some respondents felt the rule should address activities affecting designated wilderness areas or with the potential to degrade areas recommended for wilderness and reduce their potential for designation. One respondent states the rule should include wilderness management direction parallel to the Wilderness Act wording. Another respondent felt the rule should provide wilderness management flexibility to respond to changing conditions.

Response: Wilderness areas provide important places for recreation, solitude, and renewal; are refuges for species; and can attract tourism that benefits rural economies. Section 219.1 of the final rule states plans must comply with all applicable laws and regulations, including the Wilderness Act. The Department changed the wording of § 219.10(b)(iv) of the final rule from ''protection of wilderness areas as well as the protection of recommended wilderness areas to protect the ecologic and social values and character for which they might be added to the National Wilderness System,'' in the proposed rule to ''protection of congressionally designated wilderness areas as well as management of areas recommended for wilderness designation to protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation.'' The changes were made to increase clarity and better reflect the Department's intent from the proposed rule. This requirement, in addition to related requirements in §§ 219.6, 219.7, and 219.10(a)(1), reflect the Agency's responsibilities under the Wilderness Act and are consistent with the recognition in the MUSYA that wilderness is consistent with its purposes and provisions.

The protection of designated wilderness areas is a requirement of law. Management of areas recommended for wilderness designation to protect and maintain the characteristics that provide the basis for

their suitability for designation is lawful and within the Agency's authority. In fact, many State wilderness acts require that any areas recommended for wilderness designation are to be managed for the purpose of protecting the area's suitability for wilderness. The Utah Wilderness Act of 1984 is one example (Pub. L. 98–428. § 201(b)(4); 98 Stat 1660).

The Department believes the requirement in the final rule meets the Agency's intent to ensure that the types and levels of use allowed would maintain wilderness character and would not preclude future designation as wilderness. Specific direction regarding incompatible uses in recommended wilderness areas will be found in the Forest Service Directives System and in plans themselves.

Comment: Responsible official discretion to recommend areas for wilderness designation. Some respondents felt the proposed rule provides the responsible official with too much discretion about evaluations for, determinations of, and management of areas recommended for wilderness designation.

Response: Section 219.7 of the final rule was modified to require the identification and evaluation of areas that may be suitable for inclusion in the National Wilderness Preservation System. Public input during the opportunities for public participation will help the responsible official determine whether to recommend any such areas for wilderness designation. State wilderness acts, typically require the Forest Service to review the wilderness option of areas during plan revision. The Utah Wilderness Act of 1984 is one example (Pub. L. 98–428. § 201(b)(2); 98 Stat. 1659). The responsible official's recommendation in a plan is not the President's recommendation to Congress. So, the recommendation is not necessarily what is recommended to Congress. The Agency's process for identifying and evaluating areas for recommendation is established in the Forest Service Directives System in the Forest Service Handbook 1909.12, which will be revised and made available for public comment. Specific direction and requirements for management of wilderness areas are also included in the Forest Service Directives System, and are in the process of being revised and put out for public comment.

Comment: Wilderness designation. Several respondents felt that the Agency should increase wilderness areas, while others felt that the Agency should reduce wilderness areas.

Response: Only Congress has the authority to designate wilderness areas or change the boundaries of designated wilderness areas, under the Wilderness Act of 1964. Wilderness areas provide a number of benefits, and the MUSYA recognizes wilderness as consistent with its multiple use purposes and provisions. The responsible official will determine whether or not to recommend any new areas for designation as part of the planning process.

Comment: Wild and scenic river protection. Some respondents supported protection of rivers not designated as a wild and scenic river, while others did not. One respondent commented that proposed § 219.10(b)(1)(v) provides protection for only eligible rivers.

Response: The final rule has been changed to include suitable rivers in § 219.10(b)(1)(v). The Wild and Scenic Rivers Act requires ''every wild, scenic, or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic river system.'' To be eligible for inclusion, a river must be free-flowing and, with its adjacent land area, possess one or more ''outstandingly remarkable'' values. The determination of eligibility is an assessment that does not require a decision or approval document, although the results of this inventory need to be documented as a part of the plan document or plan set of documents.

Once a river is determined to be eligible, a suitability study gives the basis for determining which rivers to recommend to Congress as potential additions to the National Wild and Scenic Rivers System (National System). Therefore, the Department decided it is appropriate and consistent with the Act for the Agency to protect rivers determined to be suitable until Congress decides on designation and those eligible until the Agency determines if the rivers are suitable for the values for which they may be included in the national wild and scenic river system.

Comment: Special designations. Some respondents felt the rule should provide for special designations including a comprehensive list of designated or recommended special areas. Several respondents felt the rule should include specific procedures for identifying areas for special designation. A respondent felt the rule should provide the responsible official the opportunity to designate special areas.

Response: The Agency manages many kinds of designated areas in addition to wilderness areas and wild and scenic rivers, including experimental forests, national heritage areas, national monuments, national recreational areas, national scenic trails, research natural areas, and scenic byways. These areas can contribute in important ways to social and economic sustainability as well as ecologic sustainability.

The definition of designated areas in § 219.19 has been modified so that it is clear that designated areas may be established in the land management planning process or by a separate process by statute or by an administrative process in accord with NEPA requirements and other applicable laws. Section 219.7(c)(2) has been modified to make clear that responsible officials may designate an area if they have the delegated authority to do so. Section 219.10(b)(1)(vi) of the final rule requires plan components to provide for the ''appropriate management of other designated or recommended special areas in the plan area, including research natural areas.'' Specific guidance on designation procedures is more appropriate for the Agency's directives, and is not found in the rule.

Section 219.11—Timber Requirements Based on the NFMA

This section of the final rule includes provisions for identifying lands as not suitable for timber production and for limitations on timber harvest. This section meets the statutory requirements of the NFMA related to management of the timber resource. The NFMA, along with the requirements of this section, would provide for mitigation of the effects of timber harvest on other resources and multiple uses. Other sections of the final rule contain provisions that supplement the requirements of this section.

Timber is one of the multiple use purposes of the NFS, as recognized by the MUSYA and the Act of 1897, also known as the Organic Administration Act. Timber is also recognized by § 219.10 of this subpart. The National Forest Management Act of 1976 signaled a new direction for the planning and management of NFS lands, especially with regard to management of the timber resource and impacts to other resources. Management and use of timber harvest on NFS lands continues to evolve. Today, harvest of timber on NFS lands occurs for many different reasons, including ecological restoration, community protection in wildland urban interfaces, habitat restoration, and protection of municipal water supplies. Timber harvest also supports economic sustainability through the production of timber, pulp for paper, specialty woods for furniture, and fuel for small-scale renewable

energy projects. Timber harvesting, whether for restoration or wood production objectives, also supports employment and provides payments in lieu of taxes in many counties throughout the country.

This final rule provides the guidance for developing plans, not guidance for individual projects, and it is important to recognize that any individual timber project or activity could not provide for all aspects of social, economic, or ecological sustainability. However, all projects and activities must be consistent with the plan components in the plan, including those developed to meet the requirements of sustainability, diversity, multiple use, and timber (§§ 219.8 through 219.11), as required by § 219.15.

Section 219.11—Response to Comments

Many concerns were raised over direction for timber harvest for purposes other than timber production, responsible official discretion in determining timber harvest on lands not suited for timber production, and suitability of lands for timber production. For clarity, the Department modified this section from the wording of the proposed rule.

In the opening paragraph of this section, the Department removed the phrase ''the plan must provide for multiple uses and ecosystem services including timber'' because that requirement is found in § 219.10 and replaced that phrase with the words ''the plan must include plan components, including standards or guidelines, and other plan content regarding timber management'' to more accurately reflect the requirements of this section. The Department changed the term ''capability'' to ''inherent capability'' to be consistent with other sections of this subpart. The Department defines the term inherent capability in § 219.19. The Department removed the term ''fiscal capability'' from this section. Fiscal capability is now discussed in § 219.1 and is an overarching consideration throughout the planning process, rather than being pointed out for only selected portions of the planning process. Other minor wording changes were made for clarity.

Paragraph (a) has a new caption of ''Lands not suited for timber production.'' In paragraph (a)(1) of this section, in the discussion of identifying lands not suitable for timber production, the Department removed the sentence ''The responsible official may determine, considering physical, economic, and other pertinent factors, that lands are not suitable for timber production.'' The Department removed this sentence about factors because the criteria at paragraphs (a)(1)(i) through (a)(1)(vi) are the physical, economic, and other pertinent factors to deal with the requirements of the statute (16 U.S.C. 1604(k)), and include the consideration of other desired conditions and objectives in the plan. In particular, paragraph (a)(1)(iii) of this section deals with the economic factors as the responsible official develops desired conditions to provide for social, economic, and ecological sustainability (§§ 219.8–219.11).

The provision discussing the 10-year review of lands not suitable for timber production that was in paragraph (a) of the proposed rule has been removed from paragraph (a)(1) and moved to modified paragraph (a)(2) of this section.

The specific factors in paragraph (a) for identifying lands not suitable for timber production are based on the NFMA requirements limiting timber harvest (16 U.S.C. 1604(g)(3)(E)) and the Agency policy. Paragraph (a)(1)(iv) of this section contains a specific criterion that would not allow lands to be identified as suitable for timber production unless technology is currently available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions. Available technology may vary from place to place, and could be, for example: horse logging, ground based skidding, aerial systems, or cable logging systems. This provision has been in place since the 1979 rule, to meet the NFMA obligation to consider physical factors to determine the suitability of lands for timber production. The factor has been effective in protecting watershed conditions. However, the Department removed the words ''or substantial and permanent impairment of the productivity of the land'' from paragraph (a)(1)(iv) in the final rule because it caused confusion and the Department's intent was captured by the remaining term ''irreversible damage to soil, slope, or watershed conditions.''

Paragraph (a)(2) of this section now discusses the requirements of the 10-year review of lands not suitable for timber production. This paragraph combines and modifies discussions from paragraph (a)(1) and paragraph (a)(3) of the proposed rule for clarity.

Paragraph (a)(2) of the proposed rule has been modified and redesignated as paragraph (b) with a new caption of ''Timber harvest for the purposes of timber production.'' The Department removed the wording of the proposed rule about lands which are not identified in the plan as ''not suitable'' for timber production are suited for timber production because some respondents believed this required the designation of these lands as suitable for timber production, which was not the Department's intent. In addition, the Department added a requirement in paragraph (b) of this section to clarify that where a plan identifies lands as suitable for timber production the plan must include plan components to guide timber harvest for timber production or for other multiple purposes on such lands.

Modified paragraph (c) of this section combined provisions from paragraph (b)(2) and paragraph (c) of the proposed rule. Paragraph (c) has a new caption of ''timber harvest for purposes other than timber production.''

Paragraph (c) of this section sets forth that the plan may include plan components to allow for timber harvest for purposes other than timber production as a tool to assist in achieving or maintaining one or more applicable desired condition(s) or objective(s) of the plan in order to protect other multiple-use values, and for salvage, sanitation, or public health or safety. The wording ''in order to protect other multiple-use values'' was added for consistency with the intent of the NFMA, which allows for timber harvest ''necessitated to protect * * * multiple use values'' other than timber production on lands not suited for timber production (16 U.S.C. 1604(k)). The wording of this paragraph also reflects longstanding Agency practices of using timber harvest to protect other multiple use values and public health and safety in areas not suited for timber production.

In modified paragraph (d) of this section, the rule discusses the limitations on timber harvest based on statutory requirements, incorporating and modifying wording from the paragraphs (b)(1) and (d) of this section of the proposed rule. Paragraph (d)(1) of this section in the final rule states the same requirement as paragraph (b)(1) of the proposed rule.

At paragraph (d)(2) in this section, the rule includes the provision that plan components shall ensure timber harvest would occur only where soil, slope, or other watershed conditions would not cause irreversible damage, which is a requirement of NFMA (16 U.S.C. 1604(g)(3)(E)(i)); the proposed rule (at paragraph (d)(1)) included a citation to this part of NFMA, therefore this change does not add a new requirement.

Paragraph (d)(3) of this section includes the same requirement as paragraph (d)(2) of the proposed rule.

In paragraphs (d)(4)(i) through (d)(4)(iii) of this section, the rule directs that plan components must ensure that plans include size limits for regeneration of even-aged stand of trees in one harvest operation. The rule retains wording of paragraphs (d)(3), (d)(3)(i), (d)(3)(ii), and (d)(3)(iii) of the proposed rule, with minor changes for clarity. The changes include: (1) Clarifying what the plan may or may not provide, rather than set out a prohibition on projects; (2) the term ''areas to be cut in one harvest operation'' has been replaced with ''openings that may be cut in one harvest operation;'' and (3) the discretion for plans to exceed the default maximum size of paragraph (d)(3)(i) of the proposed rule has been changed from ''Cut openings larger than those specified may be permitted where larger units will produce a more desirable combination of benefits'' to ''Plan standards may allow for openings larger than those specified in paragraph (d)(4) of this section to be cut in one harvest operation where the responsible official determines that larger harvest openings are necessary to help achieve desired ecological conditions in the plan area.'' These changes in wording from the proposed to the final rule are not changes in requirements, but simply clarify the Department's intent.

In paragraph (d)(5) of this section, the rule directs that plan components must ensure that timber will be harvested only where the harvest complies with resource protection requirements of the NFMA. Paragraph (d)(5) is a modification of paragraph (d)(1) of the proposed rule and this modification is not a change in requirements. These requirements reference the provisions of NFMA to limit harvest to situations where the productivity of the land could be sustained and harvesting prescriptions are appropriately applied. For example, by referencing NFMA paragraph (d)(5) requires plan components for even-aged timber harvest that: (1) Limit clearcutting to locations where it is determined to be the optimum method for regenerating the site; (2) require interdisciplinary review of the harvest proposal; and (3) require cutting to be blended with the natural terrain. These requirements are referenced but not repeated in the final rule because the Department believes they are incorporated and enhanced by the requirements for resource protection in other sections of the rule and plan consistency requirements of § 219.15. In addition, some requirements are not repeated because they are addressed by other regulations; for example, the NEPA regulations direct environmental analysis and the use of interdisciplinary teams.

In paragraph (d)(6) of this section, the rule directs that plan components must set forth the limit on the quantity of timber that may be sold in the national forest. The Department modified the wording of paragraph (d)(4) of the proposed rule, and moved the provision to paragraph (d)(6) of the final rule as follows:

(1) The proposed rule required plan components to limit the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis. The final rule says plan components must ensure the quantity of timber that may be sold from the national forest is limited to an amount equal to or less than that which can be removed from such forest annually in perpetuity on a sustained-yield basis. This change was made to agree with the NFMA wording.

(2) The Department added a sentence that this limit may be measured on a decadal basis to reflect the Agency practice, and 16 U.S.C. 1611. Note that under this paragraph the quantity sold in any given year may exceed the annual average for the decade, but the total quantity sold over a 10-year period may not exceed the decadal limit.

(3) The Department changed the provision that required the plan to ''provide for departure from the limit, as provided by NFMA'' to ''The plan may provide for departures from this limit as provided by the NFMA where departure would be consistent with the plan's desired conditions and objectives.''

(4) The Department added that exceptions for departure from this limit on the quantity sold must be made with a public review and comment period of at least 90 days, to be consistent with the NFMA.

The Department concludes that these changes in wording at revised paragraphs (d)(6) of this section clarify the Department's intent and reflect the requirements of the NFMA.

In paragraph (d)(7) of this section, the rule directs that plan components must ensure that the regeneration harvest of even-aged stands of trees is limited to stands that generally have reached the culmination of mean annual increment of growth (CMAI). The Department retains the wording of paragraphs (d)(5) of the proposed rule, with minor changes for clarity. The changes include: Changing the provision that ''Exceptions, set out in 16 U.S.C. 1604(m), are permitted only if consistent with the land management plan'' to ''Plan components may allow for exceptions, set out in 16 U.S.C. 1604(m), only if such harvest is consistent with other plan components of the land management plan.'' The Department removed the provision of the proposed rule at paragraph (d)(5) that stated: ''If such exceptions are anticipated, the responsible official should include those exceptions in the land management plan as standards or guidelines'' because it is now redundant with the sentence ''Plan components may allow for exceptions * * *.'' The Department removed the provision about directives and CMAI, because that sentence is redundant with the provision at § 219.2(b)(5)(i) requiring Forest Service directives. These modifications at revised paragraphs (d)(7) of this section are not changes in requirements but clarify the Department's intent and reduce redundancy.

Comment: Timber harvest for other purposes. Some respondents felt the proposed rule at § 219.11(b)(2) was either too discretionary or too restrictive in meeting NFMA's allowance for salvage sales and other limited timber harvest on lands not suited for timber production. Some respondents felt the proposed rule should prohibit timber harvesting on unsuitable lands or specify that timber salvage on those lands be solely for non-commercial purposes.

Response: Today, timber harvest is often used to achieve ecological conditions and other multiple use benefits for purposes other than timber production. Therefore, the Department clarified at § 219.11(c) that a plan may include plan components to allow for timber harvest for purposes other than timber production as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan to protect other multiple-use values. Consistent with Section 1604(k) of NFMA, § 219.11(c) of the proposed rule also allows timber harvest for salvage, sanitation or public health or safety in areas not suitable for timber production. The Department believes that the provisions of this section provide a balanced approach recognizing that timber harvest will be necessary in many places to assist the Agency in accomplishing restoration and other multiple use objectives.

Section 219.11(d)(1) of the final rule restates the prohibition that had been in the proposed rule at 219.11(b)(1), that no harvest for the purpose of timber production may occur on lands not suitable for timber production. The final rule at § 219.11(d) also requires plan components to ensure no timber harvest may occur on lands where timber harvest would cause irreversible damage to soil, slope, or other watershed

conditions. Timber harvest must be consistent with the desired conditions set out in the plan (§ 219.15).

Comment: Responsible official discretion in determining timber harvest on lands not suited for timber production. Some respondents felt the proposed rule allows the responsible official too much discretion in allowing or permitting timber harvesting on lands not suited for timber production.

Response: This section, as well as other sections of the rule, provides sideboards to the responsible official's discretion. The rule identifies factors to be considered by the responsible official in paragraph (c) of this section consistent with the NFMA, specific limitations that require standards or guidelines for timber harvest, and consistency with other applicable plan components.

Section 219.3 of the rule requires the responsible official to use the best available scientific information. The rule also allows those interested communities, groups, or persons to engage in the public participation process for the development of plan components and monitoring programs and for the subsequent development of proposed projects and activities under the plan. Individual proposed projects for timber harvesting will still undergo additional opportunities for public involvement during the project's NEPA process. The Department believes that these requirements provide an appropriate balance of requirements and discretion.

Comment: Suitability of lands with a primary conservation focus. A respondent felt the rule should state that timber production is not suitable on lands managed with a primary conservation or restoration focus, including inventoried roadless areas, old-growth forests, priority and municipal watersheds, and riparian areas.

Response: The proposed rule provides overall direction for how plans are developed, revised, and amended. Section 219.11(a)(1)(iii) requires that where timber production would not be compatible with desired conditions and objectives established by the plan, including those established in accordance with the requirements for suitability (§ 219.8), diversity (§ 219.9), and multiple use (§ 219.10), the responsible official shall identify such lands as not suitable for timber production. Additional guidance regarding suitability of lands will be found in the plans themselves, or in the subsequent decisions regarding projects and activities on a particular national forest, grassland, prairie, or other comparable administrative unit. The rule also allows those interested communities, groups, or persons to engage in the public participation process for the development of plans. Public participation will also be used during the subsequent development of proposed projects and activities under the plan, during which concerns regarding suitability of lands may be raised.

Comment: Cost and revenues of timber harvesting. Some respondents felt the rule should require full and explicit disclosure of costs and benefits of timber harvesting in order for the public to more accurately compare plan alternatives and plan components. They felt timber harvesting should only be allowed where direct revenues will exceed all direct costs, and lands not cost-efficient should be designated unsuitable. Some felt the Government should not subsidize the logging industry or compete against private timber forest owners.

Response: The costs and benefits of each alternative for a plan developed under the final rule is required to be disclosed under the NEPA process at the time of plan development, revision, or (if relevant) amendment. The Department recognizes that the cost of timber harvest is a major concern. The real measure of the worth of the timber program; however, is not net cost versus revenues, but costs versus public benefits. The final rule requires plan components for restoration which will likely result in projects to achieve multiple benefits. Some of these benefits can be measured as receipts; others are public benefits for which revenues are not received, such as restored watersheds; improved wildlife habitat; and improved bird watching, fishing, and hunting opportunities. The emphasis of the final rule is sustainability; and managing vegetation can help attain sustainability. Selling timber and managing vegetation is a key tool for restoration and providing wildlife habitat (cover types and age classes), creating diversity in the visual appearance of the landscape, improving the overall ecological integrity, producing timber products, providing jobs, and providing additional recreational opportunities by increasing forest access. Increasingly, the Agency uses stewardship contracts to offer projects to achieve multiple objectives including harvesting timber for restoration purposes.

For lands to be identified in the plan as suitable for timber production, timber production on those lands must be compatible with the achievement of the desired conditions and objectives established by the plan. The desired conditions include those to meet requirements for plan development or revision (§ 219.7); social, economic, and ecological sustainability (§ 219.8); plant and animal diversity (§ 219.9); multiple use (§ 219.10); and timber (§ 219.11). The responsible official will establish management areas with different desired conditions based on providing social, economic, and ecological sustainability. This suitability determination is complex and will be based on analysis of costs, benefits, and values.

Additional rule requirements for a detailed analysis of costs and benefits other than the final rule requirement for an EIS for plan development and plan revision and that plans be amended to be consistent with Forest Service NEPA procedures are not necessary.

Comment: Review of lands suitable for timber production. A respondent felt lands suitable and not suitable for timber production should be reviewed every 10 years to ensure these designations are still appropriate. A respondent said the proposed rule has incorrectly expanded and interpreted the base requirements of the NFMA by: (1) falsely stating that the NFMA requires the identification of lands suitable for timber production (the respondent declared that the NFMA only requires identification of land not suited for timber production); and (2) stating that all lands not identified as not suitable are therefore suitable.

Response: The NFMA requires a review of lands designated not suitable every 10 years, and the rule follows this mandate. The rule requires identification of land not suited for timber production and imposes specific factors to be considered. The purpose of identifying lands not suitable for timber production is to identify the land base upon which timber production harvest levels are subsequently calculated (lands suitable for timber production). To avoid confusion, the provision saying that ''all lands not identified in the plan as not suitable for timber production are suited for timber production'' has been removed from the final rule. The Department believes the respondent's assumption behind this comment is that all lands except those determined to be not suitable will be harvested. That is not the Agency's expectation. The identification of lands suitable for timber production is not a final decision compelling or approving projects and activities. A final determination of suitability is made through project and activity decisionmaking.

Comment: Aesthetic resources. A respondent felt ''aesthetic resources'' should be removed from proposed § 219.11(d)(2) wording because timber harvesting can create less appealing aesthetics but can be an integral part of sustaining high quality wildlife habitat.

Response: The final rule retains the wording of the proposed rule at § 219.11(d) ensuring timber harvesting is consistent with protection of aesthetic resources, because the wording matches the NFMA at 16 U.S.C. 1604(g)(3)(F)(v). However, the Department recognizes that selling timber and managing vegetation are important tools for providing wildlife habitat (cover types and age classes), creating diversity in the visual appearance of the landscape, and improving the overall forest health.

Comment: Allowable sale quantity. A respondent felt the planning rule should include a requirement for allowable sale quantity as in the 1982 rule.

Response: Section 219.11 includes timber requirements based on the NFMA. The term ''allowable sale quantity'' (ASQ) is a term of art of the 1982 rule. The term ASQ is used in the NFMA in discussions about departures that exceed the quantity of timber that may be sold from the national forest (16 U.S.C. 1611). However, the NFMA does not require that the term be used in the implementing regulations (16 U.S.C. 1604). The term has caused confusion about whether ASQ is a target or an upper limit under the 1982 rule procedures, the Agency wants to avoid this confusion under this final rule. Plans will have an upper limit for timber harvest for the quantity of timber sold as required in § 219.11(d)(6). The requirements in § 219.7(f) that plan content must include information about the planned timber sale program and timber harvesting levels, and in § 219.11(d)(6) that the plan must limit the quantity of timber that may be sold from the national forest to that which can be removed annually in perpetuity on a sustained-yield basis, provide a more practicable way to give direction than using the term ''ASQ.'' Additional requirements will be found in the Forest Service Directive System.

Comment: Changing plan harvest levels relationship with plan amendments. A respondent felt changing the timber harvesting level specified in the unit plan should be done through a revision or amendment of the unit plan because timber harvesting is an important objective.

Response: Any change to plan components related to timber harvesting level requires a plan amendment under this final rule. Such plan components may include objectives for annual timber harvest or standards limiting the amount of timber harvested in the first decade. However, changing the tables or graphs of associated timber information in other plan content (§ 219.7(f)) may be done with an administrative change.

Comment: Levels of timber harvest. A respondent felt the rule should require forest plans to identify three timber production levels. Those three levels were: (1) The long-term sustained-yield capacity, which is the theoretical maximum sustainable level in perpetuity; (2) the timber harvest level associated with achieving the desired future conditions contemplated in the plan; and (3) the probable timber harvest level given anticipated budgets and other priorities.

Response: Final rule §§ 219.7(f) and 219.11(d)(6) require determination of the long-term sustained-yield capacity (the quantity of timber that may be sold from the national forest) and require determination of the planned timber sale program. A requirement for the timber harvest level associated with achieving the desired future conditions is not included because the NFMA does not require such a calculation and it would be a highly speculative harvest level that would not likely be realistic. Harvest levels must be within the fiscal capability of the unit.

Comment: Timber harvest unit size limits. Some respondent felt the proposed rule standards for maximum size limits for areas to be cut in one regeneration harvest operation should be determined by local conditions, individual forest plans objectives, based on science, and mimic historic forest disturbance regimes.

Response: These limits on the maximum opening sizes were established in the 1979 planning rule and have been in use under the 1982 rule. In 1979, the committee of scientists recommended the maximum size for openings created by timber cutting be set by regional plans or regional silvicultural guides, not be set as a national standard. However, the Department decided in 1979 to set maximum size of harvest cut openings (40-, 60-, or 100-acre maximums depending on geographic location) with exceptions provided for through regional plans where larger openings will produce more desirable combinations of benefits. In the final rule, the Department continues these standards with the exceptions provided through the responsible official, who is normally the forest or grassland supervisor. The procedure for varying these limits is an established process that has worked effectively, providing a limit on opening size and public involvement with higher level approval for exceeding the limits. The Department believes that the procedure for varying from these limits may be particularly justifiable in the future for ecological restoration, species recovery, improvement of vegetation diversity, mitigation of wildland fire risk, or other reasons. For example, some rare species are adapted to large patch sizes with similar habitat attributes for critical parts of their life cycle.

Comment: Limiting the quantity of timber removed annually. Some respondents felt the proposed rule was unclear on direction for limiting the quantity of timber removed annually in perpetuity on a sustained-yield basis as it simply repeats NFMA wording.

Response: The Department changed the wording in paragraph (d)(6) of this section of the final rule to add clarity. In addition, the Department requires the Chief to set forth procedures for planning in the Forest Service Directives System to further explain the methods for determining the limit of the quantity of timber removed annually in perpetuity on a sustained-yield basis for an individual unit plan (§ 219.11(d)(6)).

Comment: Use of culmination of mean annual increment. A respondent felt the proposed use of culmination of mean annual increment (CMAI) of growth to limit regeneration harvests of even-aged stands will not address issues of poor forest health, and the likelihood of uncharacteristic insect, disease, and fire. Another respondent felt CMAI should also be used where timber is cut in non-even-aged stands.

Response: The Department does not agree that the national policy of CMAI as required by 16 U.S.C. 1604(m) has caused problems with issues of forest heath and the likelihood of uncharacteristic insect, disease, and fire. The national policy gives the Agency authority for exceptions from this standard for recreation, wildlife habitat, and other purposes. The NFMA requires that standards shall not preclude the use of sound silvicultural practices, such as thinning or other stand improvement measures. CMAI does not apply to uneven-aged stands as these stands are multi-aged; therefore, the final rule continues to limit the use of CMAI to regeneration harvests of even-aged stands.

Section 219.12—Response to Comments

Many comments on this section focused on requirements for the plan monitoring program, broad-scale monitoring strategies, and use of the monitoring information and the monitoring report. Throughout this section of the final rule, the Department

made minor edits for clarity and changed the name from ''unit monitoring program'' in the proposed rule to the ''plan monitoring program'' In the final rule. This change to the name clarifies that monitoring is intended to focus on the plan components and is not geographically defined or applicable to other resource program monitoring on the unit. Additionally, the Department added a sentence to paragraph (a) to draw a clearer link between the monitoring program and the use of monitoring information for adaptive management of the plan area.

The Department removed the requirements for science in paragraph (a)(4)(ii) because the requirements of § 219.3 apply to the entire subpart and therefore do not need to be repeated here. The Department is committed to using science to inform monitoring and the decisions based on monitoring information.

At paragraph (a)(5) of this section, the Department corrected the phrase monitoring ''questions or indicators'' to ''questions and associated indicators'' to better reflect the way questions and indicators are used for monitoring. In response to public comment the Department made several changes to the list of required monitoring questions and associated indicators of paragraph (a)(5) as follows:

(1) At paragraph (a)(5)(ii) of this section, the Department added direction that the monitoring for the status of select ecological conditions include questions and indicators for key characteristics of terrestrial and aquatic ecosystems, to link this monitoring requirement to the ecological requirements in §§ 219.8 and 219.9.

(2) At paragraph (a)(5)(iii) of this section, the Department clarified that questions and indicators for the status of focal species are to assess the ecological conditions required under § 219.9, to link this monitoring requirement more clearly to the coarse-filter requirements.

(3) At paragraph (a)(5)(iv) the Department added a new requirement for questions and indicators for the status of a select set of ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species; conserve proposed and candidate species; and maintain a viable population of each species of conservation concern. This change was made in response to comments to more closely link monitoring with the need to assess progress towards meeting plan components for the species requirements in § 219.9. Additional discussion of this addition is discussed in the comment on *monitoring of at risk species.*

(4) At paragraph (a)(5)(v), the Department added the status of visitor satisfaction to the requirement for questions and indicators for the status of visitor use designated at paragraph (a)(5)(iv) of the proposed rule, in response to public comment.

(5) At paragraph (a)(5)(vi), the Department retained the requirement for questions and indicators related to climate change designated at paragraph (a)(5)(v) of the proposed rule, and changed the words ''and other stressors on the unit'' to ''and other stressors that may be affecting the plan area.''

(6) The Department removed the requirement for questions and indicators for the carbon stored in above ground vegetation previously designated at paragraph (a)(5)(vi) of the proposed rule. This change is accompanied by a change to § 219.6(b)(4) that requires responsible officials to identify and evaluate existing information for a baseline assessment of carbon stocks as part of the assessment. This change in requirements will lead to a more comprehensive assessment of carbon stocks (as opposed to carbon stored in above ground vegetation) earlier in the planning process. The Department retains the requirement to monitor changes related to climate change and other stressors (§ 219.12(a)(5)(vi).

(7) At paragraph (a)(5)(vii), the Department removed the requirement for questions and indicators for the progress toward fulfilling the unit's distinctive roles and contributions and added a requirement for questions and indicators addressing the progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities. This change more accurately reflects what the Department intended to accomplish with the previous requirement at paragraph (a)(5)(vii) and the other requirements of (a)(5), and will help inform management effectiveness.

(8) At paragraph (a)(5)(viii), the Department changed the term ''management system'' to ''each management system'' to use words of the NFMA at 16 U.S.C. 1604(g)(3)(C) and respond to public comments.

The Department added wording to paragraph (a)(7) to clarify that project and activity monitoring may be used to gather information for the plan monitoring program, and that plan monitoring may inform the development of specific projects and activities; but that the plan monitoring requirements of this section are not a prerequisite for making a decision to carry out a project or activity.

At paragraph (c) of this section on timing and process, the Department removed the requirement at paragraph (c)(1) where the proposed rule required the responsible official to work with the public to identify potential monitoring needs during the assessment. The Department removed this requirement from the assessment phase in response to public comments to make the assessment phase more efficient and focused. As required in § 219.7, the assessment information will inform the development of monitoring questions and indicators during the plan development or revision phase.

The Department removed paragraph § 219.12(c)(4) of the proposed rule, the requirement that responsible officials ensure that scientists are involved in the design and evaluation of unit and broad-scale monitoring, because wording of the requirement was confusing and the substance of the requirement was redundant with the coordination requirements at §§ 219.12(a)(1) and (b)(2) of the rule.

The Department reorganized paragraph (d) for clarity. The Department removed the second sentence of paragraph (d)(1) of the proposed rule and moved to paragraph (d)(2) the requirement the monitoring evaluation report indicate whether a change to plan components or other plan content may be warranted. In addition, at paragraph (d)(2) the Department added the requirement that the report must be used to inform adaptive management of the unit.

At paragraph (d)(1)(iii) of the proposed rule the Department removed the requirement that the monitoring evaluation report must describe how best available science was taken into account, because the report is intended to be an evaluation of data and information gathered by the plan monitoring program, which must be informed by best available scientific information. A new requirement was added to section 219.14(a)(4) to make clear that the plan decision document must document how the responsible official used best available scientific information to inform the plan monitoring program.

In addition, paragraph (d)(3) of the proposed rule is now paragraph (d)(1)(iii) of the final rule, paragraph (d)(2) of the proposed rule is now (d)(3) of the final rule, but no changes to these requirements were made.

Comment: Scope of monitoring. Some respondents felt the proposed rule was unclear as to the extent of topics, including ones for desired conditions, responsible officials could consider when choosing the scope and scale of

plan monitoring. A respondent felt the rule should require the scope of the monitoring question be as complete as possible even if the scope of the final monitoring program cannot address all the questions.

Response: Because the information needs most critical for informed and adaptive management will vary by unit, the rule allows the responsible official the discretion to set the scope and scale of the plan monitoring program, subject to the minimum requirements in paragraph (a)(5) of this section. Paragraph (a)(2) directs that questions and indicators should be based on one or more desired conditions, objectives, or other plan component(s), but makes clear that not every plan component needs to have a corresponding monitoring question. Furthermore, the questions and indicators must be designed to inform the management of resources on the plan area, including by testing assumptions, tracking changes, and measuring management effectiveness and progress towards achieving or maintaining the plan's desired conditions or objectives. This direction allows the responsible official to develop the most strategic, effective and useful monitoring program for the plan area, based on the plan components in the plan and informed by best available scientific information and public input. This direction also recognizes possible limits to the technical or financial capabilities of the Agency: not all parts of a plan, or every acre, can be monitored each year—and it may not be a strategic investment to do so.

However, section 219.12(a)(5) of the final rule provides direction for a set of monitoring questions and associated indicators that must be part of every plan monitoring program. The list reflects substantive requirements of the final rule and links to the assessment phase. The responsible official can always consider additional factors and add questions and indicators.

Every plan monitoring program would contain one or more questions and associated indicators that address each of the following: (1) The status of select watershed conditions; (2) the status of select ecological conditions including key characteristics of terrestrial and aquatic ecosystems; (3) the status of focal species to assess the ecological conditions required under § 219.9; (4) the status of a select set of ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species; conserve proposed and candidate species; and maintain a viable population of each species of conservation concern within the plan area; (5) the status of visitor use, visitor satisfaction, and progress toward meeting recreation objectives; (6) measurable changes on the plan area related to climate change and other stressors affecting the plan area; (7) progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities; and (8) the effects of each management system to determine that they do not substantially and permanently impair the productivity of the land.

Comment: Accountability and public oversight for monitoring: Some respondents felt the rule should provide sufficient opportunity for public enforcement of monitoring quality and for public input on the Agency's use of monitoring information affecting project decisions. Several respondents felt the proposed rule did not establish accountability for monitoring and suggested the rule either require review by the Chief or specify the consequences of not conducting monitoring. Another suggested that the monitoring effort be periodically reviewed objectively by disinterested parties. Some respondents felt to improve accountability findings from monitoring program reports, the reports should be decisions subject to review.

Response: The rule cannot grant enforcement authorities to the public. Those authorities can only be granted by Congress. However, the rule's public participation and reporting requirements allow for a more transparent Government and holds officials accountable for sharing monitoring information and data with the public. This data will be open to public scrutiny, criticism, and objective review. The public will be able to evaluate and provide input on the Agency's use of the monitoring information to inform future decisions during opportunities for public participation and comment for those decisions, including future plan amendments, plan revisions, projects, and activities.

Accountability is achieved through the rule by requiring officials to develop monitoring, plan monitoring programs with questions and indicators and broader-scale monitoring strategies, and to prepare biennial monitoring reports. All these requirements allow for public involvement and review. Section 219.2(b)(5) of the rule further requires the Chief of the Forest Service to administer a national oversight and accountability process to review NFS land management planning which includes monitoring programs. The Agency already follows Departmental standards for the objectivity of information used to inform significant decisions under the Information Quality Act (Section 515 of Public Law 106–554). In addition, the responsible official is subject to performance review and accountability for fulfilling requirements of the rule and policies of the Agency. The Forest Service is required to report monitoring information consistent with the USDA Strategic Plan. (*http://www.ocfo.usda.gov/usdasp/sp2010/sp2010.pdf*).

Monitoring reports (like assessment reports) will include information that will be used to inform decisions, but are not decision documents because they do not compel an action or make a decision on an action; therefore, subjecting monitoring specifications to objection or appeal procedures is not necessary.

Comment: Monitoring requirements. A respondent felt the rule should include monitoring requirements for scientific grounding, thoughtful design, and sufficient funding, regularly scheduled, and analysis of cumulative impacts.

Response: The final rule requires the use of the best available scientific information to inform the monitoring program, requires the responsible official to identify the fundamental questions and indicators that will inform the design of monitoring programs, and will lead to a robust monitoring program that will be used to inform management. The public will have opportunities to provide input into the design of the monitoring program and to review the monitoring data. The monitoring information can be used in a number of ways, including analyzing cumulative effects. The final rule includes direction to take financial and technical capabilities of the Agency into account in designing the monitoring program, and requires in § 219.1(g) that the plan be within the fiscal capability of the unit.

Comment: Monitoring and consistency of methods. Some respondents felt the rule should include national monitoring standards to enable consistency across units so each national forest and grassland could be compared to others. Some respondents felt units could not develop monitoring programs efficiently in the absence of regional or national standards or guidance. Some respondents felt units will need additional guidance to enable them to design and conduct monitoring because the necessary resources and expertise is not often available on each unit. A respondent felt clarification was needed for how broader-scale monitoring could be associated with

assessments by the plan unit in the absence of regional guidelines. A respondent felt specific terminology should be used regarding monitoring types: range and distribution monitoring, status and change monitoring, and cause and effect monitoring. Some respondents felt the rule should require technical details like methods for data collection, sampling methods, specific measurements to sample, statistically sound set of monitoring guidelines, reference conditions or baseline data, cause-effect designs for monitoring, or possible contaminants to water quality, or that schedules of work be required in monitoring programs and documented in plans.

Response: The Department and Agency recognize the importance of having a system of monitoring that allows for information to be collected, used and compared across planning units. For that reason the final rule directs that the plan monitoring program must be coordinated and integrated with broader scale monitoring strategies to ensure that monitoring is complementary and efficient, and gathered at the appropriate scales, along with direction to coordinate with Research and Development, State and Private Forestry, and others. To support implementation of these requirements, the Agency is currently reviewing its inventory and monitoring system. However, the final rule does not include national monitoring standards for consistency across units because there is no fully tested national approach available at this time. The kinds of things to be monitored are varied, monitoring techniques and protocols evolve and improve over time, and different techniques may be more or less appropriate depending on what is being monitored and the information needs most critical to inform adaptive management on the unit. In addition, monitoring techniques may vary by partner, impacting opportunities to coordinate monitoring across landscapes and among neighboring land managers.

For these reasons the Department concluded it would be more appropriate to include additional direction and guidance, including for the kinds of technical specifications identified by the respondents, in the Forest Service Directives and in the unit plans. The final rule makes clear in paragraph (a)(6) of this section that a range of monitoring techniques may be used to carry out the monitoring required by this section: different questions and indicators will require the use of different, and evolving, techniques or methodologies. The responsible officials will use the best available scientific information to inform those choices. Monitoring protocols and methods would be coordinated with the regional forester and Forest Service State and Private Forestry and Research and Development.

Comment: Monitoring triggers. Some respondents thought that the monitoring program should include triggers or thresholds for action.

Response: The rule did not include triggers or thresholds because not all monitoring elements and indicators are suited to triggers. Establishing triggers can be complex and time consuming. The rule does not preclude the inclusion of triggers where they can be developed and where they are informed by the best available scientific information. The Department does intend the three phases of planning to be connected, and for each phase to inform the others. The information gathered and evaluated in the assessment phase will help the responsible official to develop a strategic monitoring program, and the information from monitoring will be used to indicate whether a new assessment is warranted, and to inform future assessments and plan components and other plan content. Wording was added to § 219.7 to make clear that the assessment and monitoring reports should be used to inform the plan development or revision, and to § 219.12 to make clear that the monitoring report should be used to inform adaptive management.

Comment: Use of non-agency data. Some respondents felt the Agency is reluctant to accept monitoring data about environmental conditions from a third party, like livestock permittees, and that the proposed rule funding requirements would further reduce funding available for monitoring. These conditions would cause the Agency to unfairly restrict some special uses, like grazing. Other respondents felt the rule should clearly provide opportunities for the responsible official to use information and assistance from non-agency organizations and individuals to contribute to monitoring programs. Other respondents felt non-agency data must meet Agency data standards. Still others felt the rule should allow the public opportunity to assist in gathering and submitting data.

Response: The rule provides more encouragement to use secondary data including sources external to the Agency than previous planning rules. Section 219.4 requires opportunities for public participation throughout the planning process, including developing the monitoring program. Section 219.12(c)(3)(i and ii) specifically directs the responsible official to take into account existing NFS and non-NFS inventory, monitoring and research programs, and to take into account opportunities to design and carry out multi-party monitoring. Many current monitoring programs and assessments rely on secondary data from a variety of sources, governmental and non-governmental sources. Monitoring data will be used to inform adaptive management. The requirements in this rule are intended to result in a more strategic use of monitoring dollars, and to leverage those investments where it is feasible and appropriate to do so.

Comment: Collection of data beyond unit boundaries. Some respondents felt the proposed rule inappropriately makes the responsible officials undertake broader-scale monitoring analyses, monitoring of significant areas not federally owned, and to collect data beyond unit boundaries.

Response: The final rule does not impose a requirement for responsible officials or regional foresters to monitor non-NFS lands. The monitoring requirements do not give responsible officials license to monitor where they lack authority.

It is appropriate and efficient to recognize that some monitoring questions are best evaluated at scales broader than one unit, to best inform management of a 193 million acre National Forest System that spans the country. The final rule directs the regional forester to develop a broader-scale monitoring strategy, in coordination with others, and encourages identifying opportunities for multi-party monitoring. The rule encourages responsible officials to coordinate monitoring across NFS units. The rule allows the Agency to continue efforts to use data from other agencies and sources because monitoring cooperation is in the best interest of Americans and the land, informing effective management and facilitating the strategic use of monitoring dollars.

Comment: Use of the Forest Inventory and Analysis system (FIA). A respondent suggests the rule should use the FIA system to monitor the health of forests and changes related to climate change.

Response: Many Agency units actively use FIA information as an integral part of their monitoring programs. The final rule directs the responsible official to take into account existing national and regional inventory, monitoring, and research programs, including from Forest Service State and

Private Forestry and Research and Development which includes FIA data.

Comment: Scientist involvement in plan and broader-scale monitoring design. A respondent felt the proposed rule sets too high a standard of ensuring scientists are involved in plan and broader-scale monitoring design. Another respondent felt the proposed rule did not specify in detail how the external scientific community would be involved.

Response: The requirement under § 219.12(c)(4) of the proposed rule for scientists to be involved in the design and evaluation of unit and broader-scale monitoring has been removed in response to public comment because the requirement was confusing and can be met through the coordination requirements at §§ 219.12(a)(1), (b)(2) and (c)(3)(ii) of the final rule. The final rule requires the use of best available scientific information to inform the design and content of the monitoring program, opportunities for public participation, and coordination in development of the monitoring program with Forest Service Research and Development, along with other partners and the public. The external science community may be involved in variety of ways, for example, through public participation opportunities or the use of external scientific reports.

Comment: Changes to specific subjects to be addressed in monitoring programs. A respondent suggested the responsible official discretion would be improved by deleting proposed wording ''related to climate change and other stressors'' and ''carbon stored in vegetation.'' Others felt requirements to monitor accomplishment of plan objectives and progress towards achieving plan ''desired conditions'' should be added. Some respondents felt the proposed rule's monitoring requirements for specific resource areas unduly limited responsible official discretion in determining what questions and indicators to include in the unit monitoring program. Some respondents felt specific subjects should be required in all plan monitoring programs including: grazing impacts, off-road vehicle use, species populations, vegetation, ecological conditions, social and economic sustainability, effects of long-term uses, noise pollution, water quality, recreational use satisfaction, and public safety, among others. Some respondents felt the proposed rule would limit monitoring programs to consider only one monitoring question or indicator.

Response: Section 219.12(a)(5) of the rule requires the responsible official to develop a plan monitoring program that describes, at a minimum, one or more questions and associated indicators on eight specific topics. The number of monitoring questions and indictors may vary by topic. The Department believes that the set of minimum requirements for the plan monitoring program included in paragraph (a)(5) of the final rule is appropriate, reflects the substantive requirements of the final rule, builds on the information gathered during the assessment phase, and is focused on informing adaptive management of the plan area.

Paragraph (a)(5) does not limit the questions and indicators in any given plan. The responsible official has the authority to determine whether additional monitoring elements are warranted or necessary to inform management decisions if they are within the fiscal capability of the unit to implement. The Department's intent is for the responsible official to determine what information needs are most critical for informed and adaptive management of the plan area. Because most resource management concerns vary by forests or grasslands, the rule allows the responsible official discretion to set priorities for monitoring where it is most needed. This discretion is also important for fostering opportunities to coordinate monitoring with other government agencies and non-government entities. Therefore, an extensive list of other possible monitoring requirements in addition to the set in paragraph (a)(5) is not included in the final rule.

The requirements to include questions and associated indicators to monitor measurable changes on the plan area related to climate change and other stressors was retained in the final rule, because it is important to track changing conditions. The final rule removes the monitoring requirement for carbon stored in above ground vegetation because the Department added a requirement in the assessment phase (§ 219.6(b)) to identify and evaluate existing information for a baseline assessment of carbon stocks. This change reflected comments to this section and the assessment section, and is consistent with the Agency's Climate Change Scorecard which also requires a baseline assessment of carbon stocks. The Department added a requirement for the plan monitoring program to monitor progress toward meeting the plan's desired conditions and objectives and a requirement to monitor visitor satisfaction in § 219.12(a)(5) of the final rule.

Comment: Ecological Conditions and Focal Species (§ 219.9). Some respondents felt the required monitoring questions and indicators of § 219.12(a) of the proposed rule did not adequately address fish and wildlife populations or gauge progress towards meeting the requirements of § 219.9 of the proposed rule.

Response: In response to these comments, the Department added wording to the required questions and indicators of § 219.12 to link them to the ecological conditions required by §§ 219.8 and 219.9, added the requirement in paragraph (a)(5)(iv) to monitor ecological conditions associated with the species requirements in § 219.9, and modified two definitions. The changes to the requirements for questions and indicators are explained in the introduction to the response to comments of this section. The Department modified the definition of ''ecosystem'' to explain these interrelated ecosystem elements so the relationship between monitoring questions and indicators are clearly related to the ecological conditions of §§ 219.8 and 219.9. The Department modified the definition of focal species to clarify the intended role of focal species in assessing the effectiveness of the plan in maintaining the diversity of plant and animal communities in the plan area.

Comment: Questions about focal species. Respondents asked questions about focal species. (1) What are they? (2) What do they represent? (3) What criteria will be used to select them? (4) How many will there be for a particular plan area? (5) How will they be monitored?

Response: (1) The inclusion of the focal species (§ 219.19) in the monitoring section is based on concepts from the March 15, 1999, Committee of Scientists report, which recommended focal species as an approach to monitor and assess species viability. The term ''focal species'' is defined in the rule as: A small subset of species whose status permits inference to the integrity of the larger ecological system to which it belongs and provides meaningful information regarding the effectiveness of the plan in maintaining or restoring the ecological conditions to maintain the diversity of plant and animal communities in the plan area. Focal species would typically be selected on the basis of their functional role in ecosystems.

(2) The requirement for monitoring questions that address the status of focal species is linked to the requirement of § 219.9 of the final rule to provide for ecosystem integrity and diversity, which describes the coarse-filter approach for providing diversity of plant and animal

communities and the persistence of native species in the plan area. The rule requires plan components designed to maintain or restore a range of ecological conditions at a variety of spatial and temporal scales (§§ 219.8 and 219.9). Appropriate monitoring of focal species will provide information about the integrity of the ecosystem and the effectiveness of the plan components in maintaining diversity of plant and animal communities in the plan area. In other words, focal species monitoring is used as means of understanding whether a specific ecological condition or set of conditions is present and functioning in the plan area. Focal species monitoring is not intended to provide information about the persistence of any individual species. The rule does not require managing habitat conditions for focal species, nor does it confer a separate conservation requirement for these species simply based on them being selected as focal species.

(3) The Committee of Scientists report said focal species may be indicator species, keystone species, ecological engineers, umbrella species, link species, or species of concern. Agency directives will provide guidance for considering the selection of a focal species from these or other categories. Criteria for selection may include: the number and extent of relevant ecosystems in the plan area; the primary threats or stressors to those ecosystems, especially those related to predominant management activities on the plan area; the sensitivity of the species to changing conditions or their utility in confirming the existence of desired ecological conditions; the broad monitoring questions to be answered; factors that may limit viability of species; and others. This does not preclude the use of an invasive species as a focal species, whose presence is a major stressor to an ecosystem.

(4) The final planning rule does not require a specific number or numeric range of focal species to be selected. The number will vary from unit to unit. The definition of focal species requires a small subset of species. The responsible official has discretion to choose the number of focal species that he or she determines will be useful and reasonable in providing the information necessary to make informed management decisions. It is not expected that a focal species be selected for every element of ecological conditions.

(5) The rule does not specify how to monitor the status of focal species. Monitoring methods may include measures of abundance, distribution, reproduction, presence/absence, area occupied, survival rates, or others. The objective is not to choose the monitoring technique(s) that will provide the most information about the focal species, but to choose a monitoring technique(s) for the focal species that will provide useful information with regard to the purpose for which the species is being monitored.

The final rule does not require monitoring species population trends. Species population trend monitoring is costly, time intensive, and may not provide conclusive or relevant information. In addition, traditional monitoring of species population size and trend is not reliable for many species because of wide variations in population size. For certain species, for example, a more reliable method may be presence-absence data obtained through non-invasive genetic sampling. Presence-absence modeling could be used to map and predict species distribution, help model habitat requirements and use occurrence data to help estimate the probability of a species being present in sustainable numbers within a geographic area. Genetic sampling, which is drawing DNA from physical species evidence collected at sites under evaluation, can be used to acquire data for this approach. Other monitoring techniques in addition to these examples may be more appropriate in a given circumstance. Therefore, although population trend monitoring may be used where feasible and appropriate, the final rule explicitly provides discretion to the responsible official to choose the most appropriate methods for monitoring, using the best available scientific information to inform the monitoring program.

Specific guidance on focal species selection and monitoring methodology is expected to be further described in the Agency's planning directives. Some focal species may be monitored at scales beyond the plan area boundary, while others may be more appropriately monitored and assessed at the plan area scale.

Comment: Focal species vs. management indicator species. Many respondents expressed concern or confusion over the role of focal species monitoring in meeting the requirements of § 219.9; and how focal species would be used differently from management indicator species (MIS) as required under the 1982 planning rule.

Response: The Department's decision to require monitoring of focal species as well as select ecological and watershed conditions is a shift from the 1982 rule's requirement to specifically monitor population trends of ''management indicator species,'' or MIS. The theory of MIS has been discredited since the 1982 rule. Essentially, monitoring the population trend of one species should not be extrapolated to form conclusions regarding the status and trends of other species. The requirement for monitoring questions that address the status of focal species is linked to the requirement of § 219.9 of the final rule to provide for ecosystem integrity and diversity, which describes the coarse-filter approach for providing diversity of plant and animal communities and the persistence of native species in the plan area. Focal species are not intended to provide information about the persistence of any individual species.

In addition, population trends for most species are extremely difficult to determine within the 15-year life of a plan, as it may take decades to establish accurate trend data, and data may be needed for a broader area than an individual national forest or grassland. Nor is this data the most useful to inform management for the purposes of meeting the diversity requirements of the rule. Instead, the Agency expects to take advantage of recent technological advancements in monitoring the status of focal species, such as genetic sampling to estimate area occupied by species.

The provisions under § 219.9 of the final planning rule are focused on maintaining or restoring the ecological conditions necessary to maintain the diversity of plant and animal communities and support the persistence of native species in the plan area. Because of the problems with MIS as stated above, and because the concept of monitoring focal species, as described by the Committee of Scientists report of March 15, 1999, is used to assess the integrity of ecological systems, the final planning rule incorporates the concept of focal species for monitoring the ecological conditions required in § 219.9. Focal species are not intended to be a proxy for other species. Instead, they are species whose presence, numbers, or status are useful indicators that are intended to provide insight into the integrity of the larger ecological system, the effects of management on those ecological conditions, and the effectiveness of the § 219.9 provisions. The monitoring questions and associated indicators required in § 219.12(a)(5)(i–iv) as discussed above are expected to assess progress towards meeting the desired ecological conditions required under §§ 219.8 and 219.9, and the effectiveness of those conditions in maintaining the diversity of plant and animal communities and

supporting the persistence of native species in the plan area.

Comment: Selection and monitoring of focal species. Respondents felt the rule should require 3 items for selection and monitoring of focal species: (1) The best available scientific information; (2) the engagement of research, state fish and wildlife agencies, and others; and (3) a broader spatial scale then one plan area.

Response: The rule requires (1) all aspects of planning to use the best available scientific information to inform the planning process, plan components, and other plan content, including the monitoring program (§§ 219.3 and 219.14); (2) coordination with research, and consideration of opportunities to design and carry out monitoring with a variety of partners including state agencies (§§ 219.12(a)(1), (b)(2), and (c)(3)(ii)); and (3) broader-scale monitoring strategies be developed in addition to the plan monitoring program, to address questions that are best answered at a broader scale than one plan area (§ 219.12(b)), which may include monitoring for one or more focal species.

Comment: Monitoring of at risk species. Some respondents felt the rule should require monitoring of populations of federally listed threatened and endangered species, species that are candidates for Federal listing, and species of conservation concern.

Response: In response to public comments, the Department added a requirement to the rule for monitoring questions and associated indicators to monitor the status of a select set of the ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species; conserve proposed and candidate species; and maintain a viable population of each species of conservation concern within the plan area (§ 219.12(a)(5)(iv). It is expected that monitoring a select set of the ecological conditions required by these species will give the responsible official information about the effectiveness of the coarse and fine-filter plan components included to meet the requirements of at risk species. The intent of the term ''a select set'' is to focus the monitoring on a few important ecological conditions that may be monitored in an efficient way. Monitoring for watershed conditions, other ecological conditions, and focal species will also provide information about the effectiveness of plan components for at risk species.

In some circumstances, a threatened, endangered, proposed, or candidate species, or a species of conservation concern may be the most appropriate focal species for assessing the ecological conditions required by § 219.9. However, as explained in earlier responses in this section, population trend monitoring is not required by the final rule.

Comment: Monitoring of habitat conditions. Respondents felt that monitoring habitat conditions only, specifically related to vegetation composition and structure, will not adequately address the reasons why species may or may not occupy those habitats; and that there may be other stressors unrelated to habitat that make suitable habitat conditions unsuitable for occupation by a particular species.

Response: The final rule requires monitoring the status of select ecological conditions. The concept of ecological conditions as defined in the proposed rule and the final rule includes more than vegetation composition and structure: it is designed to encompass those factors as well as others, including stressors that are relevant to species and ecological integrity.

Examples of ecological conditions include the abundance and distribution of aquatic and terrestrial habitats, connectivity, roads and other structural developments, human uses, and invasive species.

Comment: Distinctive roles and contributions. A respondent felt ''distinctive roles and contributions'' wording in proposed § 219.12(a)(5)(vii) is inappropriate and should be stricken from the monitoring section.

Response: The final rule removes ''distinctive roles and contributions'' from § 219.12 in response to public comment because the Department has decided that the new requirement at paragraph (a)(5)(vii) for questions and indicators addressing the progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities, more accurately reflects what the Department intended to accomplish with the previous requirement at paragraph (a)(5)(vii) in the proposed rule and the other proposed requirements of (a)(5).

Comment: Management systems in NFMA. Some respondents felt the proposed rule misinterprets the NFMA reference to management systems by not repeating the word ''each'' and by overly restricting the types of management systems.

Response: The final rule adds the word ''each'' to the monitoring requirement for management systems. As clarification, § 219.19 of the final rule also includes a definition of management system as a timber management system such as even-aged management or uneven-aged management. Management system is a term of art of the NFMA (16 U.S.C. 1604(g)(3)(C)). The term management system must be understood in the context of the NFMA which was developed to give guidance to the Agency in how to manage timber. The Department understands the intent of Congress was that research and evaluation would be done on a sample basis. The Forest Service Research and Development staff began the long-term soil productivity program in 1989 to examine the long term consequences of soil disturbance on fundamental forest productivity through a network of designed experiments. (Powers, R.F. 2006. Long-Term Soil Productivity: genesis of the concept and principles behind the program. Can. J. For. Res. 36:519–528.)

Comment: Monitoring effects of management procedures. A respondent felt the 1982 provisions for requiring documentation of the measured prescriptions and effects of management procedures (practices) are superior to the monitoring requirements of the proposed rule. The respondent felt the proposed provisions would fail to ensure that actions do not jeopardize biodiversity.

Response: The Department requires monitoring questions and indicators to monitor eight topics including the status of ecological conditions. Ecological conditions include vegetation composition and structure, abundance and distribution of aquatic and terrestrial habitats, connectivity, roads and other structural developments, human uses, and invasive species. Questions and indicators associated with the required topics in § 219.12(a)(5) of the final rule can be used to evaluate effects of management procedures (practices) based on the outcomes observed in ecological conditions. The Department concludes that these monitoring requirements support the substantive requirements for ecological integrity and ecosystem and species diversity in the final rule.

Comment: Conservation education: A respondent felt monitoring should include conservation education.

Response: Conservation education can be a valuable outcome from collaborative planning and reaching out to engage others in design of monitoring programs. The rule gives discretion to the responsible officials to consider the extent and methods chosen to address conservation education. Other sections direct the responsible official to

consider opportunities to connect people to nature. However, a specific requirement for monitoring conservation education was not added to the final rule.

Comment: Financial feasibility of monitoring. Some respondents felt the proposed rule was obligating the Agency to undertake unaffordable or unachievable monitoring work, in particular broad-scale monitoring extending beyond the boundaries of NFS lands. Some felt the monitoring requirements may cause the Agency to increase fees to cover costs or that broad-scale monitoring would become a precondition before issuing special use permits.

Response: The proposed rule does not obligate the Agency to monitor beyond its fiscal means. Final rule §§ 219.1(g), 219.12(a)(4)(ii) and 219.12(b)(3) ensures that responsible officials must exercise discretion to develop technically and financially feasible monitoring programs. Although monitoring information will be used by responsible officials to inform the need to change plan components, including standards or guidelines, the rule specifically makes clear in § 219.12(a)(7) that monitoring is not a prerequisite for carrying out a project or activity such as the renewal of special use permits.

Comment: Financial feasibility of monitoring economic and social structures of communities. A respondent felt the financial feasibility of monitoring under the proposed rule was unattainable and additional discussion was needed on how economic and social structures of local communities will be monitored.

Response: The rule requires certain subjects be addressed with one or more questions and associated indicators as the basis for plan monitoring. The NEPA compliance in support of proposed plans and projects will disclose the economic and social effects to local communities, and paragraph (a)(5)(vii) of this section requires monitoring progress towards meeting desired conditions and objectives in the plan, which will include plan components developed to contribute to social and economic sustainability. However, there is no requirement to monitor the economic and social structures of local communities. The Department believes that the monitoring requirements of the final rule will be achievable.

Comment: Feasibility of climate change monitoring. Some respondents felt the requirement for plan monitoring programs to include one question and indictor associated with measurable changes on the unit related to climate change and other stressors would be neither affordable nor achievable.

Response: The Department believes that including monitoring questions and indicators associated with measureable changes on the unit related to climate change and other stressors is achievable. The Agency is already conducting monitoring for climate change and other stressors such as insects, diseases, invasive species, wildfire, and more. In addition, the Agency is implementing the Climate Change Roadmap and Scorecard, which includes monitoring for climate change. This section allows the responsible official to use and build on other data and programs, encourages coordination with others and multi-party monitoring, and recognizes that some monitoring questions may best be answered at a scale broader than on plan area. The flexibility provided in this section will allow the responsible official to develop a strategic, effective, and financially achievable monitoring program, while meeting the requirements of paragraph (a)(5).

Comment: Project monitoring. Some respondents felt project monitoring requirements should be included in the rule. Citing Department of Army regulations, a respondent felt the rule should require project monitoring funding be allocated before project implementation. Some respondents felt proposed § 219.12(a)(7) meant project monitoring would not occur.

Response: The Department agrees project monitoring is important and is a valuable means of understanding the effects of projects and can provide information useful to adapt future project plans to improve resource protection and restoration. The Department added wording to paragraph (a)(7) to clarify that project and activity monitoring may be used to gather information for the plan monitoring program, and that plan monitoring may inform the development of specific projects and activities. The Department anticipates that project and activity monitoring will be used as part of the plan monitoring program, but the responsible official has the discretion to strategically select which projects to monitor and the monitoring questions related to those projects that will best inform the monitoring program and test assumptions, track changing conditions, or evaluate management effectiveness. However, the final rule makes clear the monitoring requirements of this section are not a prerequisite for making a decision to carry out a project or activity. Each project carried out under the plan will not automatically include the monitoring requirements for the plan.

Project monitoring may also occur for purposes other than supporting the plan monitoring program, and the final rule does not preclude project-specific monitoring requirements developed as part of project or activity decisions. The planning rule does not discuss requirements for project monitoring; therefore, funding of project monitoring is an issue outside the scope of the planning rule.

Comment: Risks from lack of monitoring or monitoring information. Some respondents felt the lack of monitoring, or information not available through monitoring, could delay management actions or foreclose activities and projects because of uncertainties. A respondent felt the rule should clearly state monitoring goals are not preconditions to approve, continue, or renew special use permits or provide for public uses, or State fish and wildlife management activities.

Response: Although monitoring information may be used by responsible officials to inform the need to change the plan, monitoring is not a precondition of conducting projects or carrying out management actions. The rule establishes those elements of monitoring necessary to inform adaptive management of the resources on the unit. None of the requirements of monitoring for the plan monitoring program apply to individual projects or activities. These monitoring requirements do not delay or foreclose management activities.

Comment: Monitoring and extractive actions. A respondent felt the rule should require all extractive actions to cease on a unit until timely monitoring has been completed.

Response: The planning rule does not apply to any ongoing projects or activities except as provided by § 219.15.

Comment: Monitoring and assessment data. A respondent felt the rule should specifically state new and accurate data is important to the success of monitoring and assessment, and use of new and accurate data is required.

Response: The final rule requires the use of best available scientific information to inform the development of the monitoring program. However, the final rule does not add the requirement suggested by the respondent as some monitoring questions or indicators may be adequately addressed with existing data. Accuracy in data is met through data protocols and quality control standards covered in other Agency guidance outside the planning regulations.

Comment: Feedback needed from monitoring to planning and

management actions. Some respondents felt the proposed rule lacks feedback between monitoring and changes to plan components. Some respondents felt the rule should include accountability measures and explicitly include ''adaptive management'' requirements rather than just describing a framework for planning consistent with principles of ''adaptive management.''

Response: The Department made changes in response to public comments to make clear the focus on adaptive management. The monitoring program is required to be designed to inform management (§ 219.12(a)). The final rule requires that the monitoring evaluation report be used to inform adaptive management of the plan area (§ 219.12(d)(2)), in addition to the requirement that the report indicate whether new information indicates that changes are warranted. The final rule requires that the responsible official review relevant information from both the assessment and monitoring to inform the development of plan components and other plan content (§ 219.7(c)(2)(i)). Section 219.5(a) sets forth a responsive planning process that informs integrated resource management and allows the Agency to adapt to changing conditions, including climate change, and improve management based on new information and monitoring. The final rule also requires the Chief to administer a national oversight process for accountability and consistency to review NFS land management planning in the context of this framework (§ 219.2(b)(5)).

Comment: Biennial evaluations. Some respondents felt the proposed biennial evaluations requirement would be too costly, time consuming and complex. Others felt the rule should require an annual evaluation. Others thought the biennial evaluation time is too short because of long-term aspects, such as climate change, require long periods of time before meaningful evaluations can be conducted. Still others felt the rule should require a public comment period on the biennial evaluation. One respondent felt the rule should not allow the responsible official to publish monitoring evaluation reports without approval at a higher level. Some respondents felt the proposed requirement for biennial reporting would not meet NFMA's requirement for continuous monitoring.

Response: The Department decided to retain the requirement that the responsible official conduct a biennial evaluation of the monitoring information and issue a written report of the evaluation and make it available to the public. The biennial evaluation of monitoring is intended to collect, evaluate, and report on new data or results that provide information for adaptive management: for example, information about management effectiveness, progress towards meeting desired conditions or objectives, changing conditions, or validation (or invalidation) of assumptions. The biennial monitoring evaluation does not need to evaluate all questions or indicators on a biennial basis but must focus on new data and results that provide new information for adaptive management. The responsible official may postpone the monitoring evaluation for 1 year after providing notice to the public in the case of exigencies such as a natural disaster or catastrophic fire. The Department believes that this requirement is implementable and important to inform adaptive management.

The Agency's experience is that an annual evaluation is too frequent to determine trends or to accumulate meaningful information and the 5-year time frame (§ 219.10(g) of the 1982 rule) is too long to wait in order to respond to changing conditions or new information. Therefore, the Department determined the monitoring evaluation would occur at a 2-year interval. The Department recognizes some kinds of monitoring indicators require longer time frames for thorough evaluation of results, but a biennial review of what information has been collected will ensure evaluation of available information is timely and can be used to inform planning and adaptive management of the unit.

The Department also retained the requirement that the responsible official publish the monitoring evaluation report, so that it is available to the public. Section 219.4(a) of the final rule requires the responsible official to provide opportunities for the public to participate in reviewing the results of monitoring information. The responsible official may elect various methods for this participation, but the rule does not direct any specific form for this participation such as requiring formal comment on the biennial evaluation. Public notice of the availability of the monitoring evaluation report is required, and must be posted online. Additional notice may be made in any way the responsible official deems appropriate. Any changes to the monitoring program require consideration of public comment.

Section 219.5(a)(3) of the final rule states that under the planning framework ''monitoring is continuous.'' The biennial monitoring evaluation report would not halt monitoring; it would simply report new information obtained from that monitoring.

Comment: Evaluation reports and changes to plan components based on information from petition(s). A respondent suggested the biennial evaluation report incorporate science contained in environmental analyses and the plan be updated to incorporate information from petition(s).

Response: The requirement in this section for a biennial evaluation report is focused on providing systematic and transparent reporting and evaluation of information obtained pursuant to the monitoring program established consistent with this section. The report will be used to inform adaptive management on the unit. As part of the planning process, the responsible official may also consider any additional relevant information contained in other sources, such as petitions or new environmental analyses.

Comment: Required actions in response to monitoring. Some respondents felt monitoring results might be of no consequence if there are no requirements in the rule to take specific actions to respond to monitoring results. These changes should not wait for another planning cycle. Others felt the rule should include criteria as to when a need to change the plan is indicated by monitoring. A respondent suggested unit monitoring incorporate efforts to focus on non-native invasive species not present but can reasonably be foreseen as posing a risk to eventually enter the plan area. Another respondent felt proposed § 219.12(a)(7) would result in monitoring programs not dealing with watershed degradation associated with projects or activities, such as grazing, and the rule should focus on watersheds in poor condition, degraded riparian and upland habitats, substantial and permanent losses in soil productivity, and streams. A respondent felt the requirement to monitor ''the status of select watershed conditions'' was vague and could lead to the collection of disparate types of information across planning units and could create local conflicts over the requirement's interpretation. A respondent felt more explanation was necessary in the rule on why topics were not included in requirements under § 219.12(a)(5). A respondent felt the rule should require the monitoring program to substantiate why certain portions of the plan do not warrant monitoring. A respondent suggested the rule specify a framework for reporting on forest conditions such as the Montreal Protocol.

Response: The final rule requires that the monitoring evaluation report indicate whether a change to the plan, management activities, the monitoring program, or a new assessment may be warranted based on the new information. It also requires that the monitoring evaluation report be used to inform adaptive management of the plan area to ensure that the plan remains effective and relevant. The responsible official will need to evaluate when the information warrants a change to the plan. The public will have the opportunity to review the biennial monitoring report, and is welcome to provide input to the responsible official. The Department modified the requirements of paragraph (a)(5) in response to public comments and to more closely link the monitoring requirements to the assessment topics and to the substantive requirements in §§ 219.7 through 219.11. The responsible official is not limited to the monitoring requirements identified in paragraph (a)(5) of this section. The responsible official may add questions and indicators to reflect the monitoring needs most appropriate to inform effective management for that unit. In addition, the broader-scale monitoring strategies will identify questions and indicators best monitored at a broader geographic scale than the plan area.

The Department concluded that the set of monitoring requirements in the final rule provides an appropriate balance between requiring core monitoring on each unit and recognizing that there will be a wide and diverse array of monitoring needs across each system, including with regard to what specific questions and indicators may be most relevant for the topics in paragraph (a)(5) of this section. The responsible official will need to document the rationale for decisionmaking, as well as how best available scientific information was used to inform the monitoring program. Additional direction will be included in the Forest Service Directive System, and may be provided as a result of the Agency's ongoing review of its monitoring system.

The final rule requires monitoring of watershed conditions, as well as ecological conditions associated with aquatic ecosystems, and progress towards meeting desired conditions and objectives. The Department believes that these monitoring requirements will support the substantive requirements in the final rule for plan components for watersheds, water quality, water resources, and riparian areas, including those considerations with regard to water identified in the comment, and will inform management effectiveness and adaptive management.

The Department expects monitoring will be informed by FIA data. The FIA program inventories and reports on changing conditions across all forested lands and provides information that reflects many Montreal Process indicators.

Comment: Adjusting plans without adequate monitoring information. A respondent felt the proposed rule's emphasis on making rapid changes may cause the responsible official to make changes to plan components without the benefit of monitoring over an appropriate period of time, as some monitoring questions and indicators cannot be adequately evaluated annually. A respondent felt the proposed rule's support of rapid adjustment of management through monitoring could lead to mistakes when causal factors are not understood. Another respondent felt the adaptive management approach was too vague and the rule needed wording to endorse a precautionary approach when the responsible official has only limited data available for a decision about a significant change in resource management.

Response: The Department agrees numerous monitoring questions and indicators could take many years of monitoring data collection before the information can be credibly evaluated. The use of the monitoring information is one factor in deciding when and how to change a plan. Any amendment or revision conducted as a result of new information from monitoring would be carefully done in accordance with the NEPA and the requirements of this final rule. Rapid, narrow amendments can help plans stay current and relevant, while recognizing that more information will be available over time. Since responsible officials already have discretion to consider precautionary measures when risks to resources are uncertain during NEPA analysis, the Department decided it is not necessary to add precautionary wording to the final rule. Any significant change in resource management would need to be consistent with the sustainability and other requirements in the final rule.

Comment: Administrative change applied to monitoring program. A respondent felt modifying monitoring programs with an administrative change would pose a risk of not conducting good monitoring because changes could be done too easily.

Response: Section 219.2 requires national oversight and process for accountability for planning. In addition, a substantive change to a monitoring program via an administrative change can only be made after public notice and consideration of public comment. Monitoring design and specification of details about measurement quality objectives, techniques, and frequency are subject to changing scientific knowledge. The final rule allows monitoring programs to be changed in a timely way to respond to evolving science and to maintain scientific credibility. Additionally, monitoring programs do not rely exclusively on protocols authored by the Agency. For example, other agencies such as Environmental Protection Agency, US Geological Survey, and National Park Service possess expertise and have already incurred substantial expense developing, reviewing, and testing protocols. It will be important, especially for multi-party monitoring, to be able to evaluate and incorporate these protocols when appropriate in the plan monitoring program as new partnerships are formed.

Section 219.13—Plan Amendment and Administrative Changes

This section of the rule sets out the process for changing plans through plan amendments or administrative changes. The section would allow the responsible official to use new information obtained from the monitoring program or other sources and react to changing conditions to amend or change the plan. The Department's intent is that plans will be kept more current, effective, and relevant by the use of more frequent and efficient amendments, and administrative changes over the life of the plan, also reducing the amount of work needed for a full revision.

Plan Amendments

Plan amendments incrementally change the plan as need arises. Plan amendments could range from project specific amendments or amendments of one plan component, to the amendment of multiple plan components. For example, a monitoring evaluation report may show that a plan standard is not sufficiently protecting streambeds, indicating that a change to that standard may be needed to achieve an objective or desired condition in the plan for riparian areas. In that case, the responsible official could choose to act quickly to propose an amendment to change that particular standard.

The process requirements for plan amendments and administrative changes are simpler than those for new plan development or plan revisions in order to allow responsible officials to keep plans current and adapt to new information or changed conditions.

As discussed in § 219.6, the final rule does not require an assessment prior to initiating a plan amendment, because a new assessment will not always be necessary or useful. However, the responsible official can always choose to conduct an assessment and take additional time to develop a proposal when the potential amendment is broader or more complex or requires an updated understanding of the landscape-scale context for management. For example, a monitoring evaluation report may indicate that a new invasive species is affecting forest health on the plan area. The responsible official may want to conduct a new, focused assessment to synthesize new information about the spread of that species, how other plan areas or land management agencies are dealing with the threat, what stressors make a resource more vulnerable to the species, how the species may be impacting social or economic values, or how neighboring landowners are approaching removal of the species. The responsible official, consistent with the requirements for public participation in § 219.4, would then collaboratively develop a proposal to amend several plan components to deal with the invasive species.

All plan amendments must comply with Forest Service NEPA procedures. This final rule provides that appropriate NEPA documentation for an amendment could be an EIS, an environmental assessment (EA), or a categorical exclusion (CE) depending upon the scope and scale of the amendment and its likely effects. A proposed amendment that may create a significant environmental effect and thus require preparation of an EIS is considered a significant change in the plan for the purposes of the NFMA.

Administrative Changes

Administrative changes allow for rapid correction of errors in the plan components. In addition, other content in the plan, as identified in § 219.7(f), could be altered with an administrative change, including the monitoring plan, the identification of watersheds that are a priority for maintenance or restoration, the plan area's distinctive roles and contributions, and information about proposed or possible actions that may occur on the plan area during the life of the plan. This final rule requires the responsible official to provide public notice before issuing any administrative change. If the change would be a substantive change to the monitoring program, the responsible official must also provide an opportunity for the public to comment on the intended change and consider public concerns and suggestions before making a change. The Department believes that allowing administrative changes to other content, other than plan components, would help the responsible official rapidly adapt that content to changing conditions and respond to new information, while requiring the responsible official to keep the public informed. For example, a major fire event may make a particular watershed a new priority, or a new collaborative monitoring effort may require the addition of one or more monitoring questions.

Section 219.13—Response to Comments

The Department made minor modifications to the wording of this section from the 2011 proposed rule for clarity.

At the end of paragraph (a), the words ''(including management areas or geographic areas)'' were added to reflect the modifications of § 219.7, and to clarify that an amendment is required for any change in how or whether plan components apply to those areas.

The Department merged provisions about plan amendments found in two sections of the proposed rule (§§ 219.6(c) and 219.13(b)(1)) into one paragraph (paragraph (b)(1) of this section) of the final rule, for clarity. The provisions were removed from § 219.6(c) of the final rule.

The Department added a sentence to the end of paragraph (b)(3) of this section to make clear that a proposed amendment that may have a significant environmental effect and thus require preparation of an EIS is considered a ''significant change in the plan'' for purposes of the NFMA. The NFMA at 16 U.S.C. 1604(f)(4) states that plans shall be amended in any matter whatsoever after public notice, and, if such amendment would result in a significant change in a plan, the plan must be amended in accordance to the requirements of 16 U.S.C. 1604(e) and (f) and public involvement required by 16 U.S.C. 1604(d). Likewise, as part of the NEPA process, the responsible official must determine whether the significance of the proposed amendment's impact on the environment would require an environmental impact statement. This addition to the final rule makes the NEPA and NFMA findings of ''significance'' one finding. If under NEPA a proposed amendment may have a significant effect on the environment and an EIS must be prepared, the amendment would automatically be considered a significant change to a plan.

The Department finds that the process requirements for an EIS, the 90-day public comment period required by this final rule, and the additional requirements for amendments under this final rule meet the requirements for a amendment that results in a significant change to the plan under 16 U.S.C. 1604(f)(4). Thus, the responsible official must make only one determination of significance, under the well-known standards of NEPA.

For other plan amendments, less detailed levels of NEPA compliance such as the preparation of environmental assessment or a decision memo using a categorical exclusion may be appropriate. There is the same opportunity for persons to file objections to all proposed amendments as there is for proposed revisions (subpart B of the final rule).

Paragraph (c)(1) of both the proposed and the final rule provide that changes to ''other plan content,'' may be made via an administrative change (unlike the plan components, which require an amendment to make substantive changes). Because of the importance of the monitoring program to the public, the proposed rule provided and the final rule retained a requirement that substantive changes to the monitoring program made via an administrative change can be made only after notice and consideration of public comment. In the final rule, the Department added the word ''substantive'' to convey the Department's intent that minor changes or corrections to the monitoring program can be made via an administrative change without providing an opportunity for public comment.

Comment: Appropriate NEPA for plan amendments. Some respondents felt plans should be as simple and programmatic as possible and NEPA compliance should occur only at the project level. Another respondent said categorical exclusions should be used for minor amendments, environmental assessments for more significant amendments. Some respondents felt any action requiring an amendment should be considered a significant action, therefore requiring development of an EIS to disclose the anticipated effects of the amendment. A respondent felt it was unclear as to when an EIS was done for an amendment and when it was done for a plan revision. Other respondents felt use of categorical exclusions was inappropriate for a plan amendment as any changes to the plan should be subject to careful environmental review, scrutiny, and analysis.

Response: Requiring an EIS for all amendments would be burdensome, and unduly expensive for amendments with no significant environmental effect. It would also inhibit the more frequent use of amendments as a tool for adaptive management to keep plans relevant, current and effective between plan revisions based on changing conditions and new information. The Department requires the responsible official to follow NEPA procedures and choose the appropriate level of analysis: EIS, EA, or CE, based on the scale and scope of the amendment. As clarification, § 219.13 of the final rule clarifies that any plan amendment that may create a significant environmental effect and therefore require preparation of an EIS will be considered ''a significant change in the plan'' for the purposes of the NFMA; requiring a 90-day comment period under § 219.16. An EIS is always required for a plan revision or for development of a new plan.

Comment: Amendment verses administrative change. Some respondents felt the proposed rule was confusing regarding when an amendment and when an administrative change was to be used.

Response: Plan components are the plan's desired conditions, objectives, standards, guidelines, suitability of areas, or goals described in § 219.7. An amendment is required if a change, other than correction of a clerical error or a change needed to conform to new statutory or regulatory requirements, needs to be applied to any of these plan components.

Administrative changes are made to correct clerical errors to plan components, to alter content in the plan other than the plan components, or to achieve conformance of the plan to new statutory or regulatory requirements. A clerical error is an error of the presentation of material in the plan such as phrasing, grammar, typographic errors, or minor errors in data or mapping that were appropriately evaluated in the development of the plan, plan revision, or plan amendment. An administrative change could not otherwise be used to change plan components or the location in the plan area where plan components apply, except to conform the plan to new statutory or regulatory requirements. Changes that could be made through an administrative change may also be made as part of a plan amendment or revision instead.

Comment: Thirty-day comment period on environmental assessments (EAs). Some respondents felt more than 30 days was needed for public review of a large and complicated plan amendment supported by an EA. They proposed a three tiered public response period: 90 days for proposals requiring an EIS, 60 days for those requiring an EA, and 30 days for all others.

Response: The final rule retains the 30-day minimum comment period for a plan amendment (§ 219.16(a)). Agency practice shows 30 days can be reasonable when an EA is prepared.

Comment: Project specific plan amendments. Some respondents expressed concern with the use of project specific plan amendments because they felt that they do not get sufficient analysis, review, public input, and may not use the best available science. A respondent felt these amendments should only be allowed for unforeseen events or special circumstances. Another respondent felt the supporting NEPA documentation should include a 'no amendment' alternative which accomplishes the proposed action without amending the plan.

Response: No change was made to this provision in the final rule. Project-specific amendments are short-lived with the project, and localized to the project area. The point of a project-specific amendment is to allow a project that would otherwise not be consistent with the plan to be authorized and carried out in a manner appropriate to the particular time and place of the project, without changing how the plan applies in other respects. Project specific amendments give a way to deal with exceptions. An exception is similar to a variance to a county zoning ordinance. If the amendment changed plan components that would apply to future projects, the exception would not be applicable. Section 219.16(b) requires use of the Agency's notification requirements used for project planning at 36 CFR parts 215 or 218 for project-specific of amendment.

Comment: Amending plans under existing regulations. A respondent felt the rule should allow for the option of amending existing plans under the existing planning regulations.

Response: Final rule § 219.17(b)(2) allows amendments to existing plans to be initiated for a period of 3 years under the provisions of the prior planning regulation. This provision is unchanged from the proposed rule.

Comment: Administrative changes. Some respondents felt allowing wilderness area boundaries to be changed with administrative changes was inappropriate. Some respondents felt changes to monitoring programs should not be done administratively as these changes should be transparent and have public accountability.

Response: Wilderness area boundaries may only be changed by an act of Congress, therefore a change to the wilderness area boundaries identified in the plan would only be made to conform the plan to the congressionally mandated change, with no discretion available to the responsible official or to the public. When there is no agency discretion, an administrative change to the plan is appropriate.

The rule requirements for administrative changes will facilitate more rapid adjustment of plans. The technical aspects of monitoring may need adjustment due to new information or advances in scientific methods, or a change may be needed to reflect a new monitoring partnership or for other reasons. The responsible official must involve the public in the development of the plan monitoring program and post notice of changes to the monitoring program online. If the change to the monitoring program is substantive, the public must be given an opportunity to comment. These requirements are intended to keep the public engaged and informed of the monitoring program, while allowing the program to build on new information and stay current.

Section 219.14—Decision Documents and Planning Records

This section of the rule requires the responsible official to record approval of a new plan, plan revision, or amendment in a decision document prepared according to Forest Service's NEPA procedures and this section. This section describes requirements for decision documents and associated records for approval of plans, plan amendments, or plan revisions. These requirements will increase the transparency of the decision and the rationale for approval, and require the responsible official to document how the plan complies with the requirements in this final rule.

This section also sets forth basic requirements for the responsible official to maintain public documents related to the plan and monitoring program. It requires the responsible official to ensure that certain key documents are readily accessible to the public online and through other means, and that the planning record be available to the public.

Section 219.14—Response to Comments

Comments on this section focused on the availability of documents. The Department largely retained the wording from the 2011 proposed rule; however,

the Department did make changes for consistency in this section to reflect changes made in other sections of the rule.

At paragraph (a)(2) the proposed rule wording of ''An explanation of how the plan components meet the sustainability requirements of § 219.8 and the diversity requirements of § 219.9, taking into account the limits of Forest Service authority and the capability of the plan area'' was modified to ''An explanation of how the plan components meet the sustainability requirements of § 219.8, the diversity requirements of § 219.9, the multiple use requirements of § 219.10, and the timber requirements of § 219.11.'' The Department added the requirements to explain how plan components meet the requirements of §§ 219.10 and 219.11 to cover all the substantive requirements for plan components. The Department removed the words taking into account the limits of Forest Service authority and the capability of the plan area, because they are part of §§ 219.8–11 and § 219.1(g).

At paragraph (a)(4), the Department changed the wording from the proposed rule wording of ''taken into account and applied in the planning process,'' to ''how the best scientific information was used to inform planning, the plan components, and other plan content, including the plan monitoring program'' to be consistent with the final rule wording of § 219.3. This change was made to make clear that § 219.3 applies to every aspect of planning, and the public must be able to see and understand how it has been applied. Additional minor edits were made for clarity.

Comment: Content of decision document. Some respondents felt these proposed requirements should be reduced to what is required by the NEPA. Others felt a discussion on multiple use and timber requirements per the NFMA, and use of best available scientific information should be included.

Response: The Council on Environmental Quality NEPA regulations at 40 CFR 1505.5 requires a record of decision to identify and discuss all factors and essential considerations of national policy which were balanced by the Agency in making its decision and state how those considerations entered into its decision. The plan only provides the management direction approved by the decision, while the decision document provides the rationale for the decision; therefore, the factors used in decisionmaking are most appropriate for the discussion in the decision document. The requirements of this section will help increase transparency and public understanding of the responsible official's decisions. Based on public comment, the Department added the multiple use requirements of § 219.10 and the timber requirements of § 219.11 to the list of items (§ 219.14(a)(2)) that the responsible official address in explaining how plan components meet the requirements of the rule. Section 219.14(a)(4) of the final rule also requires the decision document to document how the best available scientific information was used to inform the planning process, the plan components, and other plan content.

Comment: Availability of planning documents on the Internet. Some respondents supported the proposed requirement to make available online assessment reports; plan decision documents; proposed plans, plan revisions, or plan amendments; public notices and environmental documents associated with a plan; the monitoring program and monitoring evaluation reports. Some respondents felt the plan should also include all documents supporting analytical conclusions made and alternatives considered throughout the planning process source data, including GIS data, the monitoring program, and any plan revision. Some respondents made specific requests about when and how documents are made available online.

Response: Section 219.14(b)(1) of the final rule requires online availability of documents including assessments, the monitoring evaluation report, the current plan and proposed plan changes or decision documents, and any public notices or environmental documents associated with the plan. The final rule keeps the wording of the proposed rule that these documents must be ''readily accessible'' online; the expectation is that the documents would be posted as soon as they are finished and formatted for public viewing. Documents that require formal notifications will be posted when formal notice is made, if not before. In addition, the final rule requires that documents identified in § 219.52(c)(1) must be available online at the time of notification of the start of the objection period.

Making all data and information used in the planning process available online would be very time-consuming and expensive. However, to ensure that units continue to make all planning records available for those who may be interested, the final rule requires the responsible official to make all documents available at the office where the plan, plan revision, or amendment was developed. The final rule does not prohibit the responsible official from using other means of making documents available.

Comment: Availability of NEPA documents. Some respondents stated the final EIS supporting a plan should be made available no later than the start of objection process.

Response: The Department requires the objection process to begin after the NEPA documents are final and made available. Section 219.52(c) lists the required items that the public notice must contain in notifying the public of the beginning of the objection process including a draft plan decision document. In addition, the final rule requires that documents identified in § 219.52(c)(1) must be available online at the time of notification of the start of the objection period.

Section 219.15—Project and Activity Consistency With the Plan

This section of the final rule provides that projects and activities authorized after approval of a plan, plan revision, or plan amendment developed pursuant to the final rule must be consistent with plan components as set forth in this section. The NFMA requires that ''resource plans and permits, contracts and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans'' (16 U.S.C. 1604(i)). However, no previous planning rule provided specific criteria to evaluate consistency of projects or activities with the plan.

This section provides that every project and activity authorized after approval of a plan, plan amendment, or plan revision developed pursuant to the final rule must be consistent with the plan and the applicable plan components as set forth in this section. Project decision documents must describe how the project or activity is consistent with the plan. This final rule specifies criteria to use to evaluate consistency with the plan components.

The Agency has experienced difficulty in the past in determining how new plan components and content in a plan apply to projects and activities approved prior to the effective date of a plan amendment or revision. With respect to such projects and activities, the rule requires that: 1) the plan decision document must expressly allow such projects to go forward or continue, and thus deem them consistent, or 2) in the absence of such express provision, the authorizing instrument (permit, contract, and so forth) approving the use, occupancy, project, or activity must be adjusted as soon as practicable to be consistent with

the plan, plan amendment, or plan revision, subject to valid existing rights.

Other types of plans may be developed for the lands or resources of the planning area. These resource plans, such as travel management plans, wild and scenic river plans, and other resource plans, may be developed for the lands or resources of the planning area. This section requires that other resource plans be consistent with the land management plan and applicable plan components. If such plans are not consistent, modifications of the resource plan must be made or amendments to the land management plan must be made to resolve any inconsistencies.

Section 219.15—Response to Comments

The Department retained the wording of the proposed rule, except for three modifications. The Department clarified the first sentence of paragraph (a)(1) to say every decision document approving a plan, plan amendment, or plan revision must state whether authorizations of occupancy and use made before the decision document may proceed unchanged.

At paragraph (d), the Department added that every project and activity must be consistent with the applicable plan components and removed those words from § 219.7(d) of the proposed rule, because this provision is more appropriate in this section of the final rule.

At paragraph (d)(3), in response to comments received on the preferred alternative, the Department modified the direction for determining consistency with guidelines to make the Department's intent more clear. Paragraph (d)(3)(i) was modified to reflect the structure of the requirement for standards in paragraph (d)(2), and now reads: ''Complies with applicable guidelines as set out in the plan.'' In paragraph (d)(3)(ii), the Department replaced ''carrying out the intent'' to ''achieving the purpose'' of the applicable guidelines.

The Department removed the wording at § 219.15(d)(3)(ii) of the proposed rule that repeated text from § 219.7(e)(1)(iv), to avoid duplication and because the reference to § 219.7(e)(1)(iv) is adequate.

Comment: Consistency requirement. Some respondents felt the proposed rule was too vague and unclear about project or activity consistency with the plan. They felt the rule needs specific criteria for determining if a project or activity is consistent with the plan, and achieving consistency may not be feasible unless guidelines are made mandatory.

Response: No previous planning rule provided specific criteria to evaluate consistency of projects or activities with the plan. The Forest Service policy was that consistency could only be determined with respect to standards and guidelines, or just standards, because an individual project alone could almost never achieve objectives and desired conditions. See the 1991 Advanced Notice of Proposed Rulemaking 56 FR 6508, 6519–6520 (Feb 15, 1991) and the 1995 Proposed Rule, at 60 FR 18886, 18902, 18909 (April 13, 1995).

The Department continues to believe that the consistency requirement cannot be interpreted to require achievement of the desired conditions or objectives of a plan by any single project or activity, but we believe that we can provide direction for consistency to move the plan area toward desired conditions and objectives, or to not preclude the eventual achievement of desired conditions or objectives, as well as direction for consistency with the other plan components.

This section requires that every project and activity authorized after the approval of a plan, plan revision or plan amendment must be consistent with the plan as provided in paragraph (d) of this section. Paragraph (d) specifies criteria to evaluate consistency, and requires that project approval documents describe how the project or activity is consistent. Given the very large number of project and activities, and the wide variety of those projects and activities, it is not feasible to provide any direction more specific than that set out in paragraph (d).

Section 219.16—Public Notifications

In this section, the final rule sets forth requirements for public notification designed to ensure that information about the planning process reaches the public in a timely and accessible manner. This section describes when public notification is required, how it must be provided, and what must be included in each notice. This section of the final rule is meant to be read with § 219.4 of the rule in mind, which sets forth direction for responsible officials to engage the public and provide opportunities for interested individuals, entities, and governments to participate in the planning process.

This final rule represents a significant new investment in public engagement designed to involve the public early and throughout the planning process. The Department is making this investment in the belief that public participation throughout the planning process will result in a more informed public, better plans, and plans that are more broadly accepted by the public than in the past. The requirements in this section respond to the consensus that people want to be informed about the various stages of the planning process, with clear parameters for when and how they can get involved.

Public input at several points during the development of the rule emphasized the importance of updating the way we provide notice to the public to ensure that we successfully reach a diverse array of people and communities and inform them about the process and how they could participate. Many people said that using only one outreach method would not reach all needed communities. In response, this section directs responsible officials to use contemporary tools to provide notice to the public, and, at a minimum, to post all notices on the relevant Forest Service Web site.

This section of the final rule provides that ''notifications may be combined where appropriate.'' This provision would allow flexibility for plan amendments to have a more streamlined, efficient process than new plans or plan revisions, where appropriate. This approach is in keeping with the public's desire and the Agency's need for a process that allows plan areas to quickly and efficiently adapt to new information and changing conditions. (see § 219.13 for further discussion.)

Section 219.16—Response to Comments

The Department made the following changes to this section of the final rule:

In the introduction to paragraph (a) the Department changed the term ''formal notifications'' to ''notifications.'' This change is a clarification.

The Department removed the requirement at paragraph (a)(1) for a formal notice for the preparation of an assessment, in response to public comments on the efficiency of the assessment process. A requirement for notice of opportunities to provide information for assessments is now in paragraph (c)(6) of this section: notice must be posted online, and additional notice may be provided in any way the responsible official deems appropriate.

The wording of paragraph (a)(1) in the final rule, formerly paragraph (a)(2) in the proposed rule, was modified to remove the words ''when appropriate'' before plan amendment. The change reflects the Department's intent in the proposed rule and responds to public comments about confusion over whether notice to initiate the development of plan amendments is required (it is). This change is not a change in requirement, this is a clarification.

At paragraph (c)(3) the Department added a new paragraph that requires that when the notice is for the purpose of inviting comments on a proposed plan, plan revision, or plan amendment, and a draft EIS is prepared, the Environmental Protection Agency (EPA) **Federal Register** notice of availability of an EIS shall serve as the required **Federal Register** notice. This change makes the procedure similar to the prior rule procedures and eliminates an additional **Federal Register** notice at the time of a DEIS.

At paragraph (c)(6), the Department modified ''plan amendment assessments'' to ''assessment reports'' in the list of public notices that may be made in any way the responsible official deems appropriate that was in paragraph (c)(5) of the proposed rule. This change clarifies how the public will receive notice of a completed assessment report. The word ''additional'' was added to the beginning of paragraph (c)(6) to make clear that, at a minimum, notice for the items in the paragraph must be posted online. This change is a clarification.

At paragraph (d), the Department added an exception for the content for public notices when the notice is for the purpose of inviting comments on a proposed plan, plan amendment, or plan revision for which a draft EIS is prepared. This change is necessary because of the change at paragraph (c)(3), stating that the **Federal Register** notice of availability for the draft EIS will serve as the required public notice. The EPA has a standard format for notices that does not include the requirements of paragraph (d). The public will be able to find the additional information online.

Comment: When appropriate. Some respondents felt proposed rule § 219.16(a)(2) wording ''when appropriate'' should be removed in reference to public notification of plan amendments.

Response: The final rule removes the wording ''when appropriate'' in relation to plan amendments in what is now § 219.16(a)(1) in the final rule, in response to public comment and to clarify the Department's intent from the proposed rule.

Comment: Notification. Some respondents felt the words ''deems appropriate'' in paragraph (c)(5) of the proposed rule should be removed, and requested clarification of what contemporary tools would be used. Some respondents requested direct notification, or notification of changes to a specific use. A respondent felt **Federal Register** notice should be mandatory for all plan amendments and any other notification such as administrative changes. Some respondents suggested changes to the proposed notification process to better inform those individuals and groups who would be most affected and interested in these activities. Some respondents felt that use of a newspaper of record is not effective since newspaper subscriptions are declining across the country.

Response: Section 219.16 of the final rule requires, at a minimum, that all public notifications must be posted online and the responsible official should use contemporary tools to provide notice to the public. These could include an array of methods, such as meetings, town halls, email, or Facebook posts. The best forms of notice will vary by plan area and over time, therefore the rule does not seek to predetermine what those tools might be. The wording ''deems appropriate'' in paragraph (c)(6) for the notices not listed in paragraph (a) allows the responsible official the flexibility to determine the notification method that best meets the needs of interested individuals, groups, and communities; therefore, it has been retained in the final rule.

Additionally, there are requirements outlined in (c)(1)–(5) for posting notices in the **Federal Register** and applicable newspaper(s) of record for the notices required in paragraph (a). The use of the **Federal Register** to give notice for all amendments and administrative changes would be inefficient for the Agency; therefore the requirements in paragraph (c) vary.

Persons desiring notification of changes to a specific use on a national forest or grassland should contact that office. A requirement for direct notification has not been added. The Department concludes that such a requirement would be unworkable, and that the forms of public notice required by this section, including the requirement that all notices be posted online, will enable informed and active public engagement.

Section 219.17—Effective Dates and Transition

This section of the final rule describes when approval of plans, plan revisions, or plan amendments would take effect and when units must begin to use the new planning regulations.

Section 219.17—Response to Comments

Many comments on this section focused on the efficiency of the process, clarity, and potential additional requirements. The Department retained the wording from the proposed rule except for the following changes:

The Department changed the wording of paragraph (a) of the proposed rule about effective dates of the proposed rule in response to public comments about the efficiency of the planning process. The final rule retains the requirement that a plan or plan revision, is effective 30 days after publication of notice of approval, and also retains that requirement for a plan amendment for which an EIS is prepared. The final rule removes the 30 day delay for amendments that do not require an EIS; such amendments are effective immediately upon publication of the notice of approval. This change in requirements improves the efficiency of amendments.

Paragraphs (b)(1)–(3) were modified slightly to reflect that the effective date of the final rule will be 30 days after the date of publication of the final rule in the **Federal Register**.

In paragraph (b)(2) of this section, the Department modified the wording and added a new first sentence to clarify that all new plan amendments initiated after the effective date of this rule must use the objections process of subpart B, even if the amendment is developed using the planning procedures of the prior planning regulation. This is a change made to require that subpart B apply to all plans, plan revisions and plan amendments initiated after the effective date of the final rule. In the rest of paragraph (b)(2) the Department: Revised the sentences to improve the ease, flow, and clarity of this paragraph, and clarified that when initiating plan amendments the optional appeal procedures are not available.

In paragraph (b)(3) of this section, the Department clarified that the objection process of subpart B of this part applies if the responsible official completing a plan process initiated prior to this part chooses objections instead of optional appeal procedures. This change was made to avoid confusion about which objection procedures would apply in that case (prior rule of December 18, 2009, or subpart B of this final rule). In addition, the Department clarified that the objection process of subpart B may be chosen only if the public is provided the opportunity to comment on a proposed plan, plan amendment, or plan revision, and associated environmental analysis. These clarifications are not a change in requirements.

In paragraph (c) the Department added wording in response to public comments to clarify that existing plans will remain in effect until revised, and that the final rule does not compel a

change to any existing plan, except as required in § 219.12(c)(1). In addition the Department added wording that none of the requirements of this part apply to projects or activities on units with plans developed or revised under a prior planning rule until the plan is revised under this part, except that projects and activities must be consistent with plan amendments developed under this final rule. These changes are not changes in requirements; the changes clarify the intent of the Department in the proposed rule. This paragraph in the final rule is needed for clarity so that all NFS units understand they are subject to the new planning rule for plan development, plan amendment, and plan revision, while still requiring NFS units to follow the plan provisions of their current plans.

Comment: Timing of compliance. Some respondents felt the rule should establish a time limit beyond which any action which is being performed under a previous regulation must be brought into compliance with this part, and the responsible official should not have discretion to apply prior planning regulation in completing a plan development, plan amendment, and plan revisions initiated before the effective date of this part. A respondent felt newly started plan amendments should follow the new planning direction without exception. Another respondent felt the rule should allow the option of amending existing plans under either the existing planning regulations or the new planning rule requirements until the current plan is revised under the new rule. Some respondents felt the rule's transition provisions should state the Agency will operate under existing plans until all legal challenges to a new plan or plan revision are resolved to avoid disruption of existing contracts.

Response: There is no transition period for new plans or plan revisions initiated after the effective date of the final rule: all new plans and plan revisions must conform to the new planning requirements in subpart A. Plan revisions that are currently ongoing or initiated prior to the effective date of the final rule may be completed using either the previous rule or the final rule. Many of the ongoing plan revision efforts have taken many years, and it could be expensive in terms of both time and costs to require them to follow the new procedures, in addition to delaying needed improvements to outdated plans. It could also be unfair to the public who have invested time in these efforts. The responsible official does have the discretion to conform an ongoing revision effort to the requirements of the new rule after providing notice to the public, if doing so would be feasible and appropriate for that effort.

For amendments, there would be a 3-year transition window during which amendments may be initiated and completed using the 2000 rule, including the 1982 procedures via the 2000 rule's transition provisions, or may conform to the new rule. After 3 years, all new plan amendments must conform to the new rule. This transition period for new amendments would give the responsible official the option to facilitate amendments for plans developed under previous rules for a limited time, using a familiar process, until full familiarity with the new rule develops.

Plan decisions will not be approved until the Agency has resolved any objections filed under subpart B. This delay of the effective date until after the objections are resolved should adequately avoid disruptions. Many legal challenges to plans go on for years, however, and it would not be workable to wait to implement a plan until after all legal challenges are resolved.

Comment: Climate change requirements for 1982 revisions. A respondent felt the rule's transition provisions should require forests currently planning revisions under the 1982 planning rule to consider climate change impacts and actions to address climate change and to reduce stressors to provide for greater habitat resiliency.

Response: The Department decided not to include this requirement in the transition provisions of the final rule. However, all NFS units are working to implement the climate change roadmap released in 2009, and are using the climate change scorecard, which requires consideration of climate change impacts, vulnerability, and adaptability, as well as monitoring and other requirements. The Department decided that the Roadmap and Scorecard implementation is the most appropriate method for working to address climate change in plan revisions currently being conducted under the 1982 rule.

Comment: Conflicts between rules. A respondent felt the proposed rule's transition section is confusing because there will be situations where the old rule can be in conflict with the new rule and the final rule should therefore include guidance to handle those conflicting situations. Another respondent also felt the entire section needs more clarity.

Response: The transition provision is important to provide a smooth change to the new rule, and is workable. Changes were made as described above to improve clarity.

Comment: Planning schedule for revisions. A respondent felt the rule should establish some schedule by which overdue plans, or ones due within the next year or two, will be revised as currently 68 plans of 127 plans are past due for revision.

Response: The Agency does not have the resources to revise all 68 plans that need revision within the next few years. The Agency posts the Chief's schedule for plan revision online at *http://www.fs.fed.us/emc/nfma/index.htm.*

Comment: Compliance with regulatory scheme. A respondent felt the Forest Service should eliminate the proposed rule § 219.2(c) (none of the requirements of the final rule applies to projects) and § 219.17(c) (projects completed under existing forest plans need only be consistent with the plan and not the 1982 rule). They believe the provisions are inconsistent with case law. They cite several judicial decisions. Another respondent felt § 219.17(c) of the proposed rule allows plans to be revised free of any obligation to demonstrate compliance with the regulatory scheme under which it was developed.

Response: The Ninth Circuit and Tenth Circuits Court of Appeals have confirmed the Agency's position that the 1982 rule was superseded by the 2000 Rule, and no longer applies. See, *Land Council* v. *McNair,* 537 F. 3d 981, 989 n. 5 (9th Cir. 2008); *Forest Guardians* v. *U.S. Forest Service,* 641 F. 3d. 423 (10th Cir. 2011). This provision is needed for clarity so that all NFS units understand they are subject to the new planning rule for plan development, plan amendment, and plan revision, but otherwise are governed by the plan provisions of their current plans. Responsible officials, who continue plan development, revisions or amendments initiated prior to the effective date of the final rule using the procedures of the 1982 rule, must comply with the 1982 rule procedures in developing those plans, plan revisions or amendments. Plan amendments initiated after the effective date of this rule, may for three years follow the 1982 rule procedures or the requirements of this rule for amendments.

Comment: Delay of project-specific plan amendments. Some respondents felt the rule should require a 30-day delay for the effective date of all project-specific plan amendments, as plan amendments are significant actions and no amendment may apply only to a single concurrent project.

Response: Not all plan amendments are significant actions. The final rule does not require a 30 day-delay for project-specific plan amendments, and provides for site-specific project amendments, in keeping with the Department's intent that the amendment process be efficient and used more frequently.

Section 219.18—Severability

If any part of this final rule is held invalid by a court, this section provides that the invalid part would be severed from the other parts of the rule, which would remain valid.

Section 219.18—Response to Comments

This section explains that it is the Department's intent that the individual provisions of the final rule be severable from each other. The Department retains the 2011 proposed rule wording in the final rule.

Comment: Invalidation of entire rule. A respondent felt if any part of the proposed rule is judged invalid by a court the rule should state the entire rule is invalid.

Response: The Department retained the provision in the final rule, because rulemaking is an extensive Departmental and public undertaking, and the entire rule should not be dismissed if a court finds only a portion of the rule is inappropriate.

Section 219.19—Definitions

This section sets out and defines the special terms used in the final subpart A. Changes to this section were made in response to public comments.

The Department added definitions for: best management practices, candidate species, conserve, disturbance regime, ecological integrity, inherent capability of the plan area, integrated resource management, maintain, management system, native species, persistence, proposed species, recreation opportunity, restore, recovery, riparian management zone, scenic character, and stressors for clarity and to define new terms.

The Department removed definitions for: Health(y), landscape character, potential wilderness areas, and resilience, because the terms are not used in the final rule. The Department moved a modified definition of species of conservation concern from § 219.19 to § 219.9. The Department removed the definition of system drivers, because the term is defined in the rule in § 219.6 as disturbance regimes, dominant ecological processes, and stressors—including wildland fire, invasive species, and climate change.

The Department modified the definitions for: assessment, collaboration, connectivity, conservation, designated areas, ecological conditions, ecosystem, focal species, landscape, multiple use, recreation setting, restoration, riparian areas, sole source aquifer, sustainability, and sustainable recreation to improve clarity.

The Department modified the definition of ''ecosystem'' to further explain and describe the key characteristics related to ecosystem composition, structure, function, and connectivity so the relationship between monitoring questions and indicators are clearly related to the ecological conditions of §§ 219.8 and 219.9.

Section 219.19—Response to Comments

Comment: Definitions for various terms. Some respondents felt more detailed definitions or explanations about specific terms should be included in the rule, including: access, aesthetic value, air quality, capability, clerical error, concurrence, coordination, cultural images, cultural sustenance, decision document, documented need, ecological integrity, educational, evaluation, extent practicable, feedbacks, fiscal capability of the unit, grasslands, identify, Indian, interested parties, irreversible damage, landscape character, no reasonable assurance, opportunity, partners, reasonably foreseeable budgets, renewable energy projects, renewable resources, scenic attractiveness, scenic integrity, small-scale reasonably foreseeable risks, spatial mosaic, spiritual, substantial and permanent impairment, sustainable management of infrastructure, transportation and utility corridors, valid existing rights, and watershed conditions.

Response: Some of the requested definitions were included in the final rule, where including a definition provides additional meaning or clarity, or where the term is uncommon terms or used with a specific meaning. Other requested definitions were not included, either because the term was not included in the final rule, or the Department used the terms in their ordinary meaning.

Comment: Requests for inclusion of definitions. Some respondents felt additional definitions should be included in the rule, including: airstrip, alternate disputes resolution methods, animal welfare, appropriately interpreted and applied, biodiversity, biological integration, completeness or wholeness, cost effectiveness, cost efficiency, default width, ecological unit, ecologically sustainable, economic efficiency, efficiency, environmental justice, healthy and resilient ecosystem, incidental recreation, Indian land, internal trailheads, materially altered, measureable progress, national historic trails, net public benefits, non-Tribal indigenous entity, primitive road, reasonable basis, recreational values, roadless area, scenic landscape character, science-based understanding, silviculture, soundscape, substantive way, sustainable multiple uses, and timely manner.

Response: The final rule either does not use the term; therefore, a definition is not provided or the final rule uses the commonly understood meaning, making definition unnecessary.

Comment: Definition of assessment. A respondent felt the definition of assessment should be revised to allow for the development of new information if and when it is necessary for a successful assessment.

Response: The Department has modified the definition to be clear that an assessment is to focus on and rapidly evaluate existing information to provide an informed basis and context for initiating a change to a plan or plan development. The need for new information may be identified in the assessment report, but development of new information is not required or intended during the assessment process.

Comment: Definition of collaboration processes. A respondent felt the Agency should define collaborative process. A respondent requested the Agency add the concept of feedback to collaboration definition.

Response: The proposed rule defined collaboration; the final rule defines both collaboration and collaborative process using the proposed rule's definition of collaboration. The definition is unchanged except that the last sentence of the proposed rule's definition was moved to § 219.4. The concept of feedback is indirectly included in the proposed rule definition. The concept of feedback is an important part of why the Department supports an adaptive framework that provides meaningful opportunities for public participation early and throughout the process. The moved sentence clarifies that under collaboration the Forest Service retains decisionmaking authority and responsibility for all decisions throughout the process.

Comment: Definitions for congressionally designated areas and administratively designated areas. A respondent felt separating of congressionally designated and administratively designated areas through the definition would help in clarifying their differences, including a

definition for national scenic and historic trail. A comment was received on the preferred alternative, asking if the lists in the definition of designated areas were exhaustive.

Response: The Department clarified the definition of designated areas in the final rule. The definition encompasses both congressionally and administratively designated areas, and provides examples of areas that are designated by each process. National scenic trails are referenced as one of the examples of a designated area, but a separate definition was not added to the final rule. The final rule provides direction for wilderness and wild and scenic rivers in § 219.10(b) separately from other designated or recommended areas because their associated legislation contains specific requirements for the Secretary of Agriculture. The final rule in § 219.10(b)(vi) provides for appropriate management of other designated or recommended areas, which would include areas such as congressionally designated national historic trails. To respond to the comment on the preferred alternative, the Department clarified the definition of designated areas to explicitly show that the list of examples is not exhaustive by removing the word ''include'' and added the words: Examples of * * * designated areas are.

Comment: Definition of connectivity. Some respondents felt the definition should remove the word ''separate'' so that it includes connectivity both within and between national forests at multiple scales, reflecting the disparate needs of different species with different capacities for mobility. A respondent said the term is not appropriate because it might trigger counterproductive litigation.

Response: Connectivity is an important part of the concept of ecological integrity. The Department therefore retained the term in the final rule, and modified it in response to public comments. The Department modified the definition of connectivity, removing the words that would limit the concept to ''separate national forest or grassland areas.'' The final rule definition is worded to apply to several scales and to identify the types of the biophysical aspects of ecological functions that the term encompasses.

Comment: Definition of conservation. Respondents felt the proposed rule definition fails to include elements of resource use and wise use, or should not include preservation or should not include management.

Response: The Department retains the definition of conservation because the definition is consistent with the use of the term in the rule. However, the Department added species to the list of resources included in the definition so that conservation is defined as the protection, preservation, management, or restoration of natural environments, ecological communities, and species.

Comment: Definition of disturbance. A respondent felt the definition of disturbance should go beyond biological resources and extend to cultural, historic, recreational, and aesthetic resources as well.

Response: In the final rule, the concept of disturbance is limited to any disruption of an ecosystem, watershed, plant and animal community, or species population: therefore the Department retained the proposed rule definition. Such disturbance may result in impacts to cultural, historic, recreation, aesthetic, or other resources or uses.

Comment: Definition of diversity. A respondent felt the rule needs a definition of ''diversity.'' One respondent requested a definition of biodiversity.

Response: When the term diversity is used alone in the rule, its meaning is the commonly understood use of the term and therefore no rule definition of the term is necessary. The final rule retains a definition of the term ecosystem diversity. The term biodiversity is not in the rule, and therefore no definition of that term is needed.

Comment: Definition of ecosystem services. Some respondents felt specific aspects of services should be included in the definition. Other respondents felt the proposed definition is too limiting to ''direct human utility.'' A respondent felt the proposed rule definition mixes services with uses and resources, making the term ''ecosystem services'' confusing.

Response: The final rule retains the proposed definition, which focuses on the ''benefits people obtain from ecosystems.'' The definition is consistent with the MUSYA mandate to ''administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom'' (16 U.S.C. 529), and allows for changing conditions and needs.

Comment: Definition of focal species. A respondent felt the definition of focal species is too narrow: it should not be limited to a small number because of fiscal capability.

Response: The Department changed the definition of focal species based on public comment to clarify the intended role of focal species in assessing the effectiveness of the plan in maintaining the diversity of plant and animal communities in the plan area, as required in § 219.9. The Department retained the concept of a small number in the final rule because the responsible official has discretion to choose the small subset of focal species that he or she determines will be useful and reasonable in providing the information necessary to make informed management decisions. The Department does not expect a focal species to be selected for every element of ecological conditions.

Comment: Definition of integrated resource management. Several respondents felt the phrase ''integrated resource management'' needed to be defined.

Response: In the final rule the term has been defined as multiple-use management that recognizes the interdependence of ecological resources and is based on the need for integrated consideration of ecological, social, and economic factors. The approach of integrated resource management considers all relevant interdependent elements of sustainability as a whole, instead of as separate resources or uses. ''Integrated resource management'' is not the same as the ''all-lands approach.'' ''Integrated resource management'' refers to the way in which the resources are to be considered, as a whole instead of by individual resource. The ''all-lands approach'' refers to the area of analysis for the planning phases, which can extend beyond the national forest and grassland boundary.

Comment: Definition of landscape. A respondent felt landscapes should not be defined as being irrespective of ownership.

Response: The Department recognizes and respects ownership boundaries. The definition applies to a perspective for assessment purposes for resources and influences that may extend beyond the NFS boundary. The Department retained the landscape term in the final rule because conditions and trends across the broader area may influence, or be influenced by projects or activities on NFS lands. Plan components would apply only the NFS lands, but the responsible official should be informed by an understanding of the broader landscape when developing plan components.

Comment: Definition of local and indigenous knowledge. Some respondents felt the rule should provide a definition for local and indigenous knowledge, and this knowledge should not be considered on the same level as scientifically- or historically-based information.

Response: Section 219.19 of the final rule retains the proposed rule's

definition for native knowledge. The final rule requires the use of the best available scientific information to inform decisions. The final rule strikes a balance for using science as an integral and foundational, but not the sole, influence on planning, allowing for other sources of information or input, including native knowledge, to be considered during the planning process.

Comment: Definition of monitoring. A respondent felt the definition of monitoring should be revised to capture the concept of measuring the response of resources to land management over time. Another respondent felt the definition should include the concepts of inventory, continuity, desired conditions, public participation, and open and transparent process.

Response: The final rule revised the proposed rule definition to remove the words ''over time and space'' to ensure that the definition is broad enough to incorporate the concept of measuring the response of resources to land management over time, or at a single instant, at a broad geographic scale, or at a specific location, depending on the objective for an individual monitoring question or indicator. The rule framework itself is based on the concept that the set of monitoring questions and indicators that make up the monitoring program will be used to inform adaptive management on the unit over time. The terms that the commenter wishes added to the definition are key concepts and terms in the rule, but adding them to the definition of monitoring is unnecessary.

Comment: Multiple use definition. Some respondents requested specific inclusions and exclusions from the definition of ''multiple use. Other respondents requested more detailed definitions or explanations about specific terms associated with § 219.10 Multiple use, such as access, aesthetic value, small-scale renewable energy projects and transportation and utility corridors.

Response: The definition does not reference specific uses or services. The definition was established by Congress at 16 U.S.C. 531. The type of direction requested by the respondents is more appropriate as part of the specific requirements of the final rule, as part of plans, or as part of projects or activities carried out under the plans.

Other terms used in § 219.10 are defined where necessary; see the first response to comments in this section for additional discussion.

Comment: Definition of participation. A respondent felt that the definition of participation be defined as engagement in activities.

Response: The Department retained the proposed rule definition for participation because the Department cannot require engagement; but it can offer participation opportunities.

Comment: Definition of productivity. A respondent felt the current definition of ''productivity'' should be amended to include economic productivity.

Response: The Department's use of the term productivity in the rule does not include economic productivity; therefore, the proposed rule definition is retained in the final rule.

Comment: Definition of restoration. Several respondents felt the definition should not include the concept of going back to ecosystem conditions that once existed, especially under changing climatic conditions. Still others felt that the definition should be clearer and more in line with definitions found in the scientific literature.

Response: The final planning rule adopts the definition advanced by the Society for Ecological Restoration International, but retains from the proposed rule (with minor word changes) the additional explanation that ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystem sustainability, resilience, and health under current and future conditions. Chapter 3 of the Final PEIS discusses the relevance of evaluating the range of natural variation in the ''Historical Range of Variability (HRV) as a Way of Understanding the Historical Nature of Ecosystems and Their Variation'' under the ''Dynamic Nature of Ecosystems'' portion of the Affected Environment discussion.

Comment: Definition of riparian area vs. riparian management zones. Some respondents felt the use of the terms ''riparian areas'' and ''riparian management zones'' between the preamble and the proposed rule were inconsistent. Some felt the proposed definition of riparian areas was outdated and did not reflect current science and understanding of riparian areas function and management.

Response: The final rule rewords the proposed rule's definition for ''riparian areas'' and adds a definition for ''riparian management zone.'' Riparian areas are ecologically defined areas of transition between terrestrial and aquatic systems and have unique characteristics, values, and functions within the landscape. Riparian management zones are portions of watersheds areas where riparian-dependent resources receive primary emphasis. ''Riparian areas'' are defined in physical and biological terms; riparian management zones are defined in administrative terms. A riparian area and a riparian management zone would overlap, but one may be wider or narrower than the other.

Comment: Definition of risk. A respondent felt the definition of ''risk'' should refer to ''probability'' and ''magnitude.''

Response: The Department retains the definition of the proposed rule for risk because ''probability and magnitude'' are equivalent to ''likelihood and severity'' in the proposed rule definition, which is ''a combination of the likelihood that a negative outcome will occur and the severity of the subsequent negative consequences.''

Comment: Definition of social science. A respondent felt the final rule should define social science.

Response: The term ''social science'' was not in the proposed rule and is not in the final rule, and therefore need not be defined. The final rule includes reference to social sustainability in the definition for sustainability.

Comment: Definition of stressor. A respondent felt the Agency should define the term stressor.

Response: The Department defines the term stressor in the final rule as a factor that may directly or indirectly degrade or impair ecosystem composition, structure, or ecological process in a manner that may impair its ecological integrity, such as invasive species, loss of connectivity, or the disruption of a natural disturbance regime.

Comment: Definition of sustainable recreation. A respondent felt the term was defined vaguely and should be deleted from the rule. A respondent felt ecosystem services and sustainable recreation are equivalent concepts but defined differently so that it is confusing. A respondent felt the definition should include the predictability of opportunities, programs, and facilities over time. A respondent said the definition should include ecologically sustainable, economically sustainable, fiscally sustainable, socially sustainable, and be focused on outcomes. A respondent objected to the inclusion of the undefined term ''social sustainability'' in the definition of sustainable recreation, because social sustainability might be an opportunity to remove hunting and fishing from the NFS.

Response: The Department decided to keep the term but modify the definition for clarity. The definition in the rule is: ''the set of recreation settings and opportunities on the National Forest System that is ecologically, economically, and socially sustainable

for present and future generations.'' In addition, the Department defined the terms economic sustainability and social sustainability as part of the definition of sustainability. The socially sustainable part of sustainable recreation (when considered within the boundaries of the NFS, which is how we have now defined it) deals largely with addressing conflicts between uses.

The Department's use of the term socially sustainable is intended to give the opposite direction as the respondent's concern, leading to support for hunting and fishing opportunities because hunting and fishing are important to sustain traditions and connect people to the land and to one another.

Comment: Definition of viable population. Some respondents felt the rule should replace ''sufficient distribution to be resilient and adaptable'' in the proposed definition and incorporate the phrase ''well-distributed in habitats throughout the plan area'' and ''high likelihood'' over a specified time period (50 years) into the definition of viable population.

Response: See the response to comments to section 219.9 for a discussion of the term well-distributed.

The final planning rule does not specifically incorporate ''high likelihood'' or a specified time period into the definition of viable population because it is difficult to interpret and measure consistently and because estimating the probabilities of maintaining a viable population of a particular species of conservation concern over a certain period time will vary from species to species and from unit to unit, depending on existing conditions and potential existing and future threats and stressors, especially those related to climate change, that may affect species differently on different NFS units.

Subpart B—Pre-Decisional Administrative Review Process

Introduction to This Subpart

Subpart B sets forth the requirements for the objection process in this final rule.

Prior to the 2000 rule, the administrative review process for plan decisions provided an opportunity for a post-decisional appeal. With this process, a plan was generally put into effect before the appeal was resolved. This scenario has often been problematic because when reviewing appeals, if a reviewing officer finds fault with a plan already in effect, the remedy can be costly to both the Forest Service and the public in terms of time and money. Such a situation can also damage public trust in the planning process. Interim direction is often put into place while the responsible official prepares further analysis and other appropriate corrections.

After receiving initial public input, reviewing public comments, and taking into account agency history and experience regarding pre- or post-decision administrative appeal processes, the Department decided to include a pre-decisional administrative review process, called an objection process, in the final rule. An objection prompts an independent administrative review by an official at a level above the deciding official and a process for resolution of issues. This process allows interested individuals to voice objections and point out potential errors or violations of law, regulations, or agency policy prior to approval and implementation of a decision. The Forest Service has successfully used a similar process since 2004 for administrative review of hazardous fuel reduction projects developed pursuant to the Healthy Forests Restoration Act.

Section 219.50—Purpose and Scope

This section states that the purpose of the subpart is to establish a process for pre-decisional administrative review of plans, plan amendments, and plan revisions.

Section 219.50—Response to Comments

This subpart describes a pre-decisional administrative review (objection) process for plans, plan amendments, or plan revisions. The Department retains the 2011 proposed rule wording in the final rule of § 219.50. To respond to comments on the preferred alternative, the Department changed the wording in § 219.50 and throughout subpart B to clarify that the parties that may object include States and Tribes as well as organizations and individuals. The preferred alternative and the proposed rule used the terms ''individual'' and ''organization'' for those who may file an objection. States and Tribes are not organizations; therefore, the Department changed the term ''organization'' to ''entity'' in sections 219.50, 219.53, 219.55 and 219.61. These modifications to subpart B are clarifications, not changes in requirements,

Comment: Objection process over appeals process. Some respondents expressed support for the objection process while some respondents want the objection process removed and replaced with the appeals process, or want to see both processes used.

Response: The Department's choice of this approach is based on two primary considerations. First, a pre-decisional objection is more consistent with the collaborative nature of this final rule and encourages interested parties to bring specific concerns forward earlier in the planning process, allowing the Forest Service a chance to consider and respond to potential problems in a plan or decision before it is approved and implemented. Second, pre-decisional objections lead to a more timely and efficient planning process, reducing waste of taxpayer and agency time and dollars spent implementing projects under plans subsequently found to be flawed.

With a pre-decisional objection process, the responsible official, the reviewing official, interested parties, and the objector have the opportunity to seek reasonable solutions to conflicting views of plan components before a responsible official approves a plan, plan amendment, or plan revision. This approach fits well with a collaborative approach to planning, and encourages resolution before a plan, plan amendment, or plan revision is approved.

The Department believes that having both a pre-decisional objection process and a post decision appeals process would be redundant and inefficient.

Section 219.51—Plans, Plan Amendments, or Plan Revisions Not Subject To Objection

This section identifies those plans, plan amendments, or plan revisions that would not be subject to the pre-decisional objection process under the final rule.

Section 219.51—Response to Comments

The Department retains the 2011 proposed rule wording in the final rule except to change the term formal comments to substantive formal comments. This change was made throughout this subpart.

Comment: Secretary decisions subject to administrative review. Some respondents felt decisions made by the Secretary or the Under Secretary for Natural Resources and Environment affecting the Forest Service should be subject to administrative review.

Response: Land management plan decisions made by the Secretary or Under Secretary for Natural Resources and Environment have never been subject to appeal or objection. The Department chooses not to change this approach. The Agency anticipates that approvals of plans, plan amendments, or plan revisions by the Secretary or

Under Secretary will continue to be rare occurrences.

Section 219.52—Giving Notice of a Plan, Plan Amendment, or Plan Revision Subject To Objection Before Approval

Section 219.52 provides additional information for providing the public notice, required by § 219.16 subpart A, that would begin the objection filing period. This notice serves three particular purposes: (1) To notify parties eligible to file objections that the objection filing period is commencing; (2) to notify parties eligible to file objections and others of the availability of planning documents and how to obtain those documents; and, (3) to establish a publicly and legally verifiable start date for the objection filing period.

Section 219.52 would require the Forest Service to make a special effort to ensure the public understands how the objection process in this subpart would be used for each plan, plan amendment, and plan revision. Specifically, the responsible official would be required to disclose the objection procedures by stating that this process will be used during scoping under the NEPA process and in the appropriate NEPA documents. Early disclosure will help ensure that those parties who may want to file objections are aware of the necessary steps to be eligible.

The final rule also requires the responsible official to make the public notice for beginning the objection filing period available to those who have requested the environmental documents or who are eligible to file an objection. This requirement is intended to ensure that the necessary information reaches those who have specifically requested it and those who could have a particular interest in the start of the objection filing period by virtue of their eligibility to file an objection.

Paragraph (c) outlines the format and content of the public notice to ensure potential objectors have necessary procedural information, can find underlying documents, and understand the process, timing, and requirements for filing an objection.

Section 219.52—Response to Comments

Changes were made to wording in this section to be consistent with changes made in response to public comments on other sections in this subpart, including changing the term ''formal comments'' to ''substantive formal comments'' and the objection periods from 30 days in the proposed rule to 45 days, or 60 days if an EIS was prepared.

The Department added a sentence to paragraph (a) of this section to allow the responsible official to choose to use the objection process for a plan, plan amendment, or plan revision initiated before the effective date of the rule even when the scoping notice had not indicated that an objection process would be used. To ensure meaningful notice is given, however, the notice that the objection process will be used must be given prior to an opportunity to provide substantive formal comment on a proposed plan, plan amendment, or revision and associated environmental analysis.

A requirement to make the documents identified in paragraph (c)(1) of this section available online at the time of public notice was added for clarity, to reflect the Department's intent.

Comment: Notice of a plan, plan amendment, or plan revision subject to objection. Some respondents felt ''making available'' the public notice for the beginning of the objection period for a plan, plan amendment, or plan revision was not adequate notification.

Response: Section 219.16(a)(3) of subpart A requires formal notification of the beginning of the objection period by posting the information online, and via the **Federal Register** and/or the newspaper of record as set forth in § 219.16(c). The term ''making available'' is used in this section to allow the responsible official the flexibility to use other tools at his or her disposal for notification, for example, sending an email to a list of interested parties or issuing a news release, in addition to the formal notifications identified in § 219.16.

Comment: Specific date for the start of the objection process. Some respondents felt there is a need for a specific publication date for the beginning of the objection period.

Response: The Department believes the matter is best addressed by having the objection filing deadline begin the day after publication of the public notice as outlined in § 219.56(b)(2). Although the Agency can request newspapers publish notices on a certain date, a publication date is not guaranteed. When publication occurs on a different date than estimated, the result could lead to confusion. By not publishing a (potentially different) starting date, the Department believes the potential for confusion is reduced or eliminated and leaves all parties with the same information.

Comment: Need to guess and predict decision. Some respondents said the objection process forces the public to guess and predict what the actual decision will be.

Response A draft plan decision document is one of the items § 219.52 (c) requires to be made available to the public when public notice of the beginning of the objection process is given. If no objections are filed, the draft, once signed would become the decision. If an objection is filed, there may be changes made for the final decision. The objection process allows objectors and interested parties to meet with the reviewing officer to try to resolve issues raised in an objection before a final plan decision. This process is more efficient and more consistent with the participatory approach used in the final rule.

Section 219.53—Who May File an Objection

This section of the rule identifies eligibility requirements for filing an objection under this subpart. This section is written in the context of § 219.4 in subpart A, which expresses the Agency's intent to involve the public early and throughout the planning process in keeping with the collaborative nature of this final rule.

Section 219.53—Response to Comments

Except for minor corrections of editorial errors, the Department retains the proposed rule wording. The Department changed the term ''formal comments'' to ''substantive formal comments.'' In the proposed rule, we used both terms; in the final rule, we used the term ''substantive formal comments'' consistently throughout. The Department clarified in paragraph (a) that objections must be based on previously submitted substantive formal comments ''attributed to the objector'' to be consistent with § 219.54(c)(7). As discussed in response to comments for § 219.50, the Department changed the term ''organizations'' to ''entities'' in this section. These changes are not changes in requirements, but are clarifications.

Comment: Substantive formal comment. Some respondents requested the rule define ''substantive formal comment.''

Response: The proposed rule included a definition for ''formal comments.'' The final rule includes instead a definition of ''substantive formal comments,'' the term used throughout this subpart in the final rule, at § 219.62 of the final rule, in response to this comment. The definition is consistent with the definition used in Agency appeal regulations 36 CFR part 215 for ''substantive comment.''

Comment: Who may file an objection? Some respondents felt limiting the opportunity for filing an objection to

those who have participated in providing substantive formal comments was the correct approach. Other respondents felt anyone should be able to file an objection.

Response: The rule requires the responsible official to engage the public early and throughout the planning process in an open and transparent way, providing opportunities for meaningful public participation to inform all stages of planning. The requirement for limiting the opportunity for filing an objection to those who have provided substantive formal comments during at least one public participation opportunity is intended to encourage public engagement throughout the planning process and help ensure that the Agency has the opportunity to hear and respond to potential problems as early as possible in the process. Without this requirement some substantive problems might not be identified until the end of the planning process.

This requirement will increase the efficiency of the planning process and the effectiveness of plans by encouraging early and meaningful public participation. Engaging the public early and often results in better identification of issues and concerns and allows the Agency to respond earlier in the process and in a way that is transparent to all members of the public.

Comment: Substantive comment submittal requirement. Some respondents felt the proposed rule requirement for participation by a formal comment submittal in order to file an objection is an undue burden on the public because organizations and individuals with limited resources cannot be expected to participate in all public involvement opportunities. Others felt it places an unreasonable limitation on the ability of citizens to participate in the objection process. Still others disagree with the basic concept of not submitting formal comments equates to not having an opportunity to object.

Response: Because the final rule requires significant investment in providing opportunities for public participation, the Department believes it is important to honor that process and ensure that issues arise as early in the process as possible, when then can best be addressed. The Department does not believe it is too high a burden for a potential objector to first engage in and provide formal substantive comments during at least one of the numerous opportunities for public participation during the planning process for a plan, plan amendment, or plan revision. Subpart B does not require participation in every one of those opportunities. This requirement should assist in the timely involvement of the public. The objection process is expected to resolve many potential conflicts by encouraging resolution before a plan, plan amendment, or plan revision is approved.

Comment: Objection eligibility. Some respondents felt the objection process forces the public to submit comments on everything in order to preserve their right to object based on submitted comments. A number of respondents stated objections should be permitted on issues raised by any party at any time.

Response: The planning process is intended to engage interested individuals and entities in an ongoing dialogue in which all substantive issues and concerns are identified. The Department decided to retain the requirements in this section to make sure that issues are identified as early as possible, by the parties interested in those issues. At the same time, this subpart recognizes that there may be issues that arise after the opportunities for public comment, and allows parties who have participated earlier to object on those issues.

Comment: Objections by other Federal agencies and Federal employees. A respondent stated that objections from other Federal agencies should be allowed. Another respondent stated that a Federal employee should be allowed to file an objection and should be allowed to include and discuss non-public information in their objection.

Response: The objection process is an administrative review opportunity for individuals and entities, other than Federal agencies. Federal agencies have other avenues for working together to resolve concerns, including consultations required by various environmental protection laws. It is expected that Federal agencies will work cooperatively during the planning process.

Federal employees who meet eligibility requirements of § 219.53(a) and choose to file an objection may do so, but not in an official capacity. They must not be on official duty or use Government property or equipment in the preparation or filing of an objection, nor may they include information only available to them in their official capacity as Federal employees.

Section 219.54—Filing an Objection

This section of the final rule sets out how to file an objection, and the minimum content that must be included.

Section 219.54—Response to Comments

Minor changes were made to this section in response to public comment. Paragraph (a) was changed to clarify that all objections must be submitted to the reviewing officer for the plan. The Department added ''other published Forest Service documents'' to (b)(2) of this section to indicate that, along with Forest Service Directives System documents and land management plans, published Forest Service documents may be referenced rather than included in an objection. The Department also clarified in Paragraph (b) that any documents not listed in (b)(1)–(4) that are referenced in an objection must be included with the objection or a web link must be provided. These minor changes and clarifications reflect public comments.

Comment: Proposed prohibition on incorporation by reference. Some respondents felt the proposed prohibition on incorporation by reference is unduly burdensome. Some felt the wording on what references are required to be included in an objection were unclear.

Response: Section 219.54(b) of the final rule retains the proposed rule wording. The Department believes the requirements are clear, and will help the reviewing officer understand the objection and review it in a timely way. The documents that can be included by reference include: Federal laws and regulations, Forest Service Directives System documents, land management plans, and other published documents, documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and formal comments previously provided to the Forest Service by the objector during a proposed plan, plan amendment, or plan revision comment period. The final rule was modified to allow for published Forest Service documents to be included by reference as well. All documents not identified in the list in § 219.54(b), or Web links to those documents, must be included with the objection, if referenced in the objection.

Comment: Internet submission of objections. Some respondents felt the rule should allow filing of objections via Internet communication.

Response: An email submittal to the appropriate email address is an acceptable form of filing an objection.

Comment: Remedy inclusion requirement. Some respondents felt requiring inclusion of a potential remedy presents an obstacle for participation in the objection process.

Response: The objection process sets the stage for meaningful dialogue on how a proposed plan, plan amendment, or plan revision could be improved. The objection, including suggesting about how the proposed plan may be improved, can be concise, but should provide a basis for dialogue to resolve concerns. The reviewing officer should be able to use the objection to engage with the objector and other interested parties during the objection period to determine an appropriate course of action.

Section 219.55—Objections Set Aside From Review

This section describes the various circumstances that would require a reviewing officer to set aside an objection from review and the notification requirements related to setting an objection aside.

Section 219.55—Response to Comments

The Department made minor changes for clarity and consistency. Comments on this section were answered in response to comments regarding § 219.53. As discussed in response to comments for § 219.50, the Department changed the term ''organization'' to ''entity'' in this section.

Section 219.56—Objection Time Periods and Process

This section details the time in which objections can be filed, how time periods are calculated, the evidence required to demonstrate a timely filing, the role and responsibilities of the reviewing officer, publication of notifications, and the reviewing officer's response requirements.

Section 219.56—Response to Comments

Two changes were made to this section. The Department lengthened the amount of time from 30 days to 60 days to file an objection if an EIS has been prepared and the Department lengthened the time from 30 days to 45 days if an EIS is not prepared. This change in procedural requirements was made to give more time to the public in response to public comment on the proposed rule. Changes to other sections in this subpart were made to be consistent with this change.

In addition, in paragraph (e) of this section, the Department added the requirement that for an objection or part of an objection related to the selection of species of conservation concern, the reviewing officer may not be the regional forester who identified those species, but must be a different line officer. The Chief may be the reviewing officer or may delegate the reviewing officer authority and responsibility to a line officer at the same administrative level as the regional forester. In addition, the Department added a requirement for the reviewing officer for the plan to convey any such objections to the appropriate line officer. These changes in requirements are needed because of the change in § 219.9(c) subpart A requiring that the regional forester, rather than the responsible official for the plan, identify the species of conservation concern.

Comment: Thirty-day comment period. Some respondents felt the 30-day time limit for filing an objection is too short.

Response: Section 219.56 was changed to modify the objection filing period to 60 days for a new plan, plan revision, or a plan amendment for which an EIS is prepared, and 45 days for amendments for which an EIS is not prepared in response to this comment.

Comment: Interested person's timeframe. Some respondents felt the proposed interested person's timeframe of 10 days is insufficient and would limit interested parties ability to fully participate in the objection process.

Response: The final rule retains the 10-day requirement. Persons who have been participating throughout the process should already be familiar with those issues, and should be able to file a request to participate within this timeframe. Granting a longer timeframe for filing a request to participate in an objection would affect the reviewing officer's ability to schedule meetings in a timely manner to discuss issues raised in the objection with the objector and interested parties, thereby delaying resolution of an objection and impacting the reviewing officer's ability to respond to all objections within the timeframe provided by § 219.57.

Section 219.57—Resolution of Objections

This section explains the Department's requirements for the process and responsibilities related to the resolution of objectives. The intent of this process is to have a meaningful dialogue with objectors and interested parties in order to resolve as many concerns as possible prior to approval of a plan, plan amendment, or plan revision.

Section 219.57—Response to Comments

The Department retains the proposed rule wording in the final rule.

Comment: Some respondents felt that not requiring a point by point written response to objections is contrary to the objective of resolving issues before decisions are made.

Response: It is the intent of the Agency that all issues raised through objection will be responded to, although the responses may not necessarily address each issue individually. Consolidating objection issues and answering with a single response may be appropriate for objection issues of a similar or related nature. Consolidated responses allow similar issues to be examined and responded to consistently and efficiently.

Section 219.58—Timing of a Plan, Plan Amendment, or Plan Revision Decision

This section describes when a responsible official could approve a plan, plan amendment, or plan revision.

Section 219.58—Response to Comments

Other than a minor correction to paragraph (c) to change ''30-day time period'' to ''allotted filing period'' to be consistent with the option of either the 60-day or 45-day time period for filing of an objection under § 219.56, the Department retains the proposed rule wording in the final rule.

Comment: A respondent felt that the 5-day business period following the objection period should be increased to 10 days.

Response: The Department determined that 5 business days are an adequate time period for an objection that was timely filed to be received by the reviewing officer, under any delivery option.

Section 219.59—Use of Other Administrative Review Processes

This section would allow for the use of other administrative review processes in lieu of the objection process in certain circumstances when the Forest Service is participating in a multi-Federal agency planning process or when a plan amendment is approved in a decision document approving a project or activity.

Section 219.59—Response to Comments

The proposed rule authorized the reviewing officer to choose whether to adopt the administrative review procedure of another Federal agency. The final rule instead gives the responsible official this authority, to better reflect the Department's intent, and consistent with the requirement for the responsible official to notify the public early in the planning process that a review process other than the objection process of this subpart would be used.

Comment: Public burden. Some respondents expressed concern about the unreasonable and unfair burden placed on the public for site-specific

plan amendments by having to respond to two processes, the NEPA appeal of project level activity and the planning NFMA objection process for planning decision.

Response: The Department recognizes there may be limited circumstances when a plan amendment decision applicable to a project and all future projects in the plan area is made at the same time as that project or activity decision. In such circumstances, the objection process applies to the plan amendment decision, and the review process of 36 CFR part 215 or 218 would apply to the project or activity decision (§ 219.59(b)). In these circumstances, while the NEPA analysis for amendment and project may be combined, the responsible official is making two separate decisions: A project or activity decision and a plan amendment that applies to all future projects or activities. Each action, project, and amendment, should be reviewed under its appropriate review procedures. A person or entity may seek review of either or both, depending upon the person's or entity's concerns.

The Department requires the public be notified during the NEPA process that the objection process will be used (unless the option provided by paragraph (a) of this section to use another process is available and chosen). The Agency's NEPA requirements serve to assure ample opportunities for notification of the public of the use of the objection process as well as the beginning of the objection process.

Section 219.60—Secretary's Authority

This section clarifies that nothing in this subpart restricts the statutory authority of the Secretary of Agriculture regarding the protection, management, or administration of NFS lands.

Section 219.60—Response to Comments

The section of the final rule is unchanged from the proposed rule. No comments were submitted by the public on this section.

Section 219.61—Information Collection Requirements

This section explains that this subpart's requirements regarding information that an objector must provide are ''information collection requirements'' as defined by 5 CFR part 1320 and that these requirements have been approved by the Office of Management and Budget.

Section 219.61—Response to Comments

This section of the final rule is unchanged from the proposed rule. No comments were submitted by the public on this section.

Section 219.62—Definitions

This section defines some of the terms and phrases used in subpart B of the proposed rule.

Section 219.62—Response to Comments

The Department has made a few minor changes throughout this section.

The final rule dropped the definition of ''formal comments'' and added a definition of ''substantive formal comments.'' This definition includes the definition of the proposed rule's term, ''formal comments,'' and added wording to clarify when comments are considered substantive. The final rule also modified the definition of ''objection period'' by replacing the proposed rule's ''30 calendar day period'' with ''allotted filing period.'' As discussed in response to comments for § 219.50, the Department changed the term ''organization'' to ''entity'' in this section.

Comment: Substantive formal comment: Some respondents requested the rule define ''substantive formal comment.''

Response: In response to this comment, and because the term ''substantive formal comment'' is now used consistently throughout this subpart, the final rule defines ''substantive formal comments.'' The definition is consistent with the definition used in Agency appeal regulations 36 CFR 215 for ''substantive comment.''

Regulatory Certifications

Regulatory Planning and Review

The Agency reviewed this final rule under U.S. Department of Agriculture (Department) procedures and Executive Order (E.O.) 13563 issued January 18, 2011, and E.O. 12866 issued September 30, 1993. 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The final rule will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This final rule will not interfere with an action taken or planned by another Agency. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. However, because of the extensive interest in National Forest System (NFS) planning and decisionmaking, this rule has been designated a significant regulatory action, although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

A cost benefit analysis, including the regulatory impact analysis requirements associated with Executive Orders 13563 and 12866 and OMB circulars, has been developed. The analysis evaluates the regulatory impact and compares the costs and benefits of implementing the final rule to the baseline, which assumes planning pursuant to the 1982 rule procedures, as allowed by the transition provisions of the 2000 planning rule (36 CFR 219.35(b), 74 FR 67073 (December 18, 2009)). This analysis is posted on the World Wide Web at: *http://www.fs.usda/planningrule,* along with other documents associated with this final rule.

The scope of this analysis is limited to programmatic or agency procedural activities related to plan development, plan revision, and plan amendment of land management plans for management units (for example, national forests, grasslands, prairies) within the NFS. No costs or benefits associated with on-the-ground projects or activities are characterized or projected. Potential procedural effects evaluated in the analysis include potential changes in agency costs for planning and changes in overall planning efficiency. In this analysis, costs refer to planning costs to the Agency. Benefits refer to the benefits of the alternatives in terms of planning efficiency and capacity for land management plans to maintain long-term health and productivity of the land for the benefits of human communities and natural resources. This analysis identifies and compares the costs and benefits associated with developing, maintaining, revising, and amending NFS land management plans under six alternatives: Alternative A the proposed NFS planning rule (proposed rule); Modified Alternative A modification of the proposed rule (final rule); Alternative B the implementation of 1982 rule procedures under the 2000 rule (No Action); Alternative C the minimum to meet the National Forest

Management Act (NFMA) and purpose and need; Alternative D a modified version of the proposed rule with an alternative approach to species diversity and an emphasis on watershed health; Alternative E a modified version of the proposed rule with emphasis on monitoring performance and collaboration. Alternative B is the no action alternative and therefore the baseline for this analysis.

The final rule includes the same concepts and underlying principles as the proposed rule. However, there are a number of changes to the rule text and to the document structure. The changes are based on public comment received during the comment period on the DEIS and the proposed rule (Alternative A).

The cost and benefits of the final rule are evaluated within the context of a planning framework consisting of the three-part learning and planning cycle: Assessment, development/revision/amendment, and monitoring. The cost-benefit analysis focuses on key activities related to this three-part planning cycle for which agency costs can be estimated with the 1982 rule procedures as a baseline. Differences in costs across alternatives are estimated when possible, but benefits are discussed qualitatively as potential changes in procedural or programmatic efficiency. The key activities for which costs were analyzed include: (1) Assessments (for example, identification and evaluation of existing information relevant to the plan area to establish a basis of information and the landscape-scale context for management prior to changing the plan); (2) public participation (for example, collaboration and public participation activities not including those required by the NFMA and NEPA); (3) development and analysis of plan revision and amendment decisions (developing of alternatives to address the need to change the plan, analyzing and comparing the effects of alternatives, notification and comment solicitation requirements under NEPA, and finalizing and documenting plan revision and plan amendment decisions); (4) science support (activities for assuring identification and use of the best available scientific information); (5) resolution of issues regarding plan revisions or plan amendments through the administrative processes of appeals or objections; (6) monitoring (limited to those monitoring activities that support planning); and (7) minimum plan maintenance (minimum expenses to maintain a plan during non-revision years, excluding assessment, collaboration, and analysis/decision costs associated specifically with plan amendments).

Primary sources of data used to estimate agency costs include recent cost-benefit analyses, business evaluations, and budget justifications for planning rules issued between 2000 and 2008 and recent historical data (1996–2009) regarding regional and unit-level budget allocations and paid expenditures for planning and monitoring activities related to planning. The 1982 rule procedures are considered the baseline for this analysis. Until a new planning rule is in place, the 1982 rule procedures are being used, as permitted by the transition provision of the 2000 rule, to develop, revise, and amend all plans. Agency costs are initially estimated for the 1982 rule procedures and then used as a baseline from which adjustments are made, based on explicit differences in planning procedures, to estimate the incremental impact of the final rule. However, it should be noted that cost projections of the final rule are speculative because there are challenges anticipating the process costs of revising and amending plans at this programmatic level of analysis. Annual costs are estimated separately for years during which units (with regional support) are engaged in plan revision and the years units are engaged in plan maintenance/amendment. The estimated costs are then aggregated to estimate total planning costs. Based on past studies and analyses of plan revisions under the 1982 rule procedures, the agency determines that plan revisions under the 1982 rule procedures will take approximately 5 years. These studies and analyses indicate that plan revisions for some units may take 7 years or longer. For estimation of average agency costs for planning over a 15-year planning cycle, it is assumed that management units will be engaged in plan revision for 3 to 4 years under the final rule and 5 years under the 1982 rule procedures, assuming annual plan maintenance or more frequent but shorter amendments than the 1982 rule procedures will be occurring for the remaining years between revision cycles.

Monitoring is assumed to occur every year, but monitoring differs slightly for plan revision years compared to maintenance years. Shorter revision periods reflect the expectation that the process for revising plans will be more efficient under the final rule because of procedural changes described below (see ''Efficiency and Cost Effectiveness Impacts''). It is also assumed that approximately 120 management units will initiate plan revision over the next 15 years (2012 through 2026). Total costs are assumed to cover activities directly related to planning (and monitoring for planning purposes) at the unit and regional office levels, as well as indirect or overhead (cost pools) activity for supporting planning activities, but do not include project-level costs. Costs associated with planning at the national office and research stations are assumed to remain relatively constant across alternatives; these costs are unknown but not expected to be substantial compared to other costs evaluated. Total costs (2009 dollars ($)) are estimated for a 15-year planning cycle and then annualized assuming a 3 percent and 7 percent discount rate. Annualized costs accrued over the 15-year period reflect the annual flow of costs that have been adjusted to acknowledge society's time value of money.

Due to the programmatic nature of the final action, the benefits derived from land management plans developed, revised, or amended under the different alternatives are not quantified. Instead, the benefits of the alternatives are assessed qualitatively for procedural or programmatic efficiency. Efficiency is a function of (1) the time and resources used (costs) to complete and maintain plans, and (2) the degree to which those plans are capable of providing direction for resource monitoring, management, and use/access that sustains multiple uses (including ecosystem services) in perpetuity and maintains long-term health and productivity of the land for the benefit of human communities and natural resources, giving due consideration to relative values of resources (that is, meets the objectives of the NFMA and other key guiding legislation).

Agency Cost Impacts

Results of the cost analysis indicate agency costs increase for some key activities and decrease for others under the final rule and alternatives. However, total annual planning costs are not projected to be substantially different between the final rule and the 1982 rule procedures. Estimates of potential differences in planning costs are complicated by the unknown effects of any future Forest Service directives that might be developed to support the final rule.

As shown in Table 1, the annual average undiscounted cost to the Agency for all planning-related activities under the final rule ($97.7 million per year) are estimated to be $4.8 million per year lower compared to the proposed rule ($102.5 million per year), and $6.3 million per year lower

compared to the 1982 rule procedures ($104 million per year).

TABLE 1—SUMMARY OF ESTIMATED ANNUAL AVERAGE COSTS OF ALTERNATIVE RULES

[In million $ per year *]

	Estimated annual average costs			Net savings/(cost) comparisons	
	Final rule	Proposed rule	1982 rule procedures	Final rule to proposed rule	Final rule to 1982 rule procedures
Annual average undiscounted costs	97.7	102.5	104	4.8	6.3
Annualized discounted costs at 3%	97	102	103	5	6
Annualized discounted costs at 7%	96.3	101.2	102.2	4.9	5.9

* Estimates are in 2009 dollars.

Assuming a 3 percent discount rate, the projected annualized cost for the final rule is estimated to be $97 million, while the projected annualized cost for the proposed rule is $102 million, implying an annualized cost difference between the final rule and the proposed rule of $5 million, while the projected annualized cost for the 1982 rule procedures is $103 million, implying a projected annualized cost difference of $6 million. Assuming a 7 percent discount rate for the same timeframe, the projected annual cost estimate for the final rule is $96.3 million compared to $102.2 million under the 1982 rule procedures.

Given the relatively small change in estimated costs, combined with the uncertainty associated with costing assumptions, estimated annual planning costs for the final rule are not projected to be substantially different from the proposed rule and the 1982 procedures. However, over a 15-year period more plan revisions and amendments are expected to be completed under the final rule as compared to the 1982 rule procedures for about the same amount of cost estimated. It is anticipated that units will have greater capacity to maintain the currency, reliability, and legitimacy of plans to meet the objectives of the MUSYA, the NFMA, and the planning rule (§ 219.1(b) and (c)): Thereby improving the quality of plans and therefore the efficiency of the planning process.

Based on the above quantitative comparison, annual average planning costs to the Agency are projected to be similar for the final rule, the proposed rule, and the 1982 procedures. A learning curve is expected under the final rule. During the initial efforts by management units to develop, revise, or amend plans under the new rule, costs are expected to reflect additional time and resources needed to adjust to a new planning framework, including training. It is likely the cost of training will decrease gradually over time. Therefore, during the first 15-year period, planning costs will be slightly elevated and not significantly different from the no-action alternative as units adjust to the new planning process and build collaborative capacity. In subsequent 15-year periods, planning costs are likely to decrease as the new process becomes more established. Planning costs in subsequent planning cycles are expected to decrease, recognizing there will still be efficiency gains during the initial planning efforts.

The cost and benefit analysis assumed eight management units will start plan revision annually. Therefore, approximately 120 management units will at least initiate plan revision over the next 15 years (2012 through 2026). This analysis also assumed each management unit would take 3 to 4 years to revise a plan under the final rule and 5 years under the 1982 rule procedures. Given these assumptions, over a 15 year period, there would be approximately 104 plan revisions completed under the final rule in contrast to an estimated 88 plans revised under the 1982 rule procedures, a net increase of 16 plans revised under the final rule.

Efficiency and Cost-Effectiveness Impacts

The numerous public meetings, forums, and roundtable discussions revealed growing concern about a variety of risks, stressors, and challenges to planning (for example, climate change; insects and disease; recreation, timber, and other shifts in demands; population growth, and other demographic shifts; water supply protection and other ecosystem support services). Addressing these types of risks and contingencies requires a larger landscape perspective, information from a broad spectrum of sources, and a framework that can facilitate adaptation to new information. The new procedural requirements under the rule are designed to recognize these needs. The requirements are intended to increase agency capacity to adapt management plans in response to new and evolving information about risks, stressors, contingencies, and management constraints as described in the section above. It is anticipated under the final rule that the Agency will be able to establish plans that are efficient and legitimate frameworks for managing resources that meet public demand in a sustainable fashion and satisfy the goals of the MUSYA and the NFMA, and that management units will be better able to keep plans updated and current with evolving science and public concerns without substantial changes in planning costs over a 15-year period.

Under the final rule, costs are projected to be redirected toward collaboration, assessment, and monitoring activities and away from development and analysis of alternatives compared to the 1982 rule procedures. Costs are also expected to be redirected more toward maintenance or plan amendments under the final rule, due in part to expectations that less time will be needed to complete plan revisions. These effects are projected to occur, in part, because of broader support and resolution of issues at earlier stages of plan revision, achieved through collaboration as well as other procedural changes.

The reallocation of efforts and costs across different phases of planning, and across key planning activities under the final rule is expected to improve overall planning efficiency. Shifts in emphasis and resources under the final rule are projected to improve the currency, reliability, and legitimacy of plans to serve as a guide for: (1) Reducing uncertainty by identifying and gathering existing and new information about conditions, trends, risks, stressors, contingencies, vulnerabilities, values/needs, contributions, and management

constraints; (2) integrating and assessing ecological, social, and economic information to determine if outputs and outcomes related to unit contributions to ecological, social, and economic conditions indicate a need to change the plan; and (3) responding to the need for change in management activities, projects, or revisions and amendments to plan components. Potential increases and/or reallocation of costs associated with assessment, analysis, and monitoring requirements for elements such as diversity and sustainability are expected to provide clearer direction for subsequent project planning. Project-level costs are not included in the analysis of land management planning costs.

Agency planning costs under the final rule are estimated to be slightly lower compared to the proposed rule and the 1982 rule procedures, however, due to relatively small differences in estimated costs, combined with uncertainty associated with costing assumptions, the estimated agency costs are not projected to be substantially different between the proposed rule, the final rule, and the 1982 rule procedures. Changes in rule requirements under the final rule will enhance planning efficiency, and more plan revisions and amendments, as well as more effective plans, are expected as a result of the final rule. Details about the potential effects of specific procedural changes on agency costs and planning efficiency are described below, by activity category.

Assessment: Slight increases in assessment costs (compared to the cost of doing an analysis of the management situation under the 1982 rule procedures) are anticipated under the final rule. This is due to an increased emphasis on characterizing factors such as assessing conditions, trends, and sustainability within a broader ecological and geographic context (landscapes), ecosystem and species diversity, climate change, as well as other system drivers, risks, threats, and vulnerabilities. Gains in cost effectiveness are achieved through other elements such as direction to rely on existing information and the removal of required prescriptive benchmark analysis. Changes in the assessment requirements and guidance are expected to increase planning efficiency and effectiveness by improving capacity to assimilate and integrate existing and new information to inform changes to the plan.

Assessments would identify and evaluate information at landscape levels and at a geographic scale based on ecological, economic, or social factors relevant to the plan area, rather than reliance on administrative boundaries. This broader approach would enhance capacity to incorporate information about conditions outside of NFS boundaries relevant to management of the plan area.

Risks and vulnerabilities to ecosystem elements and functions would be considered in assessments thereby encouraging consideration of the effects of long-term environmental or social/economic variability, events, and trends on future outputs, ecosystem services, and outcomes.

For the final rule, the level of effort, or reallocation of effort (and cost) to the assessment phase is reduced as compared with the proposed rule, due to a narrower focus on rapid review and evaluation of existing information (for example, assessments completed by States and other entities, and so forth), as well as the inclusion of a specific set of topics to focus on for the assessment, as opposed to the broader direction in the proposed rule. Requirements to discuss roles and contributions, ''need-to-change,'' as well as monitoring questions have been removed under the final rule. The 'benefits people obtain from NFS planning areas' (ecosystem services) have been highlighted under the final rule. Direction to gather and evaluate information about potential species of conservation concern is more explicit (and transparent) under the final rule. The changes in assessment requirements under the final rule are expected to improve the cost effectiveness of assessments. These changes are also designed to increase the likelihood of improving capacity to respond to changes in conditions and trends, as originally intended under the proposed rule.

Public Participation: Requirements for public participation (including collaboration) have not changed between the proposed and final rules. Costs associated with public participation are projected to increase under the final rule as compared to the 1982 rule procedures due primarily to requirements that opportunities for participation, including collaboration where feasible and appropriate, be provided throughout the planning process. Gains in cost effectiveness may occur, in part, by providing responsible officials with discretion to design collaborative strategies that meet unit-specific needs and constraints and recognize local collaborative capacity. Costs for some units may be higher where potential barriers to collaboration are present (for example, pre-existing relationships may exacerbate perceived inequities; absence of pre-existing social networks or capacity; or false commitments). Recognizing these challenges, the final rule provides responsible officials with discretion to determine the scope, methods, and timing of opportunities for public participation that are appropriate to the circumstances specific to the action being taken, and the final rule states that opportunities for collaboration be offered when feasible and appropriate. However, changes in guidance and requirements for public participation under the final rule are expected to increase planning efficiency, especially as related to the relevance and effectiveness of plans, because of the following:

(1) Improved analysis and decisionmaking efficiency during latter stages of planning due to increases in public input during early phases;

(2) Improved capacity to reduce uncertainty by gathering, verifying, and integrating information from a variety of sources, including Tribal or other forms of knowledge, within and beyond unit boundaries;

(3) Potential to offset or reduce agency monitoring costs as a result of collaboration during monitoring plan development and monitoring itself;

(4) Improved capacity to consider values and concerns for all economic sectors and social segments, including amenity-driven demographic shifts associated with local or rural communities in wildland dependent counties;

(5) Reduced need for large numbers of plan alternatives as well as time needed to complete plan revisions as a consequence of broader support and resolution of issues achieved through public participation and collaboration during early phases of final plan development;

(6) Improved perceptions regarding the legitimacy of plans and the planning process and improved ability to address issues and concerns prior to the need for litigation by increasing transparency, developing awareness of the values and expected behavior of others, and seeking greater understanding about values, needs, tradeoffs, and outcomes during earlier stages of planning; and,

(7) Building unit (and regional) capacity to overcome existing barriers to collaboration (for example, absence of social networks or capacity; perceptions about pre-existing power relationships) through training and facilitation.

Analysis and decisions (plan development, plan revision or amendment): Costs associated with analysis and decisions are estimated to decrease overall under the final rule due primarily to the effect of fewer prescriptive requirements (relative to

1982 rule procedures) regarding probable (management) actions, timber program elements, number and types of alternatives, evaluation of alternatives, and minimum management requirements. The forces affecting the cost include (1) increased emphasis on consideration of resource attributes and conditions such as sustainability, watershed health, and water supply, and (2) adaptation to new approaches for addressing species viability and diversity in the short-term (with long-term potential for gains in cost-effectiveness).

The following elements associated with the final rule are expected to increase planning efficiency by facilitating plan revisions and amendments, expanding capacity for adaptive management, and improving guidance for responding to diverse determinations of a need to change the plan:

The adoption of a coarse-filter/fine-filter approach for addressing species viability and diversity within plan components, combined with the recognition of land management and resource limits which constrain the Agency, is expected to make management units better able to develop plans that provide feasible or realistic direction for responding to species and ecosystem sustainability and recovery needs and meeting requirements for plant and animal diversity.

A greater emphasis on sustainability and ecosystem integrity in plan components is expected to facilitate restoration responses triggered by new information regarding environmental, social, and economic risks and stressors, including climate change and changes in demand for goods and services. Expected results include reduced effects from anthropogenic stressors, thereby helping to restore healthy ecosystems and compatible uses (especially in areas sensitive to disturbance and changing conditions) as well as increased protection of riparian area function.

Refocusing the use of the term ''restoration'' to focus on recovery of resiliency and ecosystem functions (instead of historical reference points) provides greater flexibility to respond to need-for-change regarding damaged ecosystems.

Greater emphasis placed on identifying each unit's role in providing ecosystem services within a broader landscape or region should facilitate the design of management responses that recognize the marginal effects or contributions of ecological, social, or economic conditions originating from outside of the traditional unit study area boundaries.

More frequent amendments expected under the final rule could potentially lead to fewer need-for-change determinations when plans are revised. Assessments and proposal steps may not be needed for some amendments.

Under the final rule, slightly more effort is re-directed to activities associated with development and analysis of plan revisions (or amendments) compared to the proposed rule. Examples of changes under the final rule that can enhance overall planning efficiency include:

- Moving ''Need-to-change'' determinations from assessments to the plan revision phase to clarify the separation between the assessment and NEPA phases;
- Clarifying how plan area ecosystems are integrated into landscape-level ecological, social, and economic sustainability;
- Refining and clarifying requirements for riparian zones; and
- Clarifying unit responsibilities for the diversity of plant and animal communities.

These changes are expected to contribute to planning efficiency by improving the capacity of plans to provide for sustainability and diversity.

Science support: Slight cost increases for science support may occur under the final rule due in part to more prescriptive wording to use the best available scientific information during the planning process to inform the planning process, plan components, and other plan content, including the monitoring program. On the other hand, requirements under the final rule for using the best available scientific information to inform decisions contribute to planning efficiency by maximizing coverage of scientific input from diverse sources, integrating science throughout all stages of planning, and taking advantage of scientific knowledge from external partners and agency research stations, thereby strengthening the decisionmaking process. Also the final rule has fewer documentation requirements, concentrating the burden of documentation on the most relevant and appropriate points in the planning process. Additional changes are made to clarify the responsible official's use of best available scientific information in informing the planning process.

Resolutions: The cost effect of a shift from a post-decisional appeals process (under the 1982 rule procedures) to a pre-decisional objection period under the final rule is difficult to project. Ongoing litigation under the current planning rule is costly and time consuming and may continue under the new rule. However, the new planning framework (i) places greater emphasis on public participation and collaboration early and throughout the planning process, (ii) adopts a pre-decisional objection process, and (iii) changes the regional office responsible official from regional forester to forest supervisor. These changes are expected to improve legitimacy and trust in the planning process and contribute to more efficient resolution of issues early in the process, prior to the plan development, plan revision or plan amendment approval. Making a decision on an objection before plan approval can be less disruptive than an appeal decision which can come months after plan implementation begins. The more frequent use of amendments expected under the final rule will keep plans more current and is expected to narrow the focus of changes over time. In addition, the assessment and monitoring phases of the planning framework are expected to build public support and improve the legitimacy and relevance of plans by providing and continually updating a transparent base of information to inform management decisions. There is no expectation of unanimous support for any given proposed plan development, plan revision or plan amendment under any of the alternatives, however early resolution of issues is expected to occur and contribute to overall planning efficiency under the final rule. Efficiency gains under the final rule are expected to be similar to the proposed rule for resolution of issues, recognizing that the objection period for actions involving environmental impact statements is extended to 60 days under the final rule and to 45 days when there is no environmental impact statement.

Monitoring: Relative increases in monitoring costs as compared to the 1982 rule procedures are anticipated as a consequence of a greater emphasis on broader input and participation in the design and implementation of monitoring, new approaches for characterizing diversity and resiliency, and two-level (plan and broad-scale) monitoring. However, over time, the two-level approach to monitoring is expected to increase monitoring efficiencies and decrease the cost of other planning related activities. Under the final rule, the two-level approach to monitoring is intended to inform the plan area management and make progress toward desired outcomes. By testing assumptions, tracking changing conditions, and assessing management effectiveness, monitoring information will inform adaptive management and lead to more effective and relevant

plans. Plan monitoring and broader-scale monitoring levels are related. The monitoring framework would require monitoring to be more consistent across units of the NFS. The final rule would mobilize multi-party monitoring resources by working across all Forest Service branches and engage partners and other Government agencies in its monitoring efforts to help reduce the cost of added monitoring requirements and provide for monitoring efforts that are complementary. There is also potential that collaboration would result in more cooperative monitoring programs with other agencies and the public. This could help leverage resources to accomplish additional monitoring.

Changes in guidance and requirements for monitoring under the final rule as compared to the 1982 rule procedures are expected to increase planning effectiveness by improving capacity to gather information and reduce uncertainty for a number of integrated ecological, social, and economic conditions, trends, risks, stressors, constraints, and values within and beyond unit boundaries.

Monitoring under the final rule focuses to a greater extent on ecosystems, habitat diversity, and smaller numbers of species to monitor (relative to MIS under Alternative B), with the intent that tracking of species diversity and habitat sustainability will be more cost-effective and reflective of unit-specific capabilities. Two-level monitoring is intended to create a more systematic and unified monitoring approach to detect effects of management within unit boundaries as well as track risks, stressors, and conditions beyond unit boundaries that affect, or are affected by, unit conditions and actions.

Emphasis on coordination between plan area monitoring and broader-scale monitoring helps ensure information is complementary, is gathered at scales appropriate to monitoring questions, reduces redundancy, and improves cost-effectiveness.

Efficiency gains under the final rule are expected to be similar to the proposed rule. Changes to monitoring requirements under the final rule should enhance those gains by: (1) Clarifying that monitoring information should inform need-to-change, (2) modifying requirements for engaging various partners in developing the monitoring program, and (3) clarifying the connection between the monitoring requirements and the requirements for diversity in § 219.9.

Distributional Impacts

Due to the programmatic nature of this rule, it is not feasible to assess distributional impacts (for example, changes in jobs, income, or other measures for social and economic conditions across demographics or economic sectors) in detail. Under the final rule, units would continue to use their timber sale program and other forest management activities to enhance timber and other forest resource values and benefits over time (similar to the 1982 procedures). Continued monitoring of recreation use is expected under the final rule as a result of continuation of the national visitor use monitoring system. Collaboration under the final rule would help assure consideration of a broad spectrum of recreational values and an integrated mix of sustainable recreation opportunities relevant to each NFS unit.

Grazing allotments are parcels or designated areas of rangeland leased or permitted to a livestock grazer. Their use is planned and monitored to maintain sustainable production and rangeland health. Plans would include plan components to maintain or restore ecological integrity of lands, including rangelands, and grazing allotment management plans would continue to be modified to be consistent with plans developed under the final rule, as they are for plans developed using the 1982 rule procedures.

In general, the final rule is designed to facilitate engagement and involvement throughout all phases of planning, thereby improving capacity to consider and incorporate values and concerns for all economic sectors and social segments affected by any given plan, plan revision, or plan amendment. The final rule is also intended to facilitate assimilation of existing or new information about local or rural, as well as national, concerns and values throughout the planning process. Increased opportunities for considering and addressing social and economic concerns through participation and collaboration under the final rule therefore apply evenly across all sectors and populations.

The final rule requires plans to have plan components that ''guide the plan area's contributions to social and economic sustainability.'' The final rule also requires that plans include a statement of the roles and contributions of the unit within a broader landscape and that assessments, plan component development, and monitoring consider social and economic conditions, including a broad spectrum of goods and services. These requirements provide a flexible means for acknowledging the varying and relative importance of plan area contributions to social and economic sustainability as it relates to a range of economic sectors and populations across units and regions.

The final rule is more prescriptive about considering and facilitating restoration of damaged resources as well as improving resource capacity to withstand environmental risks and stressors (that is, resiliency), thereby providing greater capacity for sustaining local or rural economic opportunities to benefit from forest resources and ecosystem services, including recreation/tourism and water supply/watershed health as well as restoration based activities.

Proper Consideration of Small Entities

The final rule has also been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The Department has determined this action will not have a significant economic impact on a substantial number of small entities as defined by the E.O. 13272 and SBREFA, because the final rule imposes no requirements or costs on small entities, nor does it impose requirements or costs on specific types of industries or communities. In addition, the final rule provides more opportunities for small entities to engage with the Department and become more involved in all phases of planning, thereby expanding capacity to identify and consider the needs and preferences of small entities. Timelier planning and management decisions under the final rule should increase opportunities for small entities to benefit from implementation of updated land management plans. Additional emphasis on ecosystem resiliency to facilitate restoration activities and on sustainable recreation opportunities should help sustain economic opportunities linked to local or rural communities, many of which are host to small entities. Therefore, a regulatory flexibility analysis is not required for this final rule.

Energy Effects

This final rule has been reviewed under Executive Order (E.O.) 13211 issued May 18, 2001), ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this final rule does not constitute a significant energy action as

defined in E.O. 13211. While the Agency does not manage subsurface minerals, mineral exploration and development does occur on NFS lands. Similarly, the Agency recognizes the growing demand for geothermal, wind, and solar energy development on NFS lands. Agency management of the renewable resources mandated by MUSYA recognizes ongoing and potential exploration and development while protecting and conserving these renewable resources. The final rule set out administrative procedural requirements whereby NFS land management plans are developed, revised, and amended. The final rule recognizes in § 219.10 that development of renewable and non-renewable energy resources are among the potential uses in a plan area. However, the final rule does not dictate the activities that may occur or not occur on administrative units of the NFS. Accordingly, the final rule does not have energy requirements or energy conservation potential.

Plans developed under the final rule will provide the guidance for making future project or activity resource management decisions. The final rule recognizes in § 219.10 that the placement and maintenance of infrastructure such as transmission lines are among the potential uses in a plan area. Land management plans may identify major rights-of-way corridors for utility transmission lines, pipelines, and water canals. The effects of the construction of utility transmission lines, pipelines, and canals are, of necessity, considered on a case-by-case basis as specific construction proposals. While these plans may consider the need for such facilities and may include standards and guidelines that may constrain energy exploration and development, they would not authorize construction of them; therefore, the final rule does not constitute a significant energy action within the meaning of E.O. 13211. Consistent with E.O. 13211, direction to incorporate consideration of energy supply, distribution, and use in the planning process will be included in the Agency's administrative directives for carrying out the final rule.

Environmental Impacts

This final rule establishes the administrative procedures to guide development, amendment, and revision of NFS land management plans. The Agency has prepared a final programmatic environmental impact statement to analyze possible environmental effects of the final rule, present several alternatives to the final rule, and disclose the potential environmental impacts of those alternatives. The final programmatic environmental impact statement is available on the Web at *http://www.fs.usda.gov/planningrule*.

The final rule requires plan development, amendment, or revision to follow NEPA procedures. The rule requires an EIS for plan development and plan revisions. The rule also requires that plan amendments comply with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an EIS, an EA, or a CE, depending upon the scope and scale of the amendment and its likely effects.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements for the objection process were previously approved by the Office of Management and Budget (OMB) and assigned control number 0596–0172 for the objection process included in the Title 36, Code of Federal Regulations, Part 218—Predecisional Administrative Review Processes, Subpart. A—Predecisional Administrative Review Process for Hazardous Fuel Reduction Projects Authorized by the Healthy Forests Restoration Act of 2003.

The information required by subpart B of this rule is needed for an objector to explain the nature of the objection being made to a land management plan, plan amendment, or plan revision. This final rule retains the objection process established in the CFR 218 objection regulation and does not require additional information be provided from the public. This rule does instead give direction that is more detailed to both the public and Forest Service personnel on the timelines, requirements, and procedures of the objection process.

Federalism

The Agency has considered this final rule under the requirements of Executive Order (E.O.) 13132 issued August 4, 1999, ''Federalism.'' The Agency has made an assessment that the final rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national Government and the States, nor on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency concludes that this final rule does not have Federalism implications. Moreover, § 219.4(a) of this final rule shows sensitivity to Federalism concerns by requiring the responsible official to encourage participation of State and local governments and Indian Tribes in the planning process. In addition, § 219.4(b) requires the responsible official to coordinate planning with State and local governments and Indian Tribes.

In the spirit of E.O. 13132, the Agency provided many opportunities for State and local officials, including their national representatives, to share their ideas and concerns in developing the final regulation. Respondents to the February 14, 2011, proposed rule included the following: 113 county government agencies or elected officials, 62 State government agencies, elected officials, or associations, and 18 American Indian government agency, or elected officials. Many Tribal, State, and local government agencies submitted comments requesting that collaboration and coordination be mandatory before beginning plan revisions. Some respondents suggested that forest plans be made locally and adapted to ''local management,'' ''local control,'' and ''local collaboration.'' Intergovernmental planning coordination was supported by many respondents as well. Many respondents cited Federal, Tribal, State, local, and other types of planning they felt the Agency should be careful to consider and integrate into forest plans. Respondents often agreed that the Agency's planning efforts are strengthened when achieved in careful collaboration with local governments and other local interests. Comments of this nature were sometimes followed up with considerations for ''cooperating agency'' provisions to solidify the process and outcomes to be achieved through the participation of cooperating agencies. The Department carefully considered these comments when making changes to the rule.

Consultation With Indian Tribal Governments

On September 23, 2010, the Deputy Chief for the National Forest System sent letters inviting more than 600 federally recognized Tribes and Alaska Native Corporations to begin consultation on the proposed planning rule. The Forest Service continued to conduct government-to-government consultation on the planning rule while developing the final rule. The Forest Service considers Tribal consultation as an ongoing, iterative process through the issuance of the final rule.

The Agency held 16 consultation meetings across the country in November and December 2010. During these meetings, Forest Service leaders

met with Tribal and Alaska Native Corporation leaders, or their designees, to discuss a Tribal consultation paper, which described how the draft proposed rule discussed concerns Tribes had raised during the collaborative sessions held earlier in the year. Forest Service leaders also met one-on-one with Tribal leaders that requested consultation in this manner. In July 2011, the Deputy Chief for the National Forest System sent letters encouraging federally recognized Tribes and Alaska Native Corporations to continue consult prior to release of the final rule. Tribes have continued to consult one-on-one with Forest Service leaders, as well as through regional or sub-regional consultation meetings. All of the consultation meetings that have occurred throughout development of the proposed and final rule have strengthened the government-to-government relationship with the Tribes as well as improved the final rule. Consultation is an ongoing process and can occur at any time, including following publication of the final rule.

The Agency incorporated the input received through consultation before December 13, 2010, into the proposed rule. Those concerns heard during Tribal consultation after December 13 and which were given to the Agency by October 21, 2011, were considered for incorporation in the final rule.

The Agency also held two national Tribal roundtable conference calls to provide additional opportunities for Tribes and Tribal associations to comment prior to the development of the proposed planning rule. More than 45 Tribes and Tribal associations participated in the First National Tribal Roundtable on May 3, 2010, and more than 35 Tribes and Tribal associations participated in the Second National Tribal Roundtable on August 5, 2010. Transcripts and summaries of these meetings are available on the planning rule Web site. Additionally, six Tribal roundtables were held in California, Arizona, and New Mexico.

On March 11, 2011, after publication of the proposed rule, the Forest Service held a Tribal teleconference to provide information on the proposed rule and answer questions. Sixteen Tribes participated in the discussion and had the opportunity to have their questions answered by the Ecosystem Management Coordination Director and the Associate Chief of the Forest Service. A number of Tribes submitted comments on the proposed rule during the public comment period and the content of these letters has been carefully considered in developing the final rule.

The Agency heard from Tribal leaders that the rule should clearly state how the special rights and interests of Tribes would be provided for in the planning process and show how Tribes will be engaged early throughout the planning process. They emphasized the obligation the Forest Service has to Tribes to fulfill treaty obligations and trust responsibilities, protect and honor reserved rights, and fully recognize the unique government-to-government relationship that exists between the Federal Government and Tribes. Tribal leaders also stated that the role of science in the planning process must account for traditional Tribal knowledge. In response to these concerns, the final rule recognizes and does not modify the unique government-to-government relationship between the United States and Indian Tribes. The final rule recognizes and does not modify prior existing Tribal rights, including those involving hunting, fishing, gathering, and protecting cultural and spiritual sites. The rule requires the agency to work with federally recognized Indian Tribes, government-to-government, as providing in treaties and laws and consistent with Executive orders when developing, amending, or revising plans. The final rule encourages Tribal participation in NFS planning. Further, the rule recognizes the responsibility of Forest Service officials to consult early with Tribal governments and to work cooperatively with them where planning issues affect Tribal interests. Nothing in the final rule should be construed as eliminating public input or Tribal consultation requirements for future projects conducted in accordance with the final rule. The responsible official shall request information from Tribes about native knowledge, including information about land ethics, cultural issues, and sacred and culturally significant sites, during the planning process.

At § 219.4(b)(2), for plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments. The results of the review would be displayed in the environmental impact statement for the plan. The final rule at § 219.4(a)(1)(v) requires, where appropriate, the responsible official to encourage federally recognized Tribes to seek cooperating agency status. This provides an additional opportunity for Tribes to be engaged in the planning process and provides further avenues for Tribes to provide input during the planning process. Additionally, the responsible official may participate in planning efforts of federally recognized Indian Tribes and Alaska Native Corporations, where practicable and appropriate. For federally recognized Tribes, cooperating agency status does not replace or superseded the trust responsibilities and requirements for consultation also recognized and included in the final rule.

Tribal leaders stated that they want to see non-federally recognized Tribes and groups included in the consultation or planning process, as well as the involvement of youth. Non-federally recognized groups and Tribes would be able to participate in the planning process under the public requirements in § 219.4. Section 219.4(a)(1)(ii) requires the responsible officials to encourage participation by youth, as well as low-income and minority populations.

Tribes place great emphasis on protection of water resources and want to see the planning rule include stipulations for water protection. Water resources are discussed throughout this final rule, including specifically in § 219.7 (New plan development or plan revision), § 219.8 (Sustainability), § 219.9 (Diversity of Plant and Animal Communities), and § 219.10 (Multiple Use). Tribes support a management approach that moves away from monoculture management and promotes sustainable and diverse populations of plants and animals. Section 219.9 of the final rule requires land management plans to contain components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area.

The definition of native knowledge in § 219.19 has been retained based on the feedback that we received during consultation. The definition acknowledges that native knowledge is a way of knowing or understanding the world derived from multiple generations of indigenous peoples' interactions, observations, and experiences with their ecological systems, and that it is also place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system.

Many Tribes had a variety of concerns regarding social, economic, and ecological sustainability, and suggested that the Agency specifically discuss cultural sustainability within the final rule and protect cultural resources. The definition in the final rule of

''sustainability'' notes that ''social sustainability refers to the capability of society to support the network of relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities.'' In addition, § 219.1(c) recognizes that NFS lands provide people and communities with a wide array of benefits, including ''cultural benefits.'' Section 219.4 requires opportunities for public and Tribal participation and coordination throughout the planning process. Section 219.4(a)(3) requires that the responsible official request ''information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites'' during consultation and opportunities for Tribal participation. Section 219.6(b) requires assessment content to include cultural conditions and cultural and historic resources and uses. Section 219.8 in the final rule recognizes cultural aspects of sustainability by requiring ''cultural and historic resources and uses ''be taken into account when designing plan components to guide contributions to social and economic sustainability.'' Section 219.10(b)(1)(ii) of the rule requires ''plan components * * * for a new plan or plan revision must provide for protection of cultural and historic resources,'' and ''management of areas of Tribal importance.'' The final rule also includes recognition of and requirements for ''ecosystem services,'' which include ''cultural heritage values.'' These requirements, in combination with the requirement that plan content include descriptions of a unit's roles and contributions within the broader landscape under § 219.7(e), ensure the cultural aspects of sustainability will be taken into account when developing plan components that guide unit contributions to social sustainability.

During the consultation meetings, the Agency heard from Tribal leaders that confidentiality is a big concern. To explicitly discuss confidentiality, § 219.1(e) states that the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008, Executive Order 13007 of May 24, 1996, Executive Order 13175 of November 6, 2000, laws and other requirements with respect to disclosing or withholding under the Freedom of Information Act certain information regarding reburial sites or other information that is culturally sensitive to Indian Tribe or Tribes.

The Agency has heard from Tribal leaders that they want to see sacred sites protected. The final rule requires that responsible officials request information from Tribes about sacred sites, and provides for protection of cultural and historic resources and management of areas of Tribal importance. In addition, a separate initiative by the USDA Office of Tribal Relations and the Forest Service is conducting a policy review concerning sacred sites and is consulting with Tribes during their effort. The Agency has informed Tribes of this separate initiative and how they can participate during the consultation meetings. Information that the Agency received during the planning rule consultation process regarding sacred sites has been shared with the USDA Office of Tribal Relations and the Forest Service initiative.

The Forest Service received many other comments during the Tribal consultation meetings. A number of these comments were regarding concerns that are outside of the scope of the national planning rule or that will be discussed at the local level during the development of land management plans. Tribes received responses to these comments in separate documents, which were mailed to those Tribes and Alaska Native Corporations that participated in the October and November 2010 consultation meetings following the publication of the proposed rule. Additionally, a document summarizing the comments and responses from these meetings was made available to federally recognized Tribes and Alaska Native Corporations as part of the consultation documents provided in August 2011.

Many of the public participation and other requirements in the final rule have significant potential to involve Tribes and tribal members in NFS planning and management, and to incorporate information into the process that will be relevant with regard to local effects of management on individual units, including to Tribal communities. However, pursuant to Executive Order 13175 of November 6, 2000, ''Consultation and Coordination with Indian Tribal Governments,'' the final rule itself does not have ''substantial direct effects.'' Effects, both positive and adverse, may occur at the local planning level, which is one of the many reasons the final rule includes requirements for tribal consultation as well as outreach to Tribes during public participation opportunities. Effects may also occur at the project or activity level, which have additional opportunities for public engagement.

The Agency has also determined that this final rule does not impose substantial direct compliance costs on Indian Tribal governments. This final rule does not mandate Tribal participation in NFS planning. Rather, the final rule imposes an obligation on Forest Service officials to provide Tribes an opportunity to consult and to reach out early to engage them throughout the planning process.

Takings of Private Property

The Agency analyzed this rule in accordance with the principles and criteria contained in Executive Order 12630 issued March 15, 1988, and the Agency determined that the rule does not pose the risk of a taking of private property.

Civil Justice Reform

The Agency reviewed the rule under Executive Order 12988, ''Civil Justice Reform.'' The Agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. Nevertheless, in the event that such conflicts were to be identified, the final rule, if implemented, would preempt the State or local laws or regulations found to be in conflict. However, in that case, (1) no retroactive effect would be given to this final rule; and (2) the Department would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this final rule on State, local, and Tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or Tribal governments or anyone in the private sector. Therefore, a statement under § 202 of the Act is not required.

Environmental Justice

The Department considered impacts of the final rule to civil rights and environmental justice (pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994)). If implemented, with outreach, public engagement and using NEPA procedures to document effects, this analysis concludes that no adverse civil rights or environmental justice impacts from the planning rule are anticipated to the delivery of benefits or other program outcomes on a national level for any under-represented population or to other U.S. populations or communities from the adoption of the final planning rule.

While national level impacts are not expected to be disproportionate, yet-to-

be-identified adverse impacts may be possible on a regional or local scale at the unit planning level. Differences in national level effects and regional/local level effects are the result of uneven distribution of minorities, low-income populations, and variations in regional, cultural, or traditional use, and differences in local access to resources. Impacts on the national forest level will be further examined at the unit level, including NEPA analysis for plan development, plan revision, or plan amendment and site-specific projects.

The participation efforts required by the final rule have significant potential to reach and involve diverse segments of the population that historically have not played a large role in NFS planning and management. Section 219.4(a) requires that when developing opportunities for public participation, the responsible official shall take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties as well as the accessibility of the process, opportunities, and information. The responsible official is required to be proactive and use contemporary tools, such as the Internet, to engage the public, and share information in an open way with interested parties. Requirements of § 219.4 to consider accessibility and requirements to encourage participation by youth, low-income populations, and minority populations may improve environmental justice outcomes.

The final rule includes provisions for filing an objection before the final decision if the objector has filed a substantive formal comment related to a new plan, plan revision, or plan amendment. In the past, substantive formal comments were required to be in writing and submitted during the formal comment period when developing land management plans. The final rule expands the definition of a substantive formal comment to include written or oral comments submitted or recorded during an opportunity for public participation provided during the local unit's planning process (§§ 219.4 and 219.16).

If implemented, there are no anticipated adverse or disproportionate impacts to underserved, protected groups, low income, or socially disadvantaged communities. The final rule requirements, including outreach and collaboration, and the requirement for NEPA analysis are designed to avoid adverse or disproportionate effects; therefore, mitigating measures are not necessary or appropriate for adopting or implementing the planning rule. Local site-specific mitigation may occur as NFS projects and activities are planned and executed consistent with Department policy.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

Therefore, for the reasons set forth in the preamble, the Forest Service revises part 219 of Title 36 of the Code of Federal Regulations to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land Management Planning

Sec.

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219.2 Levels of planning and responsible officials.
219.3 Role of science in planning.
219.4 Requirements for public participation.
219.5 Planning framework.
219.6 Assessment.
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219.11 Timber requirements based on the NFMA.
219.12 Monitoring.
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219.17 Effective dates and transition.
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Subpart B—Pre-Decisional Administrative Review Process

219.50 Purpose and scope.
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Authority: 5 U.S.C. 301; 16 U.S.C. 1604, 1613.

Subpart A—National Forest System Land Management Planning

§ 219.1 Purpose and applicability.

(a) This subpart sets out the planning requirements for developing, amending, and revising land management plans (also referred to as plans) for units of the National Forest System (NFS), as required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) (NFMA). This subpart also sets out the requirements for plan components and other content in land management plans. This part is applicable to all units of the NFS as defined by 16 U.S.C. 1609 or subsequent statute.

(b) Consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531) (MUSYA), the Forest Service manages the NFS to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches and concepts for the benefit of human communities and natural resources. Land management plans guide sustainable, integrated resource management of the resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas.

(c) The purpose of this part is to guide the collaborative and science-based development, amendment, and revision of land management plans that promote the ecological integrity of national forests and grasslands and other administrative units of the NFS. Plans will guide management of NFS lands so that they are ecologically sustainable and contribute to social and economic sustainability; consist of ecosystems and watersheds with ecological integrity and diverse plant and animal communities; and have the capacity to provide people and communities with ecosystem services and multiple uses that provide a range of social, economic, and ecological benefits for the present and into the future. These benefits include clean air and water; habitat for fish, wildlife, and plant communities; and opportunities for recreational, spiritual, educational, and cultural benefits.

(d) This part does not affect treaty rights or valid existing rights established by statute or legal instruments.

(e) During the planning process, the responsible official shall comply with Section 8106 of the Food, Conservation, and Energy Act of 2008 (25 U.S.C. 3056), Executive Order 13007 of May

24, 1996, Executive Order 13175 of November 6, 2000, laws, and other requirements with respect to disclosing or withholding under the Freedom of Information Act (5 U.S.C. 552) certain information regarding reburial sites or other information that is culturally sensitive to an Indian Tribe or Tribes.

(f) Plans must comply with all applicable laws and regulations, including NFMA, MUSYA, the Clean Air Act, the Clean Water Act, the Wilderness Act, and the Endangered Species Act.

(g) The responsible official shall ensure that the planning process, plan components, and other plan content are within Forest Service authority, the inherent capability of the plan area, and the fiscal capability of the unit.

§ 219.2 Levels of planning and responsible officials.

Forest Service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels—national strategic planning, NFS unit planning, and project or activity planning.

(a) *National strategic planning.* The Chief of the Forest Service is responsible for national planning, such as preparation of the Forest Service strategic plan required under the Government Performance and Results Modernization Act of 2010 (5 U.S.C. 306; 31 U.S.C. 1115–1125; 31 U.S.C. 9703–9704), which is integrated with the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the NFMA. The strategic plan establishes goals, objectives, performance measures, and strategies for management of the NFS, as well as the other Forest Service mission areas: Research and Development, State and Private Forestry, and International Programs.

(b) *National Forest System unit planning.* (1) NFS unit planning results in the development, amendment, or revision of a land management plan. A land management plan provides a framework for integrated resource management and for guiding project and activity decisionmaking on a national forest, grassland, prairie, or other administrative unit. A plan reflects the unit's expected distinctive roles and contributions to the local area, region, and Nation, and the roles for which the plan area is best suited, considering the Agency's mission, the unit's unique capabilities, and the resources and management of other lands in the vicinity. Through the adaptive planning cycle set forth in this subpart, a plan can be changed to reflect new information and changing conditions.

(2) A plan does not authorize projects or activities or commit the Forest Service to take action. A plan may constrain the Agency from authorizing or carrying out projects and activities, or the manner in which they may occur. Projects and activities must be consistent with the plan (§ 219.15). A plan does not regulate uses by the public, but a project or activity decision that regulates a use by the public under 36 CFR Part 261, Subpart B, may be made contemporaneously with the approval of a plan, plan amendment, or plan revision. Plans should not repeat laws, regulations, or program management policies, practices, and procedures that are in the Forest Service Directive System.

(3) The supervisor of the national forest, grassland, prairie, or other comparable administrative unit is the responsible official for development and approval of a plan, plan amendment, or plan revision for lands under the responsibility of the supervisor, unless a regional forester; the Chief; the Under Secretary, Natural Resources and Environment; or the Secretary acts as the responsible official. Two or more responsible officials may undertake joint planning over lands under their respective jurisdictions.

(4) A plan for a unit that contains an experimental area may not be approved without the concurrence of the appropriate research station director with respect to the direction applicable to that area, and a plan amendment applicable to an experimental area may not be approved without the concurrence of the appropriate research station director.

(5) The Chief is responsible for leadership and direction for carrying out the NFS land management planning program under this part. The Chief shall:

(i) Establish planning procedures for this part in the Forest Service Directive System in Forest Service Manual 1920—Land Management Planning and in Forest Service Handbook 1909.12—Land Management Planning Handbook.

(ii) Establish and administer a national oversight process for accountability and consistency of NFS land management planning under this part.

(iii) Establish procedures in the Forest Service Directive System for obtaining inventory data on the various renewable resources, and soil and water.

(c) *Project and activity planning.* The supervisor or district ranger is the responsible official for project and activity decisions, unless a higher-level official acts as the responsible official. Requirements for project or activity planning are established in the Forest Service Directive System. Except as provided in the plan consistency requirements in § 219.15, none of the requirements of this part apply to projects or activities.

§ 219.3 Role of science in planning.

The responsible official shall use the best available scientific information to inform the planning process required by this subpart. In doing so, the responsible official shall determine what information is the most accurate, reliable, and relevant to the issues being considered. The responsible official shall document how the best available scientific information was used to inform the assessment, the plan decision, and the monitoring program as required in §§ 219.6(a)(3) and 219.14(a)(4). Such documentation must: Identify what information was determined to be the best available scientific information, explain the basis for that determination, and explain how the information was applied to the issues considered.

§ 219.4 Requirements for public participation.

(a) *Providing opportunities for participation.* The responsible official shall provide opportunities to the public for participating in the assessment process; developing a plan proposal, including the monitoring program; commenting on the proposal and the disclosure of its environmental impacts in accompanying NEPA documents; and reviewing the results of monitoring information. When developing opportunities for public participation, the responsible official shall take into account the discrete and diverse roles, jurisdictions, responsibilities, and skills of interested and affected parties; the accessibility of the process, opportunities, and information; and the cost, time, and available staffing. The responsible official should be proactive and use contemporary tools, such as the Internet, to engage the public, and should share information in an open way with interested parties. Subject to the notification requirements in § 219.16, the responsible official has the discretion to determine the scope, methods, forum, and timing of those opportunities. The Forest Service retains decisionmaking authority and responsibility for all decisions throughout the process.

(1) *Outreach.* The responsible official shall engage the public—including Tribes and Alaska Native Corporations, other Federal agencies, State and local

governments, individuals, and public and private organizations or entities—early and throughout the planning process as required by this part, using collaborative processes where feasible and appropriate. In providing opportunities for engagement, the responsible official shall encourage participation by:

(i) Interested individuals and entities, including those interested at the local, regional, and national levels.

(ii) Youth, low-income populations, and minority populations.

(iii) Private landowners whose lands are in, adjacent to, or otherwise affected by, or whose actions may impact, future management actions in the plan area.

(iv) Federal agencies, States, counties, and local governments, including State fish and wildlife agencies, State foresters and other relevant State agencies. Where appropriate, the responsible official shall encourage States, counties, and other local governments to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of States, counties, local governments, and other Federal agencies, where practicable and appropriate.

(v) Interested or affected federally recognized Indian Tribes or Alaska Native Corporations. Where appropriate, the responsible official shall encourage federally recognized Tribes to seek cooperating agency status in the NEPA process for development, amendment, or revision of a plan. The responsible official may participate in planning efforts of federally recognized Indian Tribes and Alaska Native Corporations, where practicable and appropriate.

(2) *Consultation with federally recognized Indian Tribes and Alaska Native Corporations.* The Department recognizes the Federal Government has certain trust responsibilities and a unique legal relationship with federally recognized Indian Tribes. The responsible official shall honor the government-to-government relationship between federally recognized Indian Tribes and the Federal government. The responsible official shall provide to federally recognized Indian Tribes and Alaska Native Corporations the opportunity to undertake consultation consistent with Executive Order 13175 of November 6, 2000, and 25 U.S.C. 450 note.

(3) *Native knowledge, indigenous ecological knowledge, and land ethics.* As part of tribal participation and consultation as set forth in paragraphs (a)(1)(v) and (a)(2) of this section, the responsible official shall request information about native knowledge, land ethics, cultural issues, and sacred and culturally significant sites.

(b) *Coordination with other public planning efforts.* (1) The responsible official shall coordinate land management planning with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

(2) For plan development or revision, the responsible official shall review the planning and land use policies of federally recognized Indian Tribes (43 U.S.C. 1712(b)), Alaska Native Corporations, other Federal agencies, and State and local governments, where relevant to the plan area. The results of this review shall be displayed in the environmental impact statement (EIS) for the plan (40 CFR 1502.16(c), 1506.2). The review shall include consideration of:

(i) The objectives of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments, as expressed in their plans and policies;

(ii) The compatibility and interrelated impacts of these plans and policies;

(iii) Opportunities for the plan to address the impacts identified or contribute to joint objectives; and

(iv) Opportunities to resolve or reduce conflicts, within the context of developing the plan's desired conditions or objectives.

(3) Nothing in this section should be read to indicate that the responsible official will seek to direct or control management of lands outside of the plan area, nor will the responsible official conform management to meet non-Forest Service objectives or policies.

§ 219.5 Planning framework.

(a) Planning for a national forest, grassland, prairie, or other comparable administrative unit of the NFS is an iterative process that includes assessment (§ 219.6); developing, amending, or revising a plan (§§ 219.7 and 219.13); and monitoring (§ 219.12). These three phases of the framework are complementary and may overlap. The intent of this framework is to create a responsive planning process that informs integrated resource management and allows the Forest Service to adapt to changing conditions, including climate change, and improve management based on new information and monitoring.

(1) *Assessment.* Assessments rapidly evaluate existing information about relevant ecological, economic, and social conditions, trends, and sustainability and their relationship to the land management plan within the context of the broader landscape. The responsible official shall consider and evaluate existing and possible future conditions and trends of the plan area, and assess the sustainability of social, economic, and ecological systems within the plan area, in the context of the broader landscape (§ 219.6).

(2) *Plan development, plan amendment, or plan revision.*

(i) The process for developing or revising a plan includes: Assessment, preliminary identification of the need to change the plan based on the assessment, development of a proposed plan, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(ii) The process for amending a plan includes: Preliminary identification of the need to change the plan, development of a proposed amendment, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed amendment, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan amendment. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects.

(3) *Monitoring.* Monitoring is continuous and provides feedback for the planning cycle by testing relevant assumptions, tracking relevant conditions over time, and measuring management effectiveness (§ 219.12). The monitoring program includes plan-level and broader-scale monitoring. The plan-level monitoring program is informed by the assessment phase; developed during plan development, plan amendment, or plan revision; and implemented after plan decision. The regional forester develops broader-scale monitoring strategies. Biennial monitoring evaluation reports document whether a change to the plan or change to the monitoring program is warranted based on new information, whether a new assessment may be needed, or whether there is no need for change at that time.

(b) *Interdisciplinary team(s).* The responsible official shall establish an interdisciplinary team or teams to

prepare assessments; new plans, plan amendments, and plan revisions; and plan monitoring programs.

§ 219.6 Assessment.

The responsible official has the discretion to determine the scope, scale, and timing of an assessment described in § 219.5(a)(1), subject to the requirements of this section.

(a) *Process for plan development or revision assessments.* An assessment must be completed for the development of a new plan or for a plan revision. The responsible official shall:

(1) Identify and consider relevant existing information contained in governmental or non-governmental assessments, plans, monitoring reports, studies, and other sources of relevant information. Such sources of information may include State forest assessments and strategies, the Resources Planning Act assessment, ecoregional assessments, non-governmental reports, State comprehensive outdoor recreation plans, community wildfire protection plans, public transportation plans, State wildlife data and action plans, and relevant Agency or interagency reports, resource plans or assessments. Relevant private information, including relevant land management plans and local knowledge, will be considered if publicly available or voluntarily provided.

(2) Coordinate with or provide opportunities for the regional forester, agency staff from State and Private Forestry and Research and Development, federally recognized Indian Tribes and Alaska Native Corporations, other governmental and non-governmental parties, and the public to provide existing information for the assessment.

(3) Document the assessment in a report available to the public. The report should document information needs relevant to the topics of paragraph (b) of this section. Document in the report how the best available scientific information was used to inform the assessment (§ 219.3). Include the report in the planning record (§ 219.14).

(b) *Content of the assessment for plan development or revision.* In the assessment for plan development or revision, the responsible official shall identify and evaluate existing information relevant to the plan area for the following:

(1) Terrestrial ecosystems, aquatic ecosystems, and watersheds;

(2) Air, soil, and water resources and quality;

(3) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change;

(4) Baseline assessment of carbon stocks;

(5) Threatened, endangered, proposed and candidate species, and potential species of conservation concern present in the plan area;

(6) Social, cultural, and economic conditions;

(7) Benefits people obtain from the NFS planning area (ecosystem services);

(8) Multiple uses and their contributions to local, regional, and national economies;

(9) Recreation settings, opportunities and access, and scenic character;

(10) Renewable and nonrenewable energy and mineral resources;

(11) Infrastructure, such as recreational facilities and transportation and utility corridors;

(12) Areas of tribal importance;

(13) Cultural and historic resources and uses;

(14) Land status and ownership, use, and access patterns; and

(15) Existing designated areas located in the plan area including wilderness and wild and scenic rivers and potential need and opportunity for additional designated areas.

(c) *Plan amendment assessments.* Where the responsible official determines that a new assessment is needed to inform an amendment, the responsible official has the discretion to determine the scope, scale, process, and content for the assessment depending on the topic or topics to be addressed.

§ 219.7 New plan development or plan revision.

(a) *Plan revisions.* A plan revision creates a new plan for the entire plan area, whether the plan revision differs from the prior plan to a small or large extent. A plan must be revised at least every 15 years. But, the responsible official has the discretion to determine at any time that conditions on a plan area have changed significantly such that a plan must be revised (16 U.S.C. 1604(f)(5)).

(b) *New plan development.* New plan development is required for new NFS units. The process for developing a new plan is the same as the process for plan revision.

(c) *Process for plan development or revision.* (1) The process for developing or revising a plan includes: Public notification and participation (§§ 219.4 and 219.16), assessment (§§ 219.5 and 219.6), developing a proposed plan, considering the environmental effects of the proposal, providing an opportunity to comment on the proposed plan, providing an opportunity to object before the proposal is approved (subpart B), and, finally, approving the plan or plan revision. A new plan or plan revision requires preparation of an environmental impact statement.

(2) In developing a proposed new plan or proposed plan revision, the responsible official shall:

(i) Review relevant information from the assessment and monitoring to identify a preliminary need to change the existing plan and to inform the development of plan components and other plan content.

(ii) Consider the goals and objectives of the Forest Service strategic plan (§ 219.2(a)).

(iii) Identify the presence and consider the importance of various physical, biological, social, cultural, and historic resources on the plan area (§ 219.6), with respect to the requirements for plan components of §§ 219.8 through 219.11.

(iv) Consider conditions, trends, and stressors (§ 219.6), with respect to the requirements for plan components of §§ 219.8 through 219.11.

(v) Identify and evaluate lands that may be suitable for inclusion in the National Wilderness Preservation System and determine whether to recommend any such lands for wilderness designation.

(vi) Identify the eligibility of rivers for inclusion in the National Wild and Scenic Rivers System, unless a systematic inventory has been previously completed and documented and there are no changed circumstances that warrant additional review.

(vii) Identify existing designated areas other than the areas identified in paragraphs (c)(2)(v) and (c)(2)(vi) of this section, and determine whether to recommend any additional areas for designation. If the responsible official has the delegated authority to designate a new area or modify an existing area, then the responsible official may designate such area when approving the plan, plan amendment, or plan revision.

(viii) Identify the suitability of areas for the appropriate integration of resource management and uses, with respect to the requirements for plan components of §§ 219.8 through 219.11, including identifying lands which are not suitable for timber production (§ 219.11).

(ix) Identify the maximum quantity of timber that may be removed from the plan area (§ 219.11(d)(6)).

(x) Identify questions and indicators for the plan monitoring program (§ 219.12).

(xi) Identify potential other content in the plan (paragraph (f) of this section).

(3) The regional forester shall identify the species of conservation concern for the plan area in coordination with the responsible official.

(d) *Management areas or geographic areas.* Every plan must have management areas or geographic areas or both. The plan may identify designated or recommended designated areas as management areas or geographic areas.

(e) *Plan components.* Plan components guide future project and activity decisionmaking. The plan must indicate whether specific plan components apply to the entire plan area, to specific management areas or geographic areas, or to other areas as identified in the plan.

(1) *Required plan components.* Every plan must include the following plan components:

(i) *Desired conditions.* A desired condition is a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.

(ii) *Objectives.* An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets.

(iii) *Standards.* A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(iv) *Guidelines.* A guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met. (§ 219.15(d)(3)). Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(v) *Suitability of lands.* Specific lands within a plan area will be identified as suitable for various multiple uses or activities based on the desired conditions applicable to those lands. The plan will also identify lands within the plan area as not suitable for uses that are not compatible with desired conditions for those lands. The suitability of lands need not be identified for every use or activity. Suitability identifications may be made after consideration of historic uses and of issues that have arisen in the planning process. Every plan must identify those lands that are not suitable for timber production (§ 219.11).

(2) *Optional plan component: goals.* A plan may include goals as plan components. Goals are broad statements of intent, other than desired conditions, usually related to process or interaction with the public. Goals are expressed in broad, general terms, but do not include completion dates.

(3) *Requirements for the set of plan components.* The set of plan components must meet the requirements set forth in this part for sustainability (§ 219.8), plant and animal diversity (§ 219.9), multiple use (§ 219.10), and timber (§ 219.11).

(f) *Other content in the plan.* (1) *Other required content in the plan.* Every plan must:

(i) Identify watershed(s) that are a priority for maintenance or restoration;

(ii) Describe the plan area's distinctive roles and contributions within the broader landscape;

(iii) Include the monitoring program required by § 219.12; and

(iv) Contain information reflecting proposed and possible actions that may occur on the plan area during the life of the plan, including: the planned timber sale program; timber harvesting levels; and the proportion of probable methods of forest vegetation management practices expected to be used (16 U.S.C. 1604(e)(2) and (f)(2)). Such information is not a commitment to take any action and is not a ''proposal'' as defined by the Council on Environmental Quality regulations for implementing NEPA (40 CFR 1508.23, 42 U.S.C. 4322(2)(C)).

(2) *Optional content in the plan.* A plan may include additional content, such as potential management approaches or strategies and partnership opportunities or coordination activities.

§ 219.8 Sustainability.

The plan must provide for social, economic, and ecological sustainability within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

(a) *Ecological sustainability.* (1) *Ecosystem Integrity.* The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account:

(i) Interdependence of terrestrial and aquatic ecosystems in the plan area.

(ii) Contributions of the plan area to ecological conditions within the broader landscape influenced by the plan area.

(iii) Conditions in the broader landscape that may influence the sustainability of resources and ecosystems within the plan area.

(iv) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of terrestrial and aquatic ecosystems on the plan area to adapt to change.

(v) Wildland fire and opportunities to restore fire adapted ecosystems.

(vi) Opportunities for landscape scale restoration.

(2) *Air, soil, and water.* The plan must include plan components, including standards or guidelines, to maintain or restore:

(i) Air quality.

(ii) Soils and soil productivity, including guidance to reduce soil erosion and sedimentation.

(iii) Water quality.

(iv) Water resources in the plan area, including lakes, streams, and wetlands; ground water; public water supplies; sole source aquifers; source water protection areas; and other sources of drinking water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability).

(3) *Riparian areas.* (i) The plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity, taking into account:

(A) Water temperature and chemical composition;

(B) Blockages (uncharacteristic and characteristic) of water courses;

(C) Deposits of sediment;

(D) Aquatic and terrestrial habitats;

(E) Ecological connectivity;

(F) Restoration needs; and

(G) Floodplain values and risk of flood loss.

(ii) Plans must establish width(s) for riparian management zones around all lakes, perennial and intermittent streams, and open water wetlands, within which the plan components required by paragraph (a)(3)(i) of this section will apply, giving special attention to land and vegetation for approximately 100 feet from the edges of all perennial streams and lakes.

(A) Riparian management zone width(s) may vary based on ecological or geomorphic factors or type of water body; and will apply unless replaced by a site-specific delineation of the riparian area.

(B) Plan components must ensure that no management practices causing detrimental changes in water temperature or chemical composition, blockages of water courses, or deposits of sediment that seriously and adversely affect water conditions or fish habitat shall be permitted within the riparian management zones or the site-specific delineated riparian areas.

(4) *Best management practices for water quality.* The Chief shall establish requirements for national best management practices for water quality in the Forest Service Directive System. Plan components must ensure implementation of these practices.

(b) *Social and economic sustainability.* The plan must include plan components, including standards or guidelines, to guide the plan area's contribution to social and economic sustainability, taking into account:

(1) Social, cultural, and economic conditions relevant to the area influenced by the plan;

(2) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character;

(3) Multiple uses that contribute to local, regional, and national economies in a sustainable manner;

(4) Ecosystem services;

(5) Cultural and historic resources and uses; and

(6) Opportunities to connect people with nature.

§ 219.9 Diversity of plant and animal communities.

This section adopts a complementary ecosystem and species-specific approach to maintaining the diversity of plant and animal communities and the persistence of native species in the plan area. Compliance with the ecosystem requirements of paragraph (a) is intended to provide the ecological conditions to both maintain the diversity of plant and animal communities and support the persistence of most native species in the plan area. Compliance with the requirements of paragraph (b) is intended to provide for additional ecological conditions not otherwise provided by compliance with paragraph (a) for individual species as set forth in paragraph (b). The plan must provide for the diversity of plant and animal communities, within Forest Service authority and consistent with the inherent capability of the plan area, as follows:

(a) *Ecosystem plan components.* (1) *Ecosystem integrity.* As required by § 219.8(a), the plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.

(2) *Ecosystem diversity.* The plan must include plan components, including standards or guidelines, to maintain or restore the diversity of ecosystems and habitat types throughout the plan area. In doing so, the plan must include plan components to maintain or restore:

(i) Key characteristics associated with terrestrial and aquatic ecosystem types;

(ii) Rare aquatic and terrestrial plant and animal communities; and

(iii) The diversity of native tree species similar to that existing in the plan area.

(b) *Additional, species-specific plan components.* (1) The responsible official shall determine whether or not the plan components required by paragraph (a) of this section provide the ecological conditions necessary to: contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern within the plan area. If the responsible official determines that the plan components required in paragraph (a) are insufficient to provide such ecological conditions, then additional, species-specific plan components, including standards or guidelines, must be included in the plan to provide such ecological conditions in the plan area.

(2) If the responsible official determines that it is beyond the authority of the Forest Service or not within the inherent capability of the plan area to maintain or restore the ecological conditions to maintain a viable population of a species of conservation concern in the plan area, then the responsible official shall:

(i) Document the basis for that determination (§ 219.14(a)); and

(ii) Include plan components, including standards or guidelines, to maintain or restore ecological conditions within the plan area to contribute to maintaining a viable population of the species within its range. In providing such plan components, the responsible official shall coordinate to the extent practicable with other Federal, State, Tribal, and private land managers having management authority over lands relevant to that population.

(c) *Species of conservation concern.* For purposes of this subpart, a species of conservation concern is a species, other than federally recognized threatened, endangered, proposed, or candidate species, that is known to occur in the plan area and for which the regional forester has determined that the best available scientific information indicates substantial concern about the species' capability to persist over the long-term in the plan area.

§ 219.10 Multiple use.

While meeting the requirements of §§ 219.8 and 219.9, the plan must provide for ecosystem services and multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish, within Forest Service authority and the inherent capability of the plan area as follows:

(a) *Integrated resource management for multiple use.* The plan must include plan components, including standards or guidelines, for integrated resource management to provide for ecosystem services and multiple uses in the plan area. When developing plan components for integrated resource management, to the extent relevant to the plan area and the public participation process and the requirements of §§ 219.7, 219.8, 219.9, and 219.11, the responsible official shall consider:

(1) Aesthetic values, air quality, cultural and heritage resources, ecosystem services, fish and wildlife species, forage, geologic features, grazing and rangelands, habitat and habitat connectivity, recreation settings and opportunities, riparian areas, scenery, soil, surface and subsurface water quality, timber, trails, vegetation, viewsheds, wilderness, and other relevant resources and uses.

(2) Renewable and nonrenewable energy and mineral resources.

(3) Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors.

(4) Opportunities to coordinate with neighboring landowners to link open spaces and take into account joint management objectives where feasible and appropriate.

(5) Habitat conditions, subject to the requirements of § 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence, and other activities (in

collaboration with federally recognized Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments).

(6) Land status and ownership, use, and access patterns relevant to the plan area.

(7) Reasonably foreseeable risks to ecological, social, and economic sustainability.

(8) System drivers, including dominant ecological processes, disturbance regimes, and stressors, such as natural succession, wildland fire, invasive species, and climate change; and the ability of the terrestrial and aquatic ecosystems on the plan area to adapt to change (§ 219.8);

(9) Public water supplies and associated water quality.

(10) Opportunities to connect people with nature.

(b) *Requirements for plan components for a new plan or plan revision.* (1) The plan must include plan components, including standards or guidelines, to provide for:

(i) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character. Recreation opportunities may include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.

(ii) Protection of cultural and historic resources.

(iii) Management of areas of tribal importance.

(iv) Protection of congressionally designated wilderness areas as well as management of areas recommended for wilderness designation to protect and maintain the ecological and social characteristics that provide the basis for their suitability for wilderness designation.

(v) Protection of designated wild and scenic rivers as well as management of rivers found eligible or determined suitable for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.

(vi) Appropriate management of other designated areas or recommended designated areas in the plan area, including research natural areas.

(2) Other plan components for integrated resource management to provide for multiple use as necessary.

§ 219.11 Timber requirements based on the NFMA.

While meeting the requirements of §§ 219.8 through 219.10, the plan must include plan components, including standards or guidelines, and other plan content regarding timber management within Forest Service authority and the inherent capability of the plan area, as follows:

(a) *Lands not suited for timber production.* (1) The responsible official shall identify lands within the plan area as not suited for timber production if any one of the following factors applies:

(i) Statute, Executive order, or regulation prohibits timber production on the land;

(ii) The Secretary of Agriculture or the Chief has withdrawn the land from timber production;

(iii) Timber production would not be compatible with the achievement of desired conditions and objectives established by the plan for those lands;

(iv) The technology is not currently available for conducting timber harvest without causing irreversible damage to soil, slope, or other watershed conditions;

(v) There is no reasonable assurance that such lands can be adequately restocked within 5 years after final regeneration harvest; or

(vi) The land is not forest land.

(2) The responsible official shall review lands identified in the plan as not suited for timber production at least once every 10 years, or as otherwise prescribed by law, to determine whether conditions have changed so that they have become suitable for timber production. As a result of this 10-year review, the plan may be amended to identify any such lands as suitable for timber production, if warranted by changed conditions.

(b) *Timber harvest for purposes of timber production.* A plan that identifies lands as suitable for timber production must include plan components, including standards or guidelines, to guide timber harvest for timber production or for other multiple use purposes on such lands.

(c) *Timber harvest for purposes other than timber production.* Except as provided in paragraph (d) of this section, the plan may include plan components to allow for timber harvest for purposes other than timber production throughout the plan area, or portions of the plan area, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan in order to protect other multiple-use values, and for salvage, sanitation, or public health or safety. Examples of using timber harvest to protect other multiple use values may include improving wildlife or fish habitat, thinning to reduce fire risk, or restoring meadow or savanna ecosystems where trees have invaded.

(d) *Limitations on timber harvest.* Whether timber harvest would be for the purposes of timber production or other purposes, plan components, including standards or guidelines, must ensure the following:

(1) No timber harvest for the purposes of timber production may occur on lands not suited for timber production.

(2) Timber harvest would occur only where soil, slope, or other watershed conditions would not be irreversibly damaged;

(3) Timber harvest would be carried out in a manner consistent with the protection of soil, watershed, fish, wildlife, recreation, and aesthetic resources.

(4) Where plan components will allow clearcutting, seed tree cutting, shelterwood cutting, or other cuts designed to regenerate an even-aged stand of timber, the plan must include standards limiting the maximize size for openings that may be cut in one harvest operation, according to geographic areas, forest types, or other suitable classifications. Except as provided in paragraphs (d)(4)(i) through (iii) of this section, this limit may not exceed 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 80 acres for the southern yellow pine types of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Oklahoma, and Texas; 100 acres for the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types.

(i) Plan standards may allow for openings larger than those specified in paragraph (d)(4) of this section to be cut in one harvest operation where the responsible official determines that larger harvest openings are necessary to help achieve desired ecological conditions in the plan area. If so, standards for exceptions shall include the particular conditions under which the larger size is permitted and must set a maximum size permitted under those conditions.

(ii) Plan components may allow for size limits exceeding those established in paragraphs (d)(4) and (d)(4)(i) of this section on an individual timber sale basis after 60 days public notice and review by the regional forester.

(iii) The plan maximum size for openings to be cut in one harvest operation shall not apply to the size of openings harvested as a result of natural catastrophic conditions such as fire, insect and disease attack, or windstorm (16 U.S.C. 1604(g)(3)(F)(iv)).

(5) Timber will be harvested from NFS lands only where such harvest would comply with the resource protections set out in sections 6(g)(3)(E) and (F) of the NFMA (16 U.S.C. 1604(g)(3)(E) and (F)). Some of these

requirements are listed in paragraphs (d)(2) to (d)(4) of this section.

(6) The quantity of timber that may be sold from the national forest is limited to an amount equal to or less than that which can be removed from such forest annually in perpetuity on a sustained-yield basis. This limit may be measured on a decadal basis. The plan may provide for departures from this limit as provided by the NFMA when departure would be consistent with the plan's desired conditions and objectives. Exceptions for departure from this limit on the quantity sold may be made only after a public review and comment period of at least 90 days. The Chief must include in the Forest Service Directive System procedures for estimating the quantity of timber that can be removed annually in perpetuity on a sustained-yield basis, and exceptions, consistent with 16 U.S.C. 1611.

(7) The regeneration harvest of even-aged stands of trees is limited to stands that generally have reached the culmination of mean annual increment of growth. This requirement would apply only to regeneration harvest of even-aged stands on lands identified as suitable for timber production and where timber production is the primary purpose for the harvest. Plan components may allow for exceptions, set out in 16 U.S.C. 1604(m), only if such harvest is consistent with the other plan components of the land management plan.

§ 219.12 Monitoring.

(a) *Plan monitoring program.* (1) The responsible official shall develop a monitoring program for the plan area and include it in the plan. Monitoring information should enable the responsible official to determine if a change in plan components or other plan content that guide management of resources on the plan area may be needed. The development of the plan monitoring program must be coordinated with the regional forester and Forest Service State and Private Forestry and Research and Development. Responsible officials for two or more administrative units may jointly develop their plan monitoring programs.

(2) The plan monitoring program sets out the plan monitoring questions and associated indicators. Monitoring questions and associated indicators must be designed to inform the management of resources on the plan area, including by testing relevant assumptions, tracking relevant changes, and measuring management effectiveness and progress toward achieving or maintaining the plan's desired conditions or objectives. Questions and indicators should be based on one or more desired conditions, objectives, or other plan components in the plan, but not every plan component needs to have a corresponding monitoring question.

(3) The plan monitoring program should be coordinated and integrated with relevant broader-scale monitoring strategies (paragraph (b) of this section) to ensure that monitoring is complementary and efficient, and that information is gathered at scales appropriate to the monitoring questions.

(4) Subject to the requirements of paragraph (a)(5) of this section, the responsible official has the discretion to set the scope and scale of the plan monitoring program, after considering:

(i) Information needs identified through the planning process as most critical for informed management of resources on the plan area; and

(ii) The financial and technical capabilities of the Agency.

(5) Each plan monitoring program must contain one or more monitoring questions and associated indicators addressing each of the following:

(i) The status of select watershed conditions.

(ii) The status of select ecological conditions including key characteristics of terrestrial and aquatic ecosystems.

(iii) The status of focal species to assess the ecological conditions required under § 219.9.

(iv) The status of a select set of the ecological conditions required under § 219.9 to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern.

(v) The status of visitor use, visitor satisfaction, and progress toward meeting recreation objectives.

(vi) Measurable changes on the plan area related to climate change and other stressors that may be affecting the plan area.

(vii) Progress toward meeting the desired conditions and objectives in the plan, including for providing multiple use opportunities.

(viii) The effects of each management system to determine that they do not substantially and permanently impair the productivity of the land (16 U.S.C. 1604(g)(3)(C)).

(6) A range of monitoring techniques may be used to carry out the monitoring requirements in paragraph (a)(5) of this section.

(7) This section does not apply to projects or activities. Project and activity monitoring may be used to gather information for the plan monitoring program, and information gathered through plan monitoring may be used to inform development of projects or activities. But, the monitoring requirements of this section are not a prerequisite for making a decision to carry out a project or activity.

(b) *Broader-scale monitoring strategies.* (1) The regional forester shall develop a broader-scale monitoring strategy for plan monitoring questions that can best be answered at a geographic scale broader than one plan area.

(2) When developing a monitoring strategy, the regional forester shall coordinate with the relevant responsible officials, Forest Service State and Private Forestry and Research and Development, partners, and the public. Two or more regional foresters may jointly develop broader-scale monitoring strategies.

(3) Each regional forester shall ensure that the broader-scale monitoring strategy is within the financial and technical capabilities of the region and complements other ongoing monitoring efforts.

(4) Projects and activities may be carried out under plans developed, amended, or revised under this part before the regional forester has developed a broader-scale monitoring strategy.

(c) *Timing and process for developing the plan monitoring program and broader-scale strategies.* (1) The responsible official shall develop the plan monitoring program as part of the planning process for a new plan development or plan revision. Where a plan's monitoring program has been developed under the provisions of a prior planning regulation and the unit has not initiated plan revision under this part, the responsible official shall modify the plan monitoring program within 4 years of the effective date of this part, or as soon as practicable, to meet the requirements of this section.

(2) The regional forester shall develop a broader-scale monitoring strategy as soon as practicable.

(3) To the extent practicable, appropriate, and relevant to the monitoring questions in the plan monitoring program, plan monitoring programs and broader-scale strategies must be designed to take into account:

(i) Existing national and regional inventory, monitoring, and research programs of the Agency, including from the NFS, State and Private Forestry, and Research and Development, and of other

governmental and non-governmental entities;

(ii) Opportunities to design and carry out multi-party monitoring with other Forest Service units, Federal, State or local government agencies, scientists, partners, and members of the public; and

(iii) Opportunities to design and carry out monitoring with federally recognized Indian Tribes and Alaska Native Corporations.

(d) *Biennial evaluation of the monitoring information.* (1) The responsible official shall conduct a biennial evaluation of new information gathered through the plan monitoring program and relevant information from the broader-scale strategy, and shall issue a written report of the evaluation and make it available to the public.

(i) The first monitoring evaluation for a plan or plan revision developed in accordance with this subpart must be completed no later than 2 years from the effective date of plan decision.

(ii) Where the monitoring program developed under the provisions of a prior planning regulation has been modified to meet the requirements of paragraph (c)(1) of this section, the first monitoring evaluation must be completed no later than 2 years from the date the change takes effect.

(iii) The monitoring evaluation report may be postponed for 1 year in case of exigencies, but notice of the postponement must be provided to the public prior to the date the report is due for that year (§ 219.16(c)(6)).

(2) The monitoring evaluation report must indicate whether or not a change to the plan, management activities, or the monitoring program, or a new assessment, may be warranted based on the new information. The monitoring evaluation report must be used to inform adaptive management of the plan area.

(3) The monitoring evaluation report may be incorporated into other planning documents if the responsible official has initiated a plan revision or relevant amendment.

(4) The monitoring evaluation report is not a decision document representing final Agency action, and is not subject to the objection provisions of subpart B.

§ 219.13 Plan amendment and administrative changes.

(a) *Plan amendment.* A plan may be amended at any time. Plan amendments may be broad or narrow, depending on the need for change, and should be used to keep plans current and help units adapt to new information or changing conditions. The responsible official has the discretion to determine whether and how to amend the plan. Except as provided by paragraph (c) of this section, a plan amendment is required to add, modify, or remove one or more plan components, or to change how or where one or more plan components apply to all or part of the plan area (including management areas or geographic areas).

(b) *Amendment process.* The responsible official shall:

(1) Base an amendment on a preliminary identification of the need to change the plan. The preliminary identification of the need to change the plan may be based on a new assessment; a monitoring report; or other documentation of new information, changed conditions, or changed circumstances. When a plan amendment is made together with, and only applies to, a project or activity decision, the analysis prepared for the project or activity may serve as the documentation for the preliminary identification of the need to change the plan;

(2) Provide opportunities for public participation as required in § 219.4 and public notification as required in § 219.16. The responsible official may combine processes and associated public notifications where appropriate, considering the scope and scale of the need to change the plan; and

(3) Amend the plan consistent with Forest Service NEPA procedures. The appropriate NEPA documentation for an amendment may be an environmental impact statement, an environmental assessment, or a categorical exclusion, depending upon the scope and scale of the amendment and its likely effects. A proposed amendment that may create a significant environmental effect and thus require preparation of an environmental impact statement is considered a significant change in the plan for the purposes of the NFMA.

(c) *Administrative changes.* An administrative change is any change to a plan that is not a plan amendment or plan revision. Administrative changes include corrections of clerical errors to any part of the plan, conformance of the plan to new statutory or regulatory requirements, or changes to other content in the plan (§ 219.7(f)).

(1) A substantive change to the monitoring program made outside of the process for plan revision or amendment may be made only after notice to the public of the intended change and consideration of public comment (§ 219.16(c)(6)).

(2) All other administrative changes may be made following public notice (§ 219.16(c)(6)).

§ 219.14 Decision document and planning records.

(a) *Decision document.* The responsible official shall record approval of a new plan, plan amendment, or revision in a decision document prepared according to Forest Service NEPA procedures (36 CFR 220). The decision document must include:

(1) The rationale for approval;

(2) An explanation of how the plan components meet the sustainability requirements of § 219.8, the diversity requirements of § 219.9, the multiple use requirements of § 219.10, and the timber requirements of § 219.11;

(3) A statement of how the plan, plan amendment, or plan revision applies to approved projects and activities (§ 219.15);

(4) The documentation of how the best available scientific information was used to inform planning, the plan components, and other plan content, including the plan monitoring program (§ 219.3);

(5) The concurrence by the appropriate research station director with any part of the plan applicable to any experimental forests or experimental ranges (§ 219.2(b)(4)); and

(6) The effective date of the plan, amendment, or revision.

(b) *Planning records.* (1) The responsible official shall keep the following documents readily accessible to the public by posting them online and through other means: assessment reports (§ 219.6); the plan, including the monitoring program; the proposed plan, plan amendment, or plan revision; public notices and environmental documents associated with a plan; plan decision documents; and monitoring evaluation reports (§ 219.12).

(2) The planning record includes documents that support analytical conclusions made and alternatives considered throughout the planning process. The responsible official shall make the planning record available at the office where the plan, plan amendment, or plan revision was developed.

§ 219.15 Project and activity consistency with the plan.

(a) *Application to existing authorizations and approved projects or activities.* Every decision document approving a plan, plan amendment, or plan revision must state whether authorizations of occupancy and use made before the decision document may proceed unchanged. If a plan decision document does not expressly allow such occupancy and use, the permit, contract, and other authorizing instrument for the use and occupancy must be made

consistent with the plan, plan amendment, or plan revision as soon as practicable, as provided in paragraph (d) of this section, subject to valid existing rights.

(b) *Application to projects or activities authorized after plan decision.* Projects and activities authorized after approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (d) of this section.

(c) *Resolving inconsistency.* When a proposed project or activity would not be consistent with the applicable plan components, the responsible official shall take one of the following steps, subject to valid existing rights:

(1) Modify the proposed project or activity to make it consistent with the applicable plan components;

(2) Reject the proposal or terminate the project or activity;

(3) Amend the plan so that the project or activity will be consistent with the plan as amended; or

(4) Amend the plan contemporaneously with the approval of the project or activity so that the project or activity will be consistent with the plan as amended. This amendment may be limited to apply only to the project or activity.

(d) *Determining consistency.* Every project and activity must be consistent with the applicable plan components. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) *Goals, desired conditions, and objectives.* The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives, or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) *Standards.* The project or activity complies with applicable standards.

(3) *Guidelines.* The project or activity:

(i) Complies with applicable guidelines as set out in the plan; or

(ii) Is designed in a way that is as effective in achieving the purpose of the applicable guidelines (§ 219.7(e)(1)(iv)).

(4) *Suitability.* A project or activity would occur in an area:

(i) That the plan identifies as suitable for that type of project or activity; or

(ii) For which the plan is silent with respect to its suitability for that type of project or activity.

(e) *Consistency of resource plans within the planning area with the land management plan.* Any resource plans (for example, travel management plans) developed by the Forest Service that apply to the resources or land areas within the planning area must be consistent with the plan components. Resource plans developed prior to plan decision must be evaluated for consistency with the plan and amended if necessary.

§ 219.16 Public notifications.

The following public notification requirements apply to plan development, amendment, or revision. Notifications may be combined where appropriate.

(a) *When formal public notification is required.* Public notification must be provided as follows:

(1) To initiate the development of a proposed plan, plan amendment, or plan revision;

(2) To invite comments on a proposed plan, plan amendment, or plan revision, and associated environmental analysis. For a new plan, plan amendment, or a plan revision for which a draft environmental impact statement (EIS) is prepared, the comment period is at least 90 days. For an amendment for which a draft EIS is not prepared, the comment period is at least 30 days;

(3) To begin the objection period for a plan, plan amendment, or plan revision before approval (§ 219.52);

(4) To approve a final plan, plan amendment, or plan revision; or

(5) To announce whenever a plan, plan amendment, or plan revision process initiated under the provisions of a previous planning regulation will be conformed to meet the provisions of this part (§ 219.17(b)(3)).

(b) *Project or activity plan amendments.* When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the notification requirements of 36 CFR part 215 or part 218, subpart A, applies instead of this section.

(c) *How public notice is provided.* The responsible official should use contemporary tools to provide notice to the public. At a minimum, all public notifications required by this part must be posted online, and:

(1) When the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the **Federal Register**.

(2) For a new plan or plan revision, when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, notice must be published in the **Federal Register** and the applicable newspaper(s) of record.

(3) When the notice is for the purpose of inviting comments on a proposed plan, plan amendment, or plan revision for which a draft EIS is prepared, the Environmental Protection Agency (EPA) **Federal Register** notice of availability of a draft EIS shall serve as the required **Federal Register** notice.

(4) For a plan amendment when an official other than the Chief, the Under Secretary, or the Secretary is the responsible official, and for which a draft EIS is not prepared, notices must be published in the newspaper(s) of record.

(5) If a plan, plan amendment, or plan revision applies to two or more units, notices must be published in the **Federal Register** and the newspaper(s) of record for the applicable units.

(6) Additional public notice of administrative changes, changes to the monitoring program, opportunities to provide information for assessments, assessment reports, monitoring evaluation reports, or other notices not listed in paragraph (a) of this section may be made in any way the responsible official deems appropriate.

(d) *Content of public notices.* Public notices required by this section except for notices applicable to paragraph (c)(3) of this section, must clearly describe the action subject to notice and the nature and scope of the decisions to be made; identify the responsible official; describe when, where, and how the responsible official will provide opportunities for the public to participate in the planning process; and explain how to obtain additional information.

§ 219.17 Effective dates and transition.

(a) *Effective dates.* (1) A plan or plan revision is effective 30 days after publication of notice of its approval.

(2) Except as provided in paragraph (a)(3) of this section, a plan amendment for which an environmental impact statement (EIS) has been prepared is effective 30 days after publication of notice of its approval; a plan amendment for which an EIS has not been prepared is effective immediately.

(3) A plan amendment that applies to only one specific project or activity is effective on the date the project may be implemented in accordance with administrative review regulations at 36 CFR parts 215 and 218.

(b) *Plan amendment and plan revision transition.* For the purposes of this section, initiation means that the Agency has issued a notice of intent or other notice announcing the beginning of the process to develop a proposed plan, plan amendment, or plan revision.

(1) *Initiating plan development and plan revisions.* Plan development and plan revisions initiated after May 9,

2012 must conform to the requirements of this part.

(2) *Initiating plan amendments.* All plan amendments initiated after May 9, 2012 are subject to the objection process in subpart B of this part. With respect to plans approved or revised under a prior planning regulation, including the transition provisions of the reinstated 2000 rule (36 CFR part 209, published at 36 CFR parts 200 to 209, revised as of July 1, 2010), plan amendments may be initiated under the provisions of the prior planning regulation for 3 years after May 9, 2012, and may be completed and approved under those provisions (except for the optional appeal procedures of the prior planning regulation); or may be initiated, completed, and approved under the requirements of this part. After the 3-year transition period, all plan amendments must be initiated, completed, and approved under the requirements of this part.

(3) *Plan development, plan amendments, or plan revisions initiated before this part.* For plan development, plan amendments, or plan revisions that were initiated before May 9, 2012, the responsible official may complete and approve the plan, plan amendment, or plan revision in conformance with the provisions of the prior planning regulation, including its transition provisions (36 CFR part 209, published at 36 CFR parts 200 to 209, revised as of July 1, 2010), or may conform the plan, plan amendment, or plan revision to the requirements of this part. If the responsible official chooses to complete an ongoing planning process under the provisions of the prior planning regulation, but chooses to allow for an objection rather than an administrative appeal, the objection process in subpart B of this part shall apply. When the responsible official chooses to conform an ongoing planning process to this part, public notice must be made (§ 219.16(a)(5)). An objection process may be chosen only if the public is provided the opportunity to comment on a proposed plan, plan amendment, or plan revision, and associated environmental analysis.

(c) *Plans developed, amended, or revised under a prior planning regulation.* This part supersedes any prior planning regulation. No obligations remain from any prior planning regulation, except those that are specifically included in a unit's existing plan. Existing plans will remain in effect until revised. This part does not compel a change to any existing plan, except as required in § 219.12(c)(1). None of the requirements of this part apply to projects or activities on units with plans developed or revised under a prior planning rule until the plan is revised under this part, except that projects or activities on such units must comply with the consistency requirement of § 219.15 with respect to any amendments that are developed and approved pursuant to this part.

§ 219.18 Severability.

In the event that any specific provision of this part is deemed by a court to be invalid, the remaining provisions shall remain in effect.

§ 219.19 Definitions.

Definitions of the special terms used in this subpart are set out as follows.

Alaska Native Corporation. One of the regional, urban, and village native corporations formed under the Alaska Native Claims Settlement Act of 1971.

Assessment. For the purposes of this subpart, an assessment is the identification and evaluation of existing information to support land management planning. Assessments are not decisionmaking documents, but provide current information on select topics relevant to the plan area, in the context of the broader landscape.

Best management practices for water quality (BMPs). Methods, measures, or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during, and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

Candidate species. (1) For U.S. Fish and Wildlife Service candidate species, a species for which the U.S. Fish and Wildlife Service possesses sufficient information on vulnerability and threats to support a proposal to list as endangered or threatened, but for which no proposed rule has yet been published by the U.S. Fish and Wildlife Service.

(2) For National Marine Fisheries Service candidate species, a species that is:

(i) The subject of a petition to list and for which the National Marine Fisheries Service has determined that listing may be warranted, pursuant to section 4(b)(3)(A) of the Endangered Species Act (16 U.S.C. 1533(b)(3)(A)), or

(ii) Not the subject of a petition but for which the National Marine Fisheries Service has announced in the **Federal Register** the initiation of a status review.

Collaboration or collaborative process. A structured manner in which a collection of people with diverse interests share knowledge, ideas, and resources while working together in an inclusive and cooperative manner toward a common purpose. Collaboration, in the context of this part, falls within the full spectrum of public engagement described in the Council on Environmental Quality's publication of October, 2007: Collaboration in NEPA—A Handbook for NEPA Practitioners.

Connectivity. Ecological conditions that exist at several spatial and temporal scales that provide landscape linkages that permit the exchange of flow, sediments, and nutrients; the daily and seasonal movements of animals within home ranges; the dispersal and genetic interchange between populations; and the long distance range shifts of species, such as in response to climate change.

Conservation. The protection, preservation, management, or restoration of natural environments, ecological communities, and species.

Conserve. For purposes of § 219.9, to protect, preserve, manage, or restore natural environments and ecological communities to potentially avoid federally listing of proposed and candidate species.

Culmination of mean annual increment of growth. See mean annual increment of growth.

Designated area. An area or feature identified and managed to maintain its unique special character or purpose. Some categories of designated areas may be designated only by statute and some categories may be established administratively in the land management planning process or by other administrative processes of the Federal executive branch. Examples of statutorily designated areas are national heritage areas, national recreational areas, national scenic trails, wild and scenic rivers, wilderness areas, and wilderness study areas. Examples of administratively designated areas are experimental forests, research natural areas, scenic byways, botanical areas, and significant caves.

Disturbance. Any relatively discrete event in time that disrupts ecosystem, watershed, community, or species population structure and/or function and changes resources, substrate availability, or the physical environment.

Disturbance regime. A description of the characteristic types of disturbance on a given landscape; the frequency, severity, and size distribution of these characteristic disturbance types; and their interactions.

Ecological conditions. The biological and physical environment that can affect the diversity of plant and animal communities, the persistence of native species, and the productive capacity of ecological systems. Ecological

conditions include habitat and other influences on species and the environment. Examples of ecological conditions include the abundance and distribution of aquatic and terrestrial habitats, connectivity, roads and other structural developments, human uses, and invasive species.

Ecological integrity. The quality or condition of an ecosystem when its dominant ecological characteristics (for example, composition, structure, function, connectivity, and species composition and diversity) occur within the natural range of variation and can withstand and recover from most perturbations imposed by natural environmental dynamics or human influence.

Ecological sustainability. See sustainability.

Ecological system. See ecosystem.

Economic sustainability. See sustainability.

Ecosystem. A spatially explicit, relatively homogeneous unit of the Earth that includes all interacting organisms and elements of the abiotic environment within its boundaries. An ecosystem is commonly described in terms of its:

(1) Composition. The biological elements within the different levels of biological organization, from genes and species to communities and ecosystems.

(2) Structure. The organization and physical arrangement of biological elements such as, snags and down woody debris, vertical and horizontal distribution of vegetation, stream habitat complexity, landscape pattern, and connectivity.

(3) Function. Ecological processes that sustain composition and structure, such as energy flow, nutrient cycling and retention, soil development and retention, predation and herbivory, and natural disturbances such as wind, fire, and floods.

(4) Connectivity. (see connectivity above).

Ecosystem diversity. The variety and relative extent of ecosystems.

Ecosystem services. Benefits people obtain from ecosystems, including:

(1) *Provisioning services,* such as clean air and fresh water, energy, fuel, forage, fiber, and minerals;

(2) *Regulating services,* such as long term storage of carbon; climate regulation; water filtration, purification, and storage; soil stabilization; flood control; and disease regulation;

(3) *Supporting services,* such as pollination, seed dispersal, soil formation, and nutrient cycling; and

(4) *Cultural services,* such as educational, aesthetic, spiritual and cultural heritage values, recreational experiences and tourism opportunities.

Environmental assessment (EA). See definition in § 219.62.

Environmental document. For the purposes of this part: an environmental assessment, environmental impact statement, finding of no significant impact, categorical exclusion, and notice of intent to prepare an environmental impact statement.

Environmental impact statement (EIS). See definition in § 219.62.

Even-aged stand. A stand of trees composed of a single age class.

Federally recognized Indian Tribe. An Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Focal species. A small subset of species whose status permits inference to the integrity of the larger ecological system to which it belongs and provides meaningful information regarding the effectiveness of the plan in maintaining or restoring the ecological conditions to maintain the diversity of plant and animal communities in the plan area. Focal species would be commonly selected on the basis of their functional role in ecosystems.

Forest land. Land at least 10 percent occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest uses. Lands developed for non-forest use include areas for crops, improved pasture, residential or administrative areas, improved roads of any width and adjoining road clearing, and power line clearings of any width.

Geographic area. A spatially contiguous land area identified within the planning area. A geographic area may overlap with a management area.

Inherent capability of the plan area. The ecological capacity or ecological potential of an area characterized by the interrelationship of its physical elements, its climatic regime, and natural disturbances.

Integrated resource management. Multiple use management that recognizes the interdependence of ecological resources and is based on the need for integrated consideration of ecological, social, and economic factors.

Landscape. A defined area irrespective of ownership or other artificial boundaries, such as a spatial mosaic of terrestrial and aquatic ecosystems, landforms, and plant communities, repeated in similar form throughout such a defined area.

Maintain. In reference to an ecological condition: To keep in existence or continuance of the desired ecological condition in terms of its desired composition, structure, and processes. Depending upon the circumstance, ecological conditions may be maintained by active or passive management or both.

Management area. A land area identified within the planning area that has the same set of applicable plan components. A management area does not have to be spatially contiguous.

Management system. For purposes of this subpart, a timber management system including even-aged management and uneven-aged management.

Mean annual increment of growth and culmination of mean annual increment of growth. Mean annual increment of growth is the total increment of increase of volume of a stand (standing crop plus thinnings) up to a given age divided by that age. Culmination of mean annual increment of growth is the age in the growth cycle of an even-aged stand at which the average annual rate of increase of volume is at a maximum. In land management plans, mean annual increment is expressed in cubic measure and is based on the expected growth of stands, according to intensities and utilization guidelines in the plan.

Monitoring. A systematic process of collecting information to evaluate effects of actions or changes in conditions or relationships.

Multiple use. The management of all the various renewable surface resources of the NFS so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output, consistent with the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528–531).

National Forest System. See definition in § 219.62.

Native knowledge. A way of knowing or understanding the world, including traditional ecological and social knowledge of the environment derived from multiple generations of indigenous peoples' interactions, observations, and

experiences with their ecological systems. Native knowledge is place-based and culture-based knowledge in which people learn to live in and adapt to their own environment through interactions, observations, and experiences with their ecological system. This knowledge is generally not solely gained, developed by, or retained by individuals, but is rather accumulated over successive generations and is expressed through oral traditions, ceremonies, stories, dances, songs, art, and other means within a cultural context.

Native species. An organism that was historically or is present in a particular ecosystem as a result of natural migratory or evolutionary processes; and not as a result of an accidental or deliberate introduction into that ecosystem. An organism's presence and evolution (adaptation) in an area are determined by climate, soil, and other biotic and abiotic factors.

Newspaper(s) of record. See definition in § 219.62.

Objection. See definition in § 219.62.

Online. See definition in § 219.62.

Participation. Activities that include a wide range of public involvement tools and processes, such as collaboration, public meetings, open houses, workshops, and comment periods.

Persistence. Continued existence.

Plan area. The NFS lands covered by a plan.

Plan or land management plan. A document or set of documents that provide management direction for an administrative unit of the NFS developed under the requirements of this part or a prior planning rule.

Plant and animal community. A naturally occurring assemblage of plant and animal species living within a defined area or habitat.

Productivity. The capacity of NFS lands and their ecological systems to provide the various renewable resources in certain amounts in perpetuity. For the purposes of this subpart, productivity is an ecological term, not an economic term.

Project. An organized effort to achieve an outcome on NFS lands identified by location, tasks, outputs, effects, times, and responsibilities for execution.

Proposed Species. Any species of fish, wildlife, or plant that is proposed by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service in the **Federal Register** to be listed under Section 4 of the Endangered Species Act.

Recovery. For the purposes of this subpart, and with respect to threatened or endangered species: The improvement in the status of a listed species to the point at which listing as federally endangered or threatened is no longer appropriate.

Recreation. See Sustainable recreation.

Recreation opportunity. An opportunity to participate in a specific recreation activity in a particular recreation setting to enjoy desired recreation experiences and other benefits that accrue. Recreation opportunities include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air.

Recreation setting. The social, managerial, and physical attributes of a place that, when combined, provide a distinct set of recreation opportunities. The Forest Service uses the recreation opportunity spectrum to define recreation settings and categorize them into six distinct classes: primitive, semi-primitive non-motorized, semi-primitive motorized, roaded natural, rural, and urban.

Responsible official. See definition in § 219.62.

Restoration. The process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. Ecological restoration focuses on reestablishing the composition, structure, pattern, and ecological processes necessary to facilitate terrestrial and aquatic ecosystems sustainability, resilience, and health under current and future conditions.

Restore. To renew by the process of restoration (see restoration).

Riparian Areas. Three-dimensional ecotones of interaction that include terrestrial and aquatic ecosystems that extend down into the groundwater, up above the canopy, outward across the floodplain, up the near-slopes that drain to the water, laterally into the terrestrial ecosystem, and along the water course at variable widths.

Riparian management zone. Portions of a watershed where riparian-dependent resources receive primary emphasis, and for which plans include plan components to maintain or restore riparian functions and ecological functions.

Risk. A combination of the likelihood that a negative outcome will occur and the severity of the subsequent negative consequences.

Scenic character. A combination of the physical, biological, and cultural images that gives an area its scenic identity and contributes to its sense of place. Scenic character provides a frame of reference from which to determine scenic attractiveness and to measure scenic integrity.

Social sustainability. See sustainability.

Sole source aquifer. Underground water supply designated by the Environmental Protection Agency (EPA) as the ''sole or principle'' source of drinking water for an area as established under section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

Source water protection areas. The area delineated by a State or Tribe for a public water system (PWS) or including numerous PWSs, whether the source is ground water or surface water or both, as part of a State or tribal source water assessment and protection program (SWAP) approved by Environmental Protection Agency under section 1453 of the Safe Drinking Water Act (42 U.S.C. 300h–3(e)).

Stressors. For the purposes of this subpart: Factors that may directly or indirectly degrade or impair ecosystem composition, structure or ecological process in a manner that may impair its ecological integrity, such as an invasive species, loss of connectivity, or the disruption of a natural disturbance regime.

Sustainability. The capability to meet the needs of the present generation without compromising the ability of future generations to meet their needs. For purposes of this part, ''ecological sustainability'' refers to the capability of ecosystems to maintain ecological integrity; ''economic sustainability'' refers to the capability of society to produce and consume or otherwise benefit from goods and services including contributions to jobs and market and nonmarket benefits; and ''social sustainability'' refers to the capability of society to support the network of relationships, traditions, culture, and activities that connect people to the land and to one another, and support vibrant communities.

Sustainable recreation. The set of recreation settings and opportunities on the National Forest System that is ecologically, economically, and socially sustainable for present and future generations.

Timber harvest. The removal of trees for wood fiber use and other multiple-use purposes.

Timber production. The purposeful growing, tending, harvesting, and regeneration of regulated crops of trees to be cut into logs, bolts, or other round sections for industrial or consumer use.

Viable population. A population of a species that continues to persist over the long term with sufficient distribution to be resilient and adaptable to stressors and likely future environments.

Watershed. A region or land area drained by a single stream, river, or drainage network; a drainage basin.

Watershed condition. The state of a watershed based on physical and biogeochemical characteristics and processes.

Wild and scenic river. A river designated by Congress as part of the National Wild and Scenic Rivers System that was established in the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 (note), 1271–1287).

Wilderness. Any area of land designated by Congress as part of the National Wilderness Preservation System that was established in the Wilderness Act of 1964 (16 U.S.C. 1131–1136).

Subpart B—Pre-Decisional Administrative Review Process

§ 219.50 Purpose and scope.

This subpart establishes a pre-decisional administrative review (hereinafter referred to as objection) process for plans, plan amendments, or plan revisions. This process gives an individual or entity an opportunity for an independent Forest Service review and resolution of issues before the approval of a plan, plan amendment, or plan revision. This subpart identifies who may file objections to a plan, plan amendment, or plan revision; the responsibilities of the participants in an objection; and the procedures that apply to the review of the objection.

§ 219.51 Plans, plan amendments, or plan revisions not subject to objection.

(a) A plan, plan amendment, or plan revision is not subject to objection when the responsible official receives no substantive formal comments (§ 219.62) on that proposal during the opportunities for public comment (§ 219.53(a)).

(b) Plans, plan amendments, or plan revisions proposed by the Secretary of Agriculture or the Under Secretary for Natural Resources and Environment are not subject to the procedures set forth in this section. A decision by the Secretary or Under Secretary constitutes the final administrative determination of the U.S. Department of Agriculture.

(c) A plan, plan amendment, or plan revision is not subject to objection under this subpart if another administrative review process is used consistent with § 219.59.

(d) When a plan, plan amendment, or plan revision is not subject to objection under this subpart, the responsible official shall include an explanation with the signed decision document.

§ 219.52 Giving notice of a plan, plan amendment, or plan revision subject to objection before approval.

(a) The responsible official shall disclose during the NEPA scoping process and in the appropriate NEPA documents that the proposed plan, plan amendment, or plan revision is subject to the objection procedures in this subpart. This disclosure is in addition to the public notice that begins the objection filing period, as required at § 219.16. When a responsible official chooses to use the objection process of this subpart for a plan, plan amendment, or plan revision process initiated before the effective date of this rule, notice that the objection process will be used must be given prior to an opportunity to provide substantive formal comment on a proposed plan, plan amendment, or revision and associated environmental analysis.

(b) The responsible official shall make available the public notice for the beginning of the objection period for a plan, plan amendment, or plan revision (§ 219.16(a)(3)) to those who have requested the environmental documents or are eligible to file an objection consistent with § 219.53.

(c) The content of the public notice for the beginning of the objection period for a plan, plan amendment, or plan revision before approval (§ 219.16(a)(3)) must:

(1) Inform the public of the availability of the plan, plan amendment, or plan revision, the appropriate final environmental documents, the draft plan decision document, and any relevant assessment or monitoring evaluation report; the commencement of the objection filing period under 36 CFR part 219 Subpart B; and the process for objecting. The documents in this paragraph will be made available online at the time of public notice.

(2) Include the name of the plan, plan amendment, or plan revision, the name and title of the responsible official, and instructions on how to obtain a copy of the appropriate final environmental documents; the draft plan decision document; and the plan, plan amendment, or plan revision.

(3) Include the name and address of the reviewing officer with whom an objection is to be filed. The notice must specify a street, postal, fax, and email address; the acceptable format(s) for objections filed electronically; and the reviewing officer's office business hours for those filing hand-delivered objections.

(4) Include a statement that objections will be accepted only from those who have previously submitted substantive formal comments specific to the proposed plan, plan amendment, or plan revision during any opportunity for public comment as provided in subpart A.

(5) Include a statement that the publication date of the public notice in the applicable newspaper of record (or the **Federal Register**, if the responsible official is the Chief) is the exclusive means for calculating the time to file an objection (§ 219.56).

(6) Include a statement that an objection, including attachments, must be filed with the appropriate reviewing officer (§ 219.62) within 60 days, if an environmental impact statement has been prepared, otherwise within 45 days of the date of publication of the public notice for the objection process.

(7) Include a statement describing the minimum content requirements of an objection (§ 219.54(c)).

§ 219.53 Who may file an objection.

(a) Individuals and entities who have submitted substantive formal comments related to a plan, plan amendment, or plan revision during the opportunities for public comment as provided in subpart A during the planning process for that decision may file an objection. Objections must be based on previously submitted substantive formal comments attributed to the objector unless the objection concerns an issue that arose after the opportunities for formal comment. The burden is on the objector to demonstrate compliance with requirements for objection. Objections that do not meet the requirements of this paragraph may not be accepted; however, objections not accepted must be documented in the planning record.

(b) Formal comments received from an authorized representative(s) of an entity are considered those of the entity only. Individual members of that entity do not meet objection eligibility requirements solely based on membership in an entity. A member or an individual must submit substantive formal comments independently to be eligible to file an objection in an individual capacity.

(c) When an objection lists multiple individuals or entities, each individual or entity must meet the requirements of paragraph (a) of this section. Individuals or entities listed on an objection that do not meet eligibility requirements may not be considered objectors, although an objection must be accepted (if not otherwise set aside for review under § 219.55) if at least one listed individual or entity meets the eligibility requirements.

(d) Federal agencies may not file objections.

(e) Federal employees who otherwise meet the requirements of this subpart for filing objections in a non-official capacity must comply with Federal conflict of interest statutes at 18 U.S.C. 202–209 and with employee ethics requirements at 5 CFR part 2635. Specifically, employees may not be on official duty nor use government property or equipment in the preparation or filing of an objection. Further, employees may not include information unavailable to the public, such as Federal agency documents that are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)).

§ 219.54 Filing an objection.

(a) All objections must be filed, in writing, with the reviewing officer for the plan. All objections must be open to public inspection during the objection process.

(b) Including documents by reference is not allowed, except for the following list of items that may be referenced by including the name, date, page number (where applicable), and relevant section of the cited document. All other documents or Web links to those documents, or both must be included with the objection, if referenced in the objection.

(1) All or any part of a Federal law or regulation.

(2) Forest Service Directive System documents and land management plans or other published Forest Service documents.

(3) Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection.

(4) Formal comments previously provided to the Forest Service by the objector during the proposed plan, plan amendment, or plan revision comment period.

(c) At a minimum, an objection must include the following:

(1) The objector's name and address (§ 219.62), along with a telephone number or email address if available;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection (§ 219.62). Verification of the identity of the lead objector if requested;

(4) The name of the plan, plan amendment, or plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or the parts of the plan, plan amendment, or plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If applicable, the objector should identify how the objector believes that the plan, plan amendment, or plan revision is inconsistent with law, regulation, or policy; and

(7) A statement that demonstrates the link between prior substantive formal comments attributed to the objector and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment (§ 219.53(a)).

§ 219.55 Objections set aside from review.

(a) The reviewing officer shall set aside and not review an objection when one or more of the following applies:

(1) Objections are not filed in a timely manner (§ 219.56);

(2) The proposed plan, plan amendment, or plan revision is not subject to the objection procedures of this subpart pursuant to §§ 219.51 and 219.59;

(3) The individual or entity did not submit substantive formal comments (§ 219.53) during opportunities for public comment on the proposed decision (§ 219.16(a)(1) and (a)(2));

(4) None of the issues included in the objection is based on previously submitted substantive formal comments unless one or more of those issues arose after the opportunities for formal comment;

(5) The objection does not provide sufficient information as required by § 219.54(c);

(6) The objector withdraws the objection in writing;

(7) The objector's identity is not provided or cannot be determined from the signature (written or electronically scanned), and a reasonable means of contact is not provided (§ 219.54(c)); or

(8) The objection is illegible for any reason and a legible copy cannot easily be obtained.

(b) When an objection includes an issue that is not based on previously submitted substantive formal comments and did not arise after the opportunities for formal comment, that issue will be set aside and not reviewed. Other issues raised in the objection that meet the requirements of this subpart will be reviewed.

(c) The reviewing officer shall give written notice to the objector and the responsible official when an objection or part of an objection is set aside from review and shall state the reasons for not reviewing the objection in whole or part. If the objection is set aside from review for reasons of illegibility or lack of a means of contact, the reasons must be documented in the planning record.

§ 219.56 Objection time periods and process.

(a) *Time to file an objection.* For a new plan, plan amendment, or plan revision for which an environmental impact statement (EIS) is prepared, written objections, including any attachments, must be filed within 60 days following the publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52). For an amendment for which an EIS is not prepared, the time to file an objection is within 45 days. It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner.

(b) *Computation of time periods.* (1) All time periods are computed using calendar days, including Saturdays, Sundays, and Federal holidays in the time zone of the reviewing officer. However, when the time period expires on a Saturday, Sunday, or Federal holiday, the time is extended to the end of the next Federal working day (11:59 p.m. for objections filed by electronic means such as email or facsimile machine).

(2) The day after publication of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the first day of the objection filing period.

(3) The publication date of the public notice for a plan, plan amendment, or plan revision before approval (§§ 219.16 and 219.52), is the exclusive means for calculating the time to file an objection. Objectors may not rely on dates or timeframe information provided by any other source.

(c) *Evidence of timely filing.* The objector is responsible for filing the objection in a timely manner. Timeliness must be determined by one of the following indicators:

(1) The date of the U.S. Postal Service postmark for an objection received before the close of the fifth business day after the objection filing date;

(2) The electronically generated posted date and time for email and facsimiles;

(3) The shipping date for delivery by private carrier for an objection received before the close of the fifth business day after the objection filing date; or

(4) The official agency date stamp showing receipt of hand delivery.

(d) *Extensions.* Time extensions for filing are not permitted except as provided at paragraph (b)(1) of this section.

(e) *Reviewing officer role and responsibilities.* The reviewing officer is the U.S. Department of Agriculture (USDA) or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart. The reviewing officer is a line officer at the next higher administrative level above the responsible official; except that:

(1) For a plan amendment, that next higher-level line officer may delegate the reviewing officer authority and responsibility to a line officer at the same administrative level as the responsible official. Any plan amendment delegation of reviewing officer responsibilities must be made prior to the public notification of an objection filing period (§ 219.52).

(2) For an objection or part of an objection specific to the identification of species of conservation concern, the regional forester who identified the species of conservation concern for the plan area may not be the reviewing officer. The Chief may choose to act as the reviewing officer or may delegate the reviewing officer authority to a line officer at the same administrative level as the regional forester. The reviewing officer for the plan will convey any such objections or parts thereof to the appropriate line officer.

(f) *Notice of objections filed.* Within 10 days after the close of the objection period, the responsible official shall publish a notice of all objections in the applicable newspaper of record and post the notice online.

(g) *Response to objections.* The reviewing officer must issue a written response to the objector(s) concerning their objection(s) within 90 days of the end of the objection-filing period. The reviewing officer has the discretion to extend the time when it is determined to be necessary to provide adequate response to objections or to participate in discussions with the parties. The reviewing officer must notify all parties (lead objectors and interested persons) in writing of any extensions.

§ 219.57 Resolution of objections.

(a) *Meetings.* Prior to the issuance of the reviewing officer's written response, either the reviewing officer or the objector may request to meet to discuss issues raised in the objection and potential resolution. The reviewing officer must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within 10 days after publication of the notice of objection by the responsible official (§ 219.56(f)). The responsible official shall be a participant in all meetings involving the reviewing officer, objectors, and interested persons. During meetings with objectors and interested persons, the reviewing officer may choose to use alternative dispute resolution methods to resolve objections. All meetings are open to observation by the public.

(b) *Response to objections.* (1) The reviewing officer must render a written response to the objection(s) within 90 days of the close of the objection-filing period, unless the allowable time is extended as provided at § 219.56(g). A written response must set forth the reasons for the response but need not be a point-by-point response, and may contain instructions to the responsible official. In cases involving more than one objection to a plan, plan amendment, or plan revision, the reviewing officer may consolidate objections and issue one or more responses. The response must be sent to the objecting party(ies) by certified mail, return receipt requested, and posted online.

(2) The reviewing officer's review of and response to the objection(s) is limited to only those issues and concerns submitted in the objection(s).

(3) The response of the reviewing officer will be the final decision of the U.S. Department of Agriculture on the objection.

§ 219.58 Timing of a plan, plan amendment, or plan revision decision.

(a) The responsible official may not issue a decision document concerning a plan, plan amendment, or plan revision subject to the provisions of this subpart until the reviewing officer has responded in writing to all objections.

(b) A decision by the responsible official approving a plan, plan amendment, or plan revision must be consistent with the reviewing officer's response to objections.

(c) When no objection is filed within the allotted filing period, the reviewing officer must notify the responsible official. The responsible official's approval of the plan, plan amendment, or plan revision in a plan decision document consistent with § 219.14, may occur on, but not before, the fifth business day following the end of the objection-filing period.

§ 219.59 Use of other administrative review processes.

(a) Where the Forest Service is a participant in a multi-federal agency effort that would otherwise be subject to objection under this subpart, the responsible official may waive the objection procedures of this subpart and instead adopt the administrative review procedure of another participating Federal agency. As a condition of such a waiver, the responsible official for the Forest Service must have agreement with the responsible official of the other agency or agencies that a joint agency response will be provided to those who file for administrative review of the multi-agency effort. When such an agreement is reached, the responsible official for the Forest Service shall ensure public notice required in § 219.52 sets forth which administrative review procedure is to be used.

(b) When a plan amendment is approved in a decision document approving a project or activity and the amendment applies only to the project or activity, the administrative review process of 36 CFR part 215 or part 218, subpart A, applies instead of the objection process established in this subpart. When a plan amendment applies to all future projects or activities, the objection process established in this subpart applies only to the plan amendment decision; the review process of 36 CFR part 215 or part 218 would apply to the project or activity part of the decision.

§ 219.60 Secretary's authority.

Nothing in this subpart restricts the Secretary of Agriculture from exercising any statutory authority regarding the protection, management, or administration of NFS lands.

§ 219.61 Information collection requirements.

This subpart specifies the information that objectors must give in an objection to a plan, plan amendment, or plan revision (§ 219.54(c)). As such, this subpart contains information collection requirements as defined in 5 CFR part 1320 and have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.62 Definitions.

Definitions of the special terms used in this subpart are set out as follows.

Address. An individual's or entity's current mailing address used for postal service or other delivery services. An email address is not sufficient.

Decision memo. A concise written record of the responsible official's decision to implement an action that is categorically excluded from further analysis and documentation in an environmental impact statement (EIS) or environmental assessment (EA), where the action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment, and does not give rise to extraordinary circumstances

in which a normally excluded action may have a significant environmental effect.

Environmental assessment (EA). A public document that provides sufficient evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact, aids an agency's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary, and facilitates preparation of a statement when one is necessary (40 CFR 1508.9; FSH 1909.15, Chapter 40).

Environmental impact statement (EIS). A detailed written statement as required by section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1508.11; 36 CFR 220).

Formal comments. See substantive formal comments.

Lead objector. For an objection submitted with multiple individuals, multiple entities, or combination of individuals and entities listed, the individual or entity identified to represent all other objectors for the purposes of communication, written or otherwise, regarding the objection.

Line officer. A Forest Service official who serves in a direct line of command from the Chief.

Name. The first and last name of an individual or the name of an entity. An electronic username is insufficient for identification of an individual or entity.

National Forest System. The National Forest System includes national forests, national grasslands, and the National Tallgrass Prairie.

Newspaper(s) of record. The newspaper(s) of record is (are) the principal newspaper(s) of general circulation annually identified and published in the **Federal Register** by each regional forester to be used for publishing notices as required by 36 CFR 215.5. The newspaper(s) of record for projects in a plan area is (are) the newspaper(s) of record for notices related to planning.

Objection. The written document filed with a reviewing officer by an individual or entity seeking pre-decisional administrative review of a plan, plan amendment, or plan revision.

Objection period. The allotted filing period following publication of a public notice in the applicable newspaper of record (or the **Federal Register**, if the responsible official is the Chief) of the availability of the appropriate environmental documents and draft decision document, including a plan, plan amendment, or plan revision during which an objection may be filed with the reviewing officer.

Objection process. Those procedures established for pre-decisional administrative review of a plan, plan amendment, or plan revision.

Objector. An individual or entity who meets the requirements of § 219.53, and files an objection that meets the requirements of §§ 219.54 and 219.56.

Online. Refers to the appropriate Forest Service Web site or future electronic equivalent.

Responsible official. The official with the authority and responsibility to oversee the planning process and to approve a plan, plan amendment, and plan revision.

Reviewing officer. The USDA or Forest Service official having the delegated authority and responsibility to review an objection filed under this subpart.

Substantive formal comments. Written comments submitted to, or oral comments recorded by, the responsible official or his designee during an opportunity for public participation provided during the planning process (§§ 219.4 and 219.16), and attributed to the individual or entity providing them. Comments are considered substantive when they are within the scope of the proposal, are specific to the proposal, have a direct relationship to the proposal, and include supporting reasons for the responsible official to consider.

Dated: March 23, 2012.

Harris D. Sherman,

Under Secretary, Natural Resources and Environment.

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Part III

Commodity Futures Trading Commission

17 CFR Parts 1, 23, 37, et al.

Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 23, 37, 38, and 39

RIN 3038–0092, –0094

Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These rules address: The documentation between a customer and a futures commission merchant that clears on behalf of the customer; the timing of acceptance or rejection of trades for clearing by derivatives clearing organizations and clearing members; and the risk management procedures of futures commission merchants, swap dealers, and major swap participants that are clearing members. The rules are designed to increase customer access to clearing, to facilitate the timely processing of trades, and to strengthen risk management at the clearing member level.

DATES: This rule will become effective October 1, 2012.

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director, 202–418–5480, *jlawton@cftc.gov,* and Christopher A. Hower, Attorney-Advisor, 202–418–6703, *chower@cftc.gov,* Division of Clearing and Risk, and Camden Nunery, Economist, 202–418–5723, Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; and Hugh J. Rooney, Assistant Director, 312–596–0574, *hrooney@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, 525 West Monroe Street, Chicago, Illinois 60661.

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I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (''CEA'' or ''Act'')[2] to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight. Title VII also includes amendments to the federal securities laws to establish a similar regulatory framework for security-based swaps under the authority of the Securities and Exchange Commission (''SEC'').

A fundamental premise of the Dodd-Frank Act is that the use of properly regulated central clearing can reduce systemic risk. Another tenet of the Dodd-Frank Act is that open access to clearing by market participants will increase market transparency and promote market efficiency by enabling market participants to reduce counterparty risk and by facilitating the offset of open positions. The Commission has adopted extensive regulations addressing open access and risk management at the derivatives clearing organization (''DCO'') level.[3]

Clearing members provide the portals through which market participants gain access to DCOs. Clearing members also provide the first line of risk management. Accordingly, in three related rulemakings, the Commission proposed regulations to increase customer access to clearing,[4] to facilitate the timely processing of trades,[5] and to strengthen risk management at the clearing member level.[6] In addition, in a fourth rulemaking, the Commission proposed regulations relating to the allocation of bunched orders.[7] The Commission is issuing final rules in each of these areas.

More specifically, the regulations contained in this Adopting Release were proposed in four separate notices of proposed rulemaking (''NPRMs''). Sections 1.72, 1.74, 23.608, 23.610, 39.12(a)(1)(iv), and 39.12(b)(7) were proposed in Customer Clearing Documentation and Timing of Acceptance for Clearing,[8] sections 23.506, 37.702(b), and 38.601(b) were proposed in Requirements for Processing, Clearing, and Transfer of Customer Positions,[9] sections 1.73 and 23.609 were proposed in Clearing Futures Commission Merchant Risk Management,[10] and 1.35(a–1)(5)(iv) was proposed in Adaptation of Regulations to Incorporate Swaps.[11] The Commission is finalizing the rules contained in this Adopting Release together because they address three overarching, closely-connected aims: (1) Non-discriminatory access to counterparties and clearing; (2) straight-through processing; and (3) effective risk management among clearing members. Each of these provides substantial benefits for the markets and market participants.

II. Customer Clearing Documentation

A. Introduction

As discussed in the notice of proposed rulemaking,[12] industry groups have developed a template for use by swap market participants in negotiating execution-related agreements with counterparties to swaps that are intended to be cleared.[13] The template

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

[2] 7 U.S.C. 1 *et seq.*

[3] Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011).

[4] Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 FR 45730 (Aug. 1, 2011).

[5] Requirements for Processing, Clearing, and Transfer of Customer Positions, 76 FR 13101 (Mar. 10, 2011).

[6] Clearing Member Risk Management, 76 FR 45724 (Aug. 1, 2011).

[7] Adaption of Regulations to Incorporate Swaps, 76 FR 33066 (Jun. 7, 2011).

[8] *See* 76 FR 45730 (Aug. 1, 2011).

[9] *See* 76 FR 13101 (Mar. 10, 2011).

[10] *See* 76 FR 45724 (Aug. 1, 2011).

[11] *See* 76 FR 33066 (Jun. 6, 2011).

[12] *See* 76 FR 45730 at 45731, Aug. 1, 2011.

[13] *See http://www.futuresindustry.org/downloads/ClearedDerivativesExecutionAgreement_June142001.pdf.*

includes optional annexes that make the clearing member to one or both of the executing parties a party to the agreement (the trilateral agreements). The trilateral agreements contain provisions that would permit a customer's futures commission merchant (''FCM''), in consultation with the swap dealer (''SD'') that is the customer's counterparty, to establish specific credit limits for the customer's swap transactions with the SD. The provisions further provide that the FCM will only accept for clearing those transactions that fall within these specific limits. The limits set for trades with the SD or MSP might be less than the overall limits set for the customer for all trades cleared through the FCM. The result would be to create a ''sublimit'' for the customer when trading with that SD or MSP.

When a trade is rejected for clearing, the parties to that trade may incur significant costs. As the clearing of swaps increases pursuant to the Dodd-Frank Act, the likelihood and size of such potential costs could also increase, according to the proponents of the trilateral agreements. The trilateral agreements were intended to limit these potential costs.

The Commission expressed concern in the notice of proposed rulemaking that such arrangements potentially conflict with the concepts of open access to clearing and competitive execution of transactions.[14] To address these concerns and to provide further clarity in this area, the Commission proposed § 1.72 relating to FCMs, § 23.608 relating to SDs and MSPs, and § 39.12(a)(1)(vi) relating to DCOs. These regulations would prohibit arrangements involving FCMs, SDs, MSPs, or DCOs that would (a) disclose to an FCM, SD, or MSP the identity of a customer's original executing counterparty; (b) limit the number of counterparties with whom a customer may enter into a trade; (c) restrict the size of the position a customer may take with any individual counterparty, apart from an overall credit limit for all positions held by the customer at the FCM; (d) impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or (e) prevent compliance with specified time frames for acceptance of trades into clearing.

B. Summary of Comments

The Commission received a total of 38 comment letters directed specifically at the proposed documentation rules.[15] Of the 38 commenters, 30 supported the proposed rules.[16] They included asset managers, market makers, trading platforms, clearing organizations, bank/dealers, a non-profit organization, and a private citizen. Within this group, some commenters addressed only certain aspects of the rules and were silent on other sections and some requested clarification of certain provisions.

Eight commenters expressed opposition.[17] They include bank/dealers, an association of electric utilities, and an asset manager. Within this group as well, some commenters addressed only certain aspects of the rules and were silent on other sections and some requested clarification of certain provisions.

Three commenters in support—Arbor, Citadel, and Eris—urged the Commission to make these rules a top priority in the final rulemaking process. Numerous commenters stated that the proposed rules would increase open access to clearing and execution, reduce risk, foster competition, lower costs, and increase transparency. FHLB expressed the view that the proposed rules will facilitate the transition to central clearing. Barnard and Vanguard asserted that the proposed rules will prevent conflicts of interest, and achieve clear walls between clearing and trading activities involving FCMs and affiliates. Six commenters went into detail why the trilateral agreements are bad for the markets, noting that such agreements discourage competition and efficient pricing, compromise anonymity, reduce liquidity, increase the time between execution and clearing, introduce conflicts of interest, and prevent the success of swap execution facilities (''SEFs'').[18] SDMA commented that while ''the SDMA is philosophically loathe to encourage possible government [interference] with private contracts between two parties,'' the proposed rules are necessary in their entirety in this instance, and that the proposed rules are not overly prescriptive. Vanguard, estimated that if it was required to enter into trilateral agreements, it would have to negotiate approximately 4,800 new trilateral agreements per year.[19]

Seven commenters in opposition contended that without the trilateral agreements, some market participants may have reduced access to markets.[20] (ISDA and the Committee did not address this issue.) They asserted that the trilateral agreements facilitate risk management and certainty of execution. DB believes that the trilateral agreements provide a means of ensuring compliance with mandatory clearing. DB also commented that if an SD does not know whether a swap will be cleared prior to execution, it will not know whether it should apply risk filters that take account of the swap as a cleared transaction or a bilateral one. SG commented that the rules will decrease liquidity and limit market participation, and that without the certainty of trilateral agreements, the rules may foster competing and inconsistent technology.

UBS believes that potential abuse of credit arrangements could be more narrowly tailored than the proposed rule. The Banks asserted that the credit filter infrastructure necessary to

[14] *Id.* at 45732.

[15] Comment files for each proposed rulemaking can be found on the Commission Web site, *www.cftc.gov.* Commenters include: Chris Barnard (''Barnard''); MarkitSERV (''Markit''); Swaps & Derivatives Market Association (''SDMA''); Better Markets; IntercontinentalExchange, Inc. (''ICE''); ISDA FIA (''ISDA''); The Alternative Investment Management Association Ltd. (''AIMA''); CME Group Inc. (''CME''); Morgan Stanley; Edison Electric Institute (''EEI''); State Street Corporation (''State Street''); New York Portfolio Clearing (''NYPC''); Asset Management Group of the Securities Industry and Financial Markets Association (''SIFMA''); Vanguard; AllianceBernstein L.P. (''Alliance Bernstein''); Minneapolis Grain Exchange, Inc. (''MGEX''); Atlantic Trading USA LLC; Belvedere Trading; Bluefin Trading, LLC; Chopper Trading LLC; CTC Trading Group, LLC; DRW Holdings, LLC; Eagle Seven, LLC; Endeavor Trading, LLC; Flow Traders US LLC; Geneva Trading USA, LLC; GETCO; Hard Eight Futures; HTG Capital Partners; IMC Financial Markets; Infinium Capital Management LLC; Kottke Associates, LLC; Marquette Partners, LP; Nico Holdings LLC; Optiver US LLC; RGM Advisors, LLC; Templar Securities, LLC; Tower Research Capital LLC; TradeForecaster Global Markets LLC; Traditum Group, LLC; WH Trading LLC; XR Trading LLC (''Trading Firms''); Managed Funds Association (''MFA''); Arbor Research & Trading Inc. (''Arbor''); Eris Exchange (''Eris''); ICI; DRW Trading Group (''DRW''); Spring Trading, Inc. (''Spring Trading''); Javelin Capital Markets, LLC (''Javelin''); The Committee on Investment of Employee Benefit Assets (''CIEBA''); Citadel LLC (''Citadel''); Vizier Ltd. (''Vizier''); Federal Home Loan Banks (''FHLB''); Jefferies & Company, Inc. (''Jeffries''); UBS Securities LLC (''UBS''); Wells Fargo Securities (''WF''); LCH.Clearnet Group Limited (''LCH''); D. E. Shaw group (''D. E. Shaw''); Bank of America, Merrill Lynch, BNP Paribas, Citi, Credit Suisse Securities (USA) LLC, Deutsche Bank AG, Goldman Sachs, HSBC, J.P. Morgan, Morgan Stanley (''Banks''); Deutsche Bank (''DB''); Societe Generale (''SG''); The Association of Institutional Investors (''AII''); and The Committee on Capital Markets Regulation (''Committee'').

[16] AII, AIMA, AllianceBernstein, Arbor, Better Markets, Barnard, CIEBA, Citadel, CME, D. E. Shaw, DRW, Eris, FHLB, ICE, ICI, Javelin, Jeffries, LCH, Markit, MFA, MGEX, NYPC, SDMA, SIFMA, Spring Trading, State Street, Trading Firms, Vanguard, Vizier, and WF.

[17] DB, ISDA, SG, UBS, Morgan Stanley, the Banks, EEI, and the Committee.

[18] AIMA, Javelin, SG, SIFMA, Spring Trading, and Vanguard.

[19] Vanguard.

[20] Banks, DB, EEI, ISDA, Morgan Stanley, SG, and UBS.

maximize execution choice for customers while ensuring prudent risk management is not currently available. The Banks suggested that instead of prohibiting the trilateral agreements, the Commission could require that the allocation of credit limits across executing counterparties be specified by the customer, rather than the FCM, who would confirm the customer's allocation to the identified executing counterparties.

Morgan Stanley requested clarification that the proposed rules only apply to arrangements between clearing firms and executing swap dealers and customers with respect to swaps, not futures. Morgan Stanley also commented that the Commission should alter the language in proposed § 1.72 and § 23.608 from ''relationship to the best terms available'' to ''execution with an executing swap dealer of the customer's choice.''

Spring Trading requested clarification that ''on terms that have a reasonable relationship to the best terms available'' refers to the best terms available on any market regulated by the Commission, which would prohibit an FCM from establishing special hurdles for its clearing customers in order to trade on a particular SEF.

C. Discussion

The Commission found persuasive the comments stating that the proposed rules would increase open access to clearing and execution, reduce risk, foster competition, lower costs, and increase transparency. The Commmission notes that cleared futures markets have operated for decades without any need for the types of provisions prohibited by the rules. Similarly, trades executed over-the-counter (''OTC'') have been successfully cleared by CME and ICE on behalf of customers for approximately ten years without such provisions.

Specifically, the Commission believes that, as discussed by numerous commenters, (1) disclosure of a customer's original executing counterparty could have potentially anticompetitive effects, (2) limiting the number of counterparties would hurt the customer's access to the best price as well as general market liquidity, (3) restricting the size of trades with particular counterparties also would hurt the customer's access to the best price as well as general market liquidity, and (4) restrictions on the number of counterparties and on the size of trades with them would slow down acceptance for clearing thereby causing the very problem the restrictions were purportedly designed to address.

The Commission believes that the risks the trilateral agreements were designed to address can be mitigated by other means without incurring the negative consequences described above. Specifically, the processing rules described in section III. below and the risk management rules described in section IV. below would significantly diminish the exposure of dealers, their counterparties, and their respective FCMs to risk.

Moreover, the Commission notes that there are several sections of the CEA and Commission regulations that support the premise underlying these final rules. Section 4d(c) of the CEA, as amended by the Dodd-Frank Act, directs the Commission to require FCMs to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. Similarly, section 4s(j)(5), as added by the Dodd-Frank Act, requires SDs and MSPs to implement conflict of interest procedures that address such issues the Commission determines to be appropriate. Section 4s(j)(5) also requires SDs and MSPs to ensure that any persons providing clearing activities or making determinations as to accepting clearing customers are separated by appropriate informational partitions from persons whose involvement in pricing, trading, or clearing activities might bias their judgment or contravene the core principle of open access.

Pursuant to these provisions, the Commission promulgated § 1.71(d) relating to FCMs and § 23.605(d) relating to SDs and MSPs.[21] These regulations prohibit SDs and MSPs from interfering or attempting to influence the decisions of affiliated FCMs with regard to the provision of clearing services and activities, and prohibit FCMs from permitting them to do so.

Section 4s(j)(6) of the CEA prohibits an SD or MSP from adopting any process or taking any action that results in any unreasonable restraint on trade or imposes any material anticompetitive burden on trading or clearing, unless necessary or appropriate to achieve the purposes of the Act. To implement Section 4s(j)(6) of the CEA, the Commission has promulgated § 23.607 in a separate rulemaking.[22]

Section 2(h)(1)(B)(ii) of the CEA requires that DCO rules provide for the non-discriminatory clearing of swaps executed bilaterally or through an unaffiliated designated contract market (''DCM'') or SEF. The Commission has adopted § 39.12(b)(3) to implement this provision.[23]

The trilateral agreements potentially conflict with the recently-adopted §§ 1.71(d), 23.605(d), 23.607, and 39.12. As certain commenters have stated, the provisions of the trilateral agreements described above could lead to undue influence by FCMs on a customer's choice of counterparties or undue influence by SDs on a customer's choice of clearing member. They could constrain a customer's opportunity to obtain competitive execution of the trade by limiting the number of potential counterparties.

The documentation rules covered by this rulemaking are consistent with, and complementary to, the recently adopted rules. The rules in this **Federal Register** release address specific circumstances that have been identified to the Commission by market participants, while the previously adopted rules set forth more general principles. The Commission believes that, in this case, market participants and the general public would be best served by providing both the clarity of a bright-line test for certain identifiable situations and the guidance of more broadly-articulated principles.

Contrary to the assertion of some commenters, the rules do not prohibit trilateral agreements; they prohibit certain provisions whether contained in a trilateral or a bilateral agreement. The rules have been tailored to address specific issues identified by market participants.

The Commission emphasizes that nothing in these rules would restrain an SD or MSP from establishing bilateral limits with each of its counterparties. Further, nothing in these rules would impair an SD's or MSP's ability to conduct due diligence with regard to each of its counterparties, including evaluation of balance sheet, credit ratings, overall market exposure, or similar factors.

The Commission is revising the language in §§ 23.608 and 23.608(c) to clarify that, for swaps that will be submitted for clearing, an SD or MSP may continue to manage its risk by limiting its exposure to the counterparty with whom it is trading. This

[21] ''Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer,'' available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_4_BusConductStandardsInternal/ssLINK/federalregister022312b.*

[22] *Id.*

[23] 76 FR 69334, Nov. 8, 2011.

clarification is intended to emphasize that SDs and MSPs may continue to conduct appropriate risk management exercises. Moreover, the Commission believes that this modification is responsive to the concern raised by some commenters that until straight through processing is achieved, SDs and MSPs will still need to manage risk to a counterparty before a trade is accepted or rejected for clearing.[24] Furthermore, the Commission also believes that § 23.608 does not preclude an SD or MSP from requiring that a counterparty confirm that the counterparty has an account with an FCM through which the counterparty will clear.

In response to the Morgan Stanley request for clarification, the Commission confirms that the rules, as drafted, only apply to swaps. As noted, similar provisions have never been needed and, therefore, were not proposed for futures.

The Commission has determined not to modify the language in §§ 1.72 and 23.608 as suggested by Morgan Stanley from ''relationship to the best terms available'' to ''execution with an executing swap dealer of the customer's choice.'' The rule should not imply that customers may only trade with swap dealers. Moreover, some swap markets operate anonymous central limit order books. In these instances, the counterparty is immaterial; trading decisions are based on solely the terms of the trade.

The Commission also has determined not to adopt the clarification suggested by Spring Trading. Requiring execution on the best terms available on any market regulated by the Commission could impose burdensome search costs.[25] Moreover, there could be operational costs in establishing connectivity to every market. It is not clear how many markets there will be or how compatible their systems will be with one another or with the systems of all FCMs and SDs. Upon review of the comments, the Commission is adopting §§ 1.72, and 39.12(a)(1)(vi) as proposed, and § 23.608 with the modification described above.

[24] ISDA.

[25] The Commission notes that this rule does not impose a best execution requirement. This rule merely prohibits a contractual provision that would impair a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available.

III. Time Frames for Acceptance Into Clearing

A. Swap Dealer and Major Swap Participant Submission of Trades

1. Introduction

Section 731 of the Dodd-Frank Act amended the CEA by adding a new section 4s, which sets forth a number of requirements for SDs and MSPs. Specifically, section 4s(i) of the CEA establishes swap documentation standards for those registrants. Section 4s(i) requires SDs and MSPs to ''conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.'' Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act.[26] Pursuant to these provisions, and in order to ensure compliance with any mandatory clearing requirement issued pursuant to section 2(h)(1) of the CEA and to promote the mitigation of counterparty credit risk through the use of central clearing, the Commission proposed § 23.506.

As proposed, § 23.506(a)(1) would require that SDs and MSPs have the ability to route swaps that are not executed on a SEF or DCM to a DCO in a manner that is acceptable to the DCO for the purposes of risk management. Under § 23.506(a)(2), as proposed, SDs and MSPs would also be required to coordinate with DCOs to facilitate prompt and efficient processing in accordance with proposed regulations related to the timing of clearing by DCOs.

As proposed, § 23.506(b) would set forth timing requirements for submitting swaps to DCOs in those instances where the swap is subject to a clearing mandate and in those instances when a swap is not subject to a mandate. Under § 23.506(b)(1), as proposed, an SD or MSP would be required to submit a swap that is not executed on a SEF or DCM, but is subject to a clearing mandate under section 2(h)(1) of the CEA (and has not been electively excepted from mandatory clearing by an end user under section 2(h)(7) of the CEA) as soon as technologically practicable following execution of the swap, but no later than the close of business on the day of execution.[27]

For those swaps that are not subject to a clearing mandate, but for which both counterparties to the swap have elected to clear the swap, under § 23.506(b)(2), as proposed, the SD or MSP would be required to submit the swap for clearing not later than the next business day after execution of the swap, or the agreement to clear, if later than execution. This time frame reflects the possibility that in the case of a bilateral swap, the parties may need time to agree to terms that would conform with a DCO's requirements for swaps it will accept for clearing. As noted previously, any delay between execution and novation to a clearinghouse potentially presents credit risk to the swap counterparties and the DCO because the value of the position may change significantly between the time of execution and the time of novation, thereby allowing financial exposure to accumulate in the absence of daily mark-to-market. The proposed regulation was designed to limit this delay as much as reasonably possible.

2. Summary of Comments

MFA generally supported proposed §§ 23.506(a) and 23.506(b).

CME commented that the regulations should not require any particular system or methodology that SDs or MSPs must use for submitting swaps to DCOs. Instead, the regulations should give each DCO the flexibility to work with SDs and MSPs to implement various systems and methodologies for swap submission, which may be subject to change over time as cleared swap markets continue to develop and grow.

ISDA also indicated that the rule should permit SDs and MSPs, coordinating with their DCOs, to be free to select the manner by which they route their swaps to DCOs. ISDA, however, commented that it is not apparent what proposed § 23.506(a) adds to the § 39.12(a)(3) requirement that clearing members have adequate operational capacity to meet obligations arising from their participation in DCOs. ISDA also noted that market participants have for some time been developing industry standards for the prompt and efficient processing of cleared swap transactions, and it suggested that the Commission study these standards and defer to them wherever possible.

MarkitSERV commented that the requirement to submit swaps ''as soon as technologically practicable following

[26] 7 U.S.C. 12a(5).

[27] The Commission notes that it is not expressing an opinion at this time as to whether a mandatory clearing determination must be made in conjunction with a mandatory trading determination.

execution'' may be inappropriate in light of the Commission's proposed rule regarding confirmation requirements, which requires that swap transactions be confirmed within a certain time period after execution. MarkitSERV suggested that the regulation reference the time of confirmation as opposed to the time of execution. MarkitSERV also noted that requiring SDs and MSPs to submit swaps for clearing ''no later than the close of business on the day of execution'' fails to accommodate transactions that occur late in the day and suggested a 24 hour time period.

MarkitSERV also commented that there are numerous benefits to using third party middleware providers for routing and processing services, and it suggested that the Commission permit swap counterparties to control how they process transactions. According to MarkitSERV, counterparties should be permitted to use independent third party providers for confirming, routing, and satisfying the portfolio reconciliation requirements proposed by the Commission. MarkitSERV also suggested that the Commission clarify how proposed § 23.506 would interact with proposed § 23.501, which requires confirmation of all swaps, and with the then-proposed rules requiring reporting of swap transactions to an SDR.[28]

FIA commented that SDs and MSPs are unlikely to submit a swap directly to a DCO for clearing. Instead, they will first affirm the swap by, for example, submitting the relevant details to an affirmation platform and then submit the swap to their respective clearing members for submission to a DCO.

FIA suggested that the Commission should require SDs and MSPs to have a clearing arrangement in place with clearing members that, in turn, have the capacity to route orders to a DCO in a manner acceptable to it.

FIA also believes that the ''no later than close of business'' could not be satisfied by swaps that are entered into later in the day and suggests the proposed rule be revised to provide the parties greater flexibility to submit a swap for clearing within a reasonable time as prescribed by the applicable DCO. Finally, to encourage the voluntary use of clearing where such swaps are not required to be cleared, FIA suggests that the proposed § 23.506(b)(2) be revised to permit the parties to submit such trades for clearing on any date to which the parties and their respective clearing firms agree.

[28] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Oct. 31, 2011).

The Options Clearing Corporation (''OCC'') commented that the phrase ''for purpose of risk management'' in proposed §§ 23.506(a)(1) and 37.702(b)(1) creates ambiguity because a DCO may have established routing requirements for reasons unrelated to risk management such as increased efficiency or decreased administrative costs. OCC believes that a party that submits transactions to a DCO for clearing should be required to ensure that it has the ability to route the transactions to the DCO in a manner that meets all of the DCO's legitimate requirements, and not only those that are related to risk management. OCC suggests that the Commission delete the phrase ''for purpose of risk management'' and substitute the phrase ''for clearing.''

SDMA supported the amendments to proposed § 23.506, and suggested that the Commission promulgate rules that ensure post-trade and pre-trade integrity. According to SDMA, the buyer and seller must know immediately whether their trade has been accepted for clearing. Trade uncertainty, SDMA continued, caused by the time delay between the time of trade execution and the time of trade acceptance into clearing, undermines market integrity in the post-trade work process. SDMA also stated that trade uncertainty also directly impedes liquidity, efficiency, and market stability.

CME commented that the technology for SDs and MSPs to route swaps to a DCO may be as simple as entering the necessary data in a web page. It suggested that a more apt standard may be ''as soon as operationally feasible.'' CME also believes that the proposed time frames for submission of swaps are appropriate and operationally feasible, and it is not aware of systemic obstacles to the coordination between DCOs, MSPs, and SDs required under the proposed regulation.

FHLBanks commented that the time frames are appropriate provided that the Commission establishes a cut-off time for determining the day on which a swap is executed because it may not be ''technologically practicable'' for a swap that is executed towards the end of a day to be submitted for clearing that day. FHLBanks suggests the rule specify that swaps executed after 4 p.m. New York time shall be deemed to be executed on the following business day.

ISDA commented that submission by the close of business may not be technologically practicable. In addition, ISDA suggested that trades will need to go through an affirmation platform and clearing members will need to screen trades for compliance with their own standards and with DCO standards, and this may not occur before the end of the business day. ISDA also expressed concern that mandatory, same day submission may invite error because clearing members may focus on speed over accuracy. ISDA suggested that the Commission impose an ''as soon as reasonably and technologically practicable'' standard.

ISDA also commented that § 23.506(b)(2) should not set forth a time period for clearing. According to ISDA, limiting the flexibility of parties voluntarily seeking to clear will only create disincentives to such voluntarism, including confusion and potential legal uncertainty. Thus, ISDA suggested that where parties voluntarily elect to submit a swap for clearing, all aspects of that election should be left to the parties to determine contractually.

Freddie Mac commented that swap dealers periodically enter mismatched data and send swap confirmations that incorrectly reflect the principal terms of transactions. As a result, Freddie Mac believes that a standard for submitting clearing submissions that starts the clock at execution would be confusing and impractical and it could be detrimental to counterparties who are subject to undue pressure to quickly assent to terms dictated by a market professional. Freddie Mac also commented that establishing a close of business deadline for submission of swaps for clearing would impair late day trading and potentially reduce market integrity. Freddie Mac suggested that the Commission modify proposed § 23.506(b)(1) to provide that SDs and MSPs are required to submit swaps that are not executed on a SEF or DCM but that are subject to a clearing mandate as soon as commercially and operationally practical for both parties but no later than 24 hours after execution.

LCH commented that swaps not subject to mandatory clearing obligations should not be subject to any timeline. LCH believes that a DCO should be able to accept such trades whenever they are submitted, provided that it has sufficient margin from both sides.

3. Discussion

Proposed § 23.506(a) does not prescribe the manner by which SDs or MSPs route their swaps to DCOs and provide for prompt and efficient processing. It is possible that DCOs will enable SDs and MSPs to submit their swaps to clearing via third-party platforms and other service providers. DCOs will certainly specify the role of their clearing members in the process.

The flexibility of the rule makes it consistent with the comments of MFA, CME, ISDA, MarkitSERV, and FIA. The Commission concurs with OCC's comment that a DCO may have requirements beyond risk management. The issue raised by SDMA is addressed in the customer documentation provisions.

As discussed above, any delay between the time of execution and the time of clearing creates financial risk for the parties to the trade and for their clearing FCMs. For trades that are not subject to a clearing mandate, the parties are not bound by any submission deadlines unless and until they voluntarily agree to have the trade cleared. Once they make that decision, however, it will reduce risk for both the parties, as well as their respective clearing members, to get the trade submitted for clearing as soon as practicable. Therefore, in most cases it seems likely that the parties will comply with the timing set forth within the rule because it is in their own best interests to do so. But, to leave ''all aspects'' to the parties, as ISDA suggested, creates the possibility that one party could expose itself, its counterparty, and its clearing member to unnecessary risk by delaying submission.[29] In light of all the comments, the Commission believes that the timeframes for submission set forth in the proposed rules are reasonable.

The Commission is not defining ''business day'' in this rule, in order to allow the entity accepting the trade for clearing, the DCO, to establish its own definition. The Commission understands that a DCO may choose to expand its business hours in order to offer a competitive advantage, and that this rule should not prescribe when swaps may be accepted for clearing. The Commission further believes that if a trade is submitted for clearing near the end of a business day for a particular DCO, but is ultimately not accepted or rejected before that deadline, the DCO will determine whether the trade will be accepted or rejected for clearing for the following day in accordance with § 39.12.

The Commission is adopting § 23.506(a)(1) with the amendment suggested by OCC, changing ''for purposes of risk management'' to ''for purposes of clearing.''

The Commission is adopting §§ 23.506(a)(2) and 23.506(b) as proposed.

[29] *See* ISDA.

B. Swap Execution Facility and Designated Contract Market Processing of Trades

1. Introduction

For prompt and efficient clearing to occur, the rules, procedures, and operational systems of the trading platform and the clearinghouse must align. Vertically integrated trading and clearing systems currently process high volumes of transactions quickly and efficiently. The Commission believes that trading platforms and DCOs under separate control should be able to coordinate with one another to achieve similar results.

The Commission proposed §§ 37.700 through 37.703 to implement SEF Core Principle 7 (Financial Integrity of Transactions), pursuant to its rulemaking authority under sections 5h(h) and 8a(5) of the CEA.[30] Core Principle 7 requires a SEF to ''establish and enforce rules and procedures for ensuring the financial integrity of swaps entered on or through the facilities of the swap execution facility, including the clearing and settlement of the swaps pursuant to section 2(h)(1) [of the CEA].'' [31] As originally proposed, § 37.702(b) would require a SEF to provide for the financial integrity of its transactions cleared by a DCO by ensuring that the SEF has the capacity to route transactions to the DCO in a manner acceptable to the DCO for purposes of risk management.[32] As part of the processing rulemaking, the Commission proposed to renumber previous § 37.702(b) as paragraph (b)(1) and add a new paragraph (b)(2) to require the SEF to additionally provide for the financial integrity of cleared transactions by coordinating with each DCO to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of § 39.12(b)(7) of the Commission's regulations.[33]

Similarly, the Commission previously proposed §§ 38.600 through 38.607 to implement DCM Core Principle 11 (Financial Integrity of Transactions) pursuant to its rulemaking authority under sections 5(d)(1) and 8a(5) of the CEA.[34] Core Principle 11 requires a DCM to ''establish and enforce-(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and (B) rules to ensure—(i) the financial integrity of any—(I) futures commission merchant; and (II) introducing broker; and (ii) the protection of customer funds.'' [35]

As originally proposed, § 38.601 would require that transactions executed on or through a DCM, other than transactions in security futures products, must be cleared through a registered DCO in accordance with the provisions of part 39 of the Commission's regulations.[36] The Commission later proposed to renumber this provision as paragraph (a) of proposed § 38.601 and add a new paragraph (b) to specifically require the DCM to coordinate with each DCO to which it submits transactions for clearing, in the development of DCO rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of § 39.12(b)(7) of the Commission's regulations.[37]

2. Summary of Comments

FIA supported the rules and recommended that each SEF and DCM be required to assure equal access to all DCOs that wish to clear trades executed through the facilities of the SEF or DCM. According to FIA, failure to grant such access would be inconsistent with section 2(h) of the CEA as amended by the Dodd-Frank Act, which (1) provides for the non-discriminatory clearing of swaps executed bilaterally or on an unaffiliated SEF or DCM, and (2) provides that, with respect to a swap that is entered into by a SD or MSP, the counterparty shall have the sole right to select the DCO through which the swap is cleared.

LCH also concurred with both rules. It commented that it is of paramount importance that: (1) A SEF or DCM seeking access to a DCO must first be required to meet all regulatory requirements; (2) each SEF and DCM

[30] *See* Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (Jan. 7, 2011); 7 U.S.C. 7b–3(h); and 7 U.S.C. 12a(5).

[31] *See* section 5h(f)(7) of the CEA, 7 U.S.C. 7b–3(f)(7).

[32] *See* 76 FR at 1248. Section 37.702(b), as originally proposed, referred to ''ongoing'' risk management. In renumbering and finalizing this provision herein, the Commission is deleting the term ''ongoing'' because it is superfluous and could create confusion when read in conjunction with other Commission regulations that refer to ''risk management.'' *See, e.g.,* proposed § 39.13 relating to risk management for DCOs, 76 FR at 3720.

[33] *See* 76 FR 13101 (Mar. 10, 2011) (setting forth time frames for accepting or rejecting swaps for clearing).

[34] *See* Core Principles and Other Requirements for Designated Contract Markets, 75 FR 80572 (Dec. 22, 2010); 7 U.S.C. 7(d)(1); and 7 U.S.C. 12a(5).

[35] *See* Section 5(d)(11) of the CEA, 7 U.S.C. 7(d)(11).

[36] *See* 75 FR at 80618.

[37] *See* 76 FR 13101.

must code to each DCO's application programming interfaces; and (3) each SEF and DCM must treat DCOs on a nondiscriminatory basis.

ISDA commented that coordination among the parties subject to the Commission's new swap jurisdiction is critical to ensuring that the rulemaking process is effective without disrupting the swap markets and applauds this proposal. ISDA suggested that an existing standard managed by ISDA and used between participating companies be adopted.

As noted above, OCC commented that the phrase ''for purpose of risk management'' in proposed §§ 23.506(a)(1) and 37.702(b)(1) creates ambiguity because a DCO may have established routing requirements for reasons unrelated to risk management such as increased efficiency or decreased administrative costs. OCC believes that a party that submits transactions to a DCO for clearing should be required to ensure that it has the ability to route the transactions to the DCO in a manner that meets all of the DCO's legitimate requirements, and not only those that are related to risk management. OCC suggests that the Commission delete the phrase ''for purpose of risk management'' and substitute the phrase ''for clearing.''

3. Discussion

Rules, procedures, and operational systems, along the lines set forth in the rules, currently work well for many exchange-traded futures. Similar requirements could be applied across multiple exchanges and clearinghouses for swaps. The parties would need to have clearing arrangements in place with clearing members in advance of execution. In cases where more than one DCO offered clearing services, the parties also would need to specify in advance where the trade should be sent for clearing.

The Commission concurs with OCC's comment that a DCO may have requirements beyond risk management. To the extent that FIA, LCH, and ISDA recommended that the Commission adopt additional requirements beyond those set forth in the rule as proposed, the Commission believes it is premature to adopt the additional requirements at the present time. However, the Commission will monitor the implementation of this rule and may propose amendments in the future.

The Commission is adopting § 38.601 as proposed. The Commission is adopting § 37.702 with the amendment suggested by OCC changing ''for purposes of risk management'' to ''for purposes of clearing.''

C. Clearing Member and Clearing Organization Acceptance for Clearing

1. Introduction

As noted above, a goal of the Dodd-Frank Act is to reduce risk by increasing the use of central clearing. Minimizing the time between trade execution and acceptance into clearing is an important risk mitigant.

This time lag potentially presents credit risk to the swap counterparties, clearing members, and the DCO because the value of a position may change significantly between the time of execution and the time of novation, thereby allowing financial exposure to accumulate in the absence of daily mark-to-market. Among the purposes of clearing are the reduction of risk and the enhancement of financial certainty, and this time lag diminishes the benefits of clearing swaps that Congress sought to promote in the Dodd-Frank Act. A delay in clearing is also inconsistent with other proposed regulations concerning product eligibility and financial integrity of transactions insofar as the delay reduces liquidity and increases risk.[38]

In this rulemaking, the Commission is seeking to expand access to, and strengthen the financial integrity of, the swap markets subject to Commission oversight by providing for prompt processing, submission, and acceptance of swaps eligible for clearing by DCOs. This requires setting an appropriate time frame for the processing and submission of swaps for clearing, as well as a time frame for the clearing of swaps by the DCO.

As originally proposed, § 39.12(b)(7)(i) required DCOs to coordinate with DCMs and SEFs to facilitate prompt and efficient processing of trades. In response to a comment, the Commission later proposed to require ''prompt, efficient, *and accurate* processing of trades.''[39]

Recognizing the key role clearing members play in trade processing and submission of trades to central clearing, the Commission also proposed parallel provisions for coordination among DCOs and clearing members. Proposed § 39.12(b)(7)(i)(B) would require DCOs to coordinate with clearing members to establish systems for prompt processing of trades. Proposed §§ 1.74(a) and 23.610(a) would require reciprocal coordination with DCOs by FCMs, SDs, and MSPs that are clearing members.

As originally proposed, § 39.12(b)(7)(ii) required DCOs to accept immediately upon execution all transactions executed on a DCM or SEF.[40] A number of DCOs and other commenters expressed concern that this requirement could expose DCOs to unwarranted risk because DCOs need to be able to screen trades for compliance with applicable clearinghouse rules related to product and credit filters.[41] The Commission recognized that while immediate acceptance for clearing upon execution currently occurs in some futures markets, it might not be feasible for all cleared markets at this time. For example, where the same cleared product is traded on multiple execution venues, a DCO needs to be able to aggregate the risk of trades coming in to ensure that a clearing member or customer has not exceeded its credit limits. Accordingly, the Commission modified proposed § 39.12(b)(7)(ii) to permit DCOs to screen trades against applicable product and credit criteria before accepting or rejecting them.[42] Consistent with principles of open access, the proposal would require that such criteria be non-discriminatory with respect to trading venues and clearing participants.

Proposed § 1.74(b) would set up a parallel requirement for clearing FCMs; proposed § 23.610(b) would set up a parallel requirement for SDs and MSPs that are clearing members. These rules, again, would apply a performance standard, not a prescribed method for achieving it.

As originally proposed, §§ 39.12(b)(7)(iii) and 39.12(b)(7)(iv) distinguished between swaps subject to mandatory clearing and swaps not subject to mandatory clearing.[43] Upon review of the comments, the Commission concluded that this distinction was unnecessary with regard to processing time frames. If a DCO lists a product for clearing, it should be able to process it regardless of whether clearing is mandatory or voluntary. Accordingly, the Commission modified proposed § 39.12(b)(7)(iii) to cover all trades not executed on a DCM or SEF. It would require acceptance or rejection

[38] *See* 76 FR 1214, Jan. 7, 2011.

[39] *See* letter from Robert Pickel, Executive Vice Chairman, International Swaps and Derivatives Association, dated April 8, 2011.

[40] *See* Requirements for Processing, Clearing, and Transfer of Customer Positions, 76 FR 13101 (March 10, 2011).

[41] *See* letter from Craig S. Donohue, Chief Executive Officer, CME Group, dated April 11, 2011; letter from R. Trabue Bland, Vice President and Assistant General Counsel, ICE, dated April, 11, 2011; letter from Iona J. Levine, Group General Counsel and Managing Director, LCH.Clearnet, dated April, 11, 2011; letter from William H. Navin, Executive Vice President and General Counsel, Options Clearing Corporation, dated April, 11, 2011; letter from John M. Damgard, President, Futures Industry Association, dated April 14, 2011.

[42] *See* 76 FR 45730, Aug. 1, 2011.

[43] *See* 76 FR 13101, Mar. 10, 2011.

by the DCO as quickly after submission as would be technologically practicable if fully automated systems were used.

Proposed § 1.74(b) would set up a parallel requirement for clearing FCMs; proposed § 23.610(b) would set up a parallel requirement for SDs and MSPs that are clearing members. These rules, again, would apply a performance standard, not a prescribed method for achieving it.

The Commission also recognized that some trades on a DCM or SEF may be executed non-competitively. Examples include block trades and exchanges of futures for physicals (''EFPs''). A DCO may not be notified immediately upon execution of these trades. Accordingly, the proposal treated these trades in the same manner as trades that are not executed on a DCM or SEF.

2. Summary of Comments

Eighteen [44] commenters expressed support for the timing standard as proposed by the Commission.

CME recommended that the standard be revised to ''as quickly as would be technologically practicable if fully automated systems and filters were used or as quickly as possible if automated systems or filters are not used.''

MGEX requested that the Commission codify the preamble text that the new timing standard would require action in a matter of ''milliseconds or seconds or, at most, a few minutes, not hours or days.'' MGEX also commented that proposed § 39.12(b)(7) should be a general acceptance and timing rule, not applicable for each specific contract listed to be cleared. MGEX argued that the rule only should apply to those swaps that a DCO has identified that it can and will clear, as opposed to variations of contracts listed for clearing or any contract not previously cleared by the DCO.

Morgan Stanley believes that the timing standard should be intended to prohibit only those arrangements that prevent the use of automated systems that are available in the market to facilitate clearing.

LCH suggested that the Commission modify proposed §§ 39.12(7)(ii) and (iii) by adding the language ''and for which sufficient margins have been received by the derivatives clearing organization'' prior to accepting and confirming a trade for clearing.

NYPC requested clarification that in circumstances where a DCO automatically receives matched trade data from a DCM or SEF on a locked-in basis, no further systems development would be required in order to satisfy the above-referenced requirements of proposed regulations 1.74(a) and 39.12(b)(7)(i)(B).

Better Markets stated that the timing standard must be: (1) Provided by the DCO or FCM; (2) capable of receiving and processing trade data from multiple sources in real time; (3) able to screen against standards such as price levels and block trade sizes as a threshold matter; (4) able to decrease or increase available credit real time; and (5) automatic push notification of acceptance or rejection by the DCO or FCM. Better Markets also commented that systems provided by a DCO or FCM must be open and require no special capabilities on the part of the trade execution venue, and that once data is input, the systems must function on a first-come-first-served basis using a reliable and common time stamping regime, regardless of affiliation or contractual relationship between the trading venue and DCO or FCM. Better Markets noted that confirmation of acceptance or rejection must not differ between trading venues based on affiliation or relationship.

SG suggested that the Commission establish one or both of the following: (1) Credit limits of customers and FCMs are stored at the DCO and provided to SEFs in real time upon electronic demand; or (2) an industry-wide utility that stores customer and FCM limits and provides them to DCOs and SEFs in real time upon electronic demand.

3. Discussion

The Commission continues to believe that acceptance or rejection for clearing in close to real time is crucial both for effective risk management and for the efficient operation of trading venues.[45] Rather than prescribe a specific length of time, the Commission is implementing a standard that action be taken ''as quickly as would be technologically practicable if fully automated systems were used.'' This standard would require action in a matter of milliseconds or seconds or, at most, a few minutes, not hours or days. The Commission recognizes that processing times may vary by product or market.

This requirement is intended to be a performance standard, not the prescription of a particular method of trade processing. The Commission expects that fully automated systems will be in place at some DCOs, FCMs, SDs, and MSPs. Others might have systems with some manual steps. The use of manual steps would be permitted so long as the process could operate within the same time frame as the automated systems.

As discussed by numerous commenters, the proposed standard approximates real-time acceptance while providing flexibility to accommodate different systems and procedures. Avoiding a large gap between trade execution and acceptance for clearing is crucial to risk management for DCOs, FCMs, and market participants.

The Commission notes that the time frame for acceptance by clearing members and DCOs set forth in this section is stricter than the time frames for submission by SDs and MSPs set forth in Section III.A., above. Where execution is bilateral and clearing is voluntary, the delay between execution and submission to clearing is, of necessity, within the discretion of the parties to some degree. The Commission believes, however, that prudent risk management dictates that once a trade has been submitted to a clearing member or a DCO, the clearing member or DCO must accept or reject it as quickly as possible.

Assuring prompt acceptance or rejection for clearing also undermines much of the stated rationale for the provisions in the trilateral agreements. In those unusual circumstances in which trades are rejected, the parties will know almost immediately and be able to take appropriate steps to mitigate risk.

The Commission disagrees with CME's suggested standard of ''as quickly as possible.'' The Commission believes that this standard would introduce too much potential for delay. It could increase the very risks that this final rulemaking is designed to reduce or eliminate.

In support of the final standard, the Commission notes that on December 13, 2011, $4.1 billion of trades were executed on a trading platform and cleared by a DCO within the time frame contemplated by the proposed rules. Specifically, 21 interest rate swaps were executed and cleared with an average time of 1.9 seconds and a quickest time of 1.3 seconds.[46]

[44] AIMA, AllianceBernstein, Arbor, Barnard, CIEBA, Citadel, DRW, Eris, FHLB, ICI, Javelin, Jeffries, MFA, SDMA, State Street, Spring Trading, Trading Firms, and Vizier.

[45] *See* letter from James Cawley, Swaps and Derivatives Market Association, dated April 19, 2011.

[46] Katy Burne, *UPDATE: Javelin, CME Claim Record Time To Clear Rate Swaps,* Dow Jones Newswires, Nasdaq (Dec. 14, 2011; accessed Jan. 3, 2012) *http://www.nasdaq.com/aspx/stock-market-news-story.aspx?storyid=201112141726dowjonesdjonline000739&title=updatejavelincme-claim-record-time-to-clear-rate-swaps.*

The Commission also disagrees with the MGEX suggestion that the timing standard should be codified as ''milliseconds, seconds, or minutes,'' because this would provide a window for trade acceptance that might be too wide as faster systems become available. The Commission believes that its proposed standard will allow for innovation to bring faster trade acceptance or rejection to the market most efficiently.

The Commission also disagrees with LCH's proposed addition of the language ''and for which sufficient margins have been received by the derivatives clearing organization'' prior to accepting and confirming a trade for clearing. This standard may not be practicable for DCOs that are linked to high-volume automated trading systems. Currently, many DCOs in such circumstances calculate margin at the end of the day for collection the next day. Nothing in the final rules, however, precludes a DCO in its discretion from applying such a standard.

The Commission confirms NYPC's belief that in circumstances where a DCO automatically receives matched trade data from a DCM or SEF on a locked-in basis, no further systems development would be required.

The Commission believes that the comments of Better Markets and SG are consistent with the intent of the rules but provide a level of detail that the Commission believes is unnecessary at the present time, and in some respects goes beyond what the Commission proposed. For example, Better Markets recommended that DCOs and FCMs be able to increase available credit in real-time and to have automatic push notification of acceptance or rejection from clearing. The first could conflict with risk management procedures that some DCOs or FCMs might wish to use. The second is likely to be in place at many firms, but the Commission continues to believe that it is appropriate to have a rule that sets a performance standard rather than specifying a particular means of achieving it. Fully automated systems would of course comply with the performance standard. Accordingly, the Commission has decided not to change the rule in the manner suggested by Better Markets and SG. The Commission, however, will monitor the implementation of this rule and may propose amendments in the future.

The Commission received numerous comments in the customer clearing documentation rulemaking emphasizing that it is imperative for effective risk management to have the shortest possible gap between execution and clearing. To permit additional time as suggested by some of the commenters on this rule would increase risk for DCOs, clearing members, and market participants.

However, in light of commenters' concerns, the Commission is adopting §§ 1.75 and 23.611, which delegate to the Director of the Division of Clearing and Risk the authority to establish an alternative compliance schedule for requirements of §§ 1.74 and 23.610 for swaps that are found to be technologically or economically impracticable for an FCM, SD, or MSP affected by §§ 1.74 or 23.610. The purpose of §§ 1.75 and 23.611 is to facilitate the ability of the Commission to provide a technologically practicable compliance schedule for affected FCMs, SDs, or MSPs that seek to comply in good faith with the requirements of §§ 1.74 or 23.610.

In order to obtain an exception under §§ 1.75 or 23.611, an affected FCM, SD, or MSP must submit a request to the Director of the Division of Clearing and Risk. FCMs, SDs, and MSPs submitting requests must specify the basis in fact supporting their claims that compliance with §§ 1.74 or 23.610 would be technologically or economically impracticable. Such a request may include a recitation of the specific costs and technical obstacles particular to the entity seeking an exception and the efforts the entity intends to make in order to ensure compliance according to an alternative compliance schedule. An exception granted under §§ 1.75 or 23.611 shall not cause a registrant to be out of compliance or deemed in violation of any registration requirements.

Such requests for an alternative compliance schedule shall be acted upon by the Director of the Division of Clearing and Risk or designees thereto within 30 days from the time such a request is received. If not acted upon within the 30 day period, such request will be deemed approved.

The Commission is adopting §§ 1.74, 23.610, and 39.12(b)(7) as proposed.

D. Post-Trade Allocation of Bunched Orders

1. Introduction

Bunched orders are orders entered by an account manager on behalf of multiple customers, which are executed as a block and later allocated among participating customer accounts for clearing. Believing that procedures used in the futures markets could be adapted for use in the swaps markets, the Commission proposed § 1.35(a–1)(5)(iv).[47] It provided that allocations must be made as soon as practicable after execution but in any event no later than the following times: (1) For cleared transactions, sufficiently before the end of the day to ensure that clearing records identify the customer accounts, and (2) for uncleared trades, no later than the end of the day the swap was executed.

2. Summary of Comments

In comments filed in connection with proposed §§ 1.74, 23.610, and 39.12(b)(7), BlackRock and State Street stated that the Commission should clarify the rules to specifically allow for post-trade allocation of block trades. BlackRock also commented that the final rule should provide that at the time of trade execution, confirmation of trade economics may be done at the block level, and a two-hour delay be allowed before the trade must be submitted to a DCO for clearing.

In comments also filed in connection with proposed §§ 1.74, 23.610, and 39.12(b)(7), MFA and D. E. Shaw stated that it is not necessary to delay trades for post-execution allocation of trades to multiple funds. D. E. Shaw asserted that post-execution allocation is a ''red herring'' and should not prevent the Commission from mandating real-time clearing in the proposal.

In a comment filed in connection with the proposed amendment to § 1.35, CME asserted that bunched orders in swaps should not be subject to the same type of regulatory regime as bunched orders in futures contracts because the ''futures model'' for treatment of bunched orders is not a suitable model for block trades of swaps. After a bunched trade in the futures market is accepted for clearing, an FCM generally holds the positions in a suspense account while awaiting allocation instructions from the asset manager. In contrast, the CME believes that an FCM holding bunched orders for swaps in a suspense account, while waiting for allocation instructions, may be exposed to substantially greater risk considering larger transaction sizes and the different risk profile of cleared swaps as compared to futures. CME stated that a time frame of two hours should allow sufficient time for asset managers to allocate block trades in swaps to their individual customers' accounts.

In contrast, in comments also filed in connection with proposed § 1.35, SDMA stated that there should be no delay for bunched orders that are allocated after execution. According to SDMA, the process for swaps trade allocation

[47] *See* 76 FR 33066 (Jun. 7, 2011).

should be similar to that of the futures markets.

The Commission received no substantive comments regarding allocation of uncleared trades.

3. Discussion

For many years in the futures markets, bunched orders have been executed as a block for immediate acceptance into clearing and allocated into individual accounts later in the day. Essentially, a ''stand-by'' clearing member guarantees the trades until they can be allocated. Consequently, there is no need for a two-hour delay.

The proposed amendments would apply the same process to swaps. By allowing post-trade allocation of bunched orders, the rule is responsive to all the comments. By not permitting a two-hour delay the rule is also responsive to the comments of State Street, MFA, D. E. Shaw, and SDMA, but is contrary to the comments of CME and BlackRock.

The Commission does not find persuasive the arguments that cleared swaps should be subject to a standard that differs in this regard from the standard for cleared futures. The Commission believes that a two-hour delay would create risk rather than mitigate it. First, the counterparty or counterparties to the trade would incur a delay in acceptance of their side into clearing because of the happenstance of being opposite a bunched order. This result is untenable in fast-moving markets. Second, the customers whose orders were being bunched would also suffer the same delay thereby incurring the same risks.

The futures model has worked well for many years. In most instances, the orders are successfully allocated and the stand-by FCM ultimately is not required to clear any trades. In those cases where there is a misallocation, it is corrected the next day and the stand-by FCM is compensated by the account manager. All parties receive the benefits of immediate acceptance into clearing. CME and BlackRock have not demonstrated why these procedures would not work for swaps.

The Commission believes that a similar analysis applies to uncleared swaps. Certainty of allocation by the end of the calendar day that a swap is executed will reduce risk for both counterparties. The Commission received no comments indicating otherwise.

The Commission is adopting § 1.35(a–1)(5)(iv) as proposed.

IV. Clearing Member Risk Management

A. Introduction

CEA Section 3(b) provides that one of the purposes of the Act is to ensure the financial integrity of all transactions subject to the Act and to avoid systemic risk. CEA section 8a(5) authorizes the Commission to promulgate such regulations that it believes are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. Risk management systems are critical to the avoidance of systemic risk, as evidenced by the statutory provisions cited below.

CEA section 4s(j)(2) requires each SD and MSP to have risk management systems adequate for managing its business. CEA section 4s(j)(4) requires each SD and MSP to have internal systems and procedures to perform any of the functions set forth in Section 4s.

CEA section 4d requires FCMs to register with the Commission. It further requires FCMs to segregate customer funds. CEA section 4f requires FCMs to maintain certain levels of capital. CEA section 4g establishes reporting and recordkeeping requirements for FCMs.

These provisions of law—and Commission regulations promulgated pursuant to these provisions—create a web of requirements designed to secure the financial integrity of the markets and the clearing system, to avoid systemic risk, and to protect customer funds. Effective risk management by SDs, MSPs, and FCMs is essential to achieving these goals. For example, a poorly managed position in the customer account may cause an FCM to become undersegregated. A poorly managed position in the proprietary account may cause an FCM to fall out of compliance with capital requirements.

Even more significantly, a failure of risk management can cause an FCM to become insolvent and default to a DCO. This can disrupt the markets and the clearing system and harm customers. Such failures have been predominately attributable to failures in risk management.

Proposed § 1.73 set forth risk management requirements that would apply to clearing members that are FCMs; proposed § 23.609 would apply to clearing members that are SDs or MSPs. These provisions would require these clearing members to have procedures to limit the financial risks they incur as a result of clearing trades and liquid resources to meet the obligations that arise. The proposal required each clearing member to:

(1) Establish credit and market risk-based limits based on position size, order size, margin requirements, or similar factors;

(2) Use automated means to screen orders for compliance with the risk-based limits;

(3) Monitor for adherence to the risk-based limits intra-day and overnight;

(4) Conduct stress tests of all positions in the proprietary account and all positions in any customer account that could pose material risk to the futures commission merchant at least once per week;

(5) Evaluate its ability to meet initial margin requirements at least once per week;

(6) Evaluate its ability to meet variation margin requirements in cash at least once per week;

(7) Evaluate its ability to liquidate the positions it clears in an orderly manner, and estimate the cost of the liquidation at least once per month; and

(8) Test all lines of credit at least once per quarter.

Each of these items has been observed by Commission staff as an element of an existing sound risk management program at a DCO or an FCM.

B. Components of the Rule

The Commission received a total of 15 comment letters directed specifically at the proposed risk management rules.[48] A discussion of the comments received in response to each component of the rule follows.

1. Establish Credit and Market Limits and Automated Screening of Orders

a. Summary of Comments

FIA stated that it does not believe that ''pre-execution'' screening of orders is feasible in all market situations. For instance, the FIA noted four situations wherein ''pre-execution screening'' is not possible given current technology. Specifically, FIA does not believe that ''pre-execution'' screening is possible in the case of floor execution, trading advisors using ''bunched'' orders, give-up agreements, and traders using multiple trading platforms.

The CME also commented that automated screening is not feasible in a floor trading environment. The CME suggested that the Commission adopt the following language: ''automated or otherwise appropriate means to screen orders for compliance with risk-base-limits.''

ISDA made comments consistent with CME and recommended a more flexible approach. ISDA noted that the

[48] Barnard; Futures Industry Association (''FIA''); SDMA; Better Markets; ICE; CME; Freddie Mac; ISDA; MGEX; MFA; Citadel; FHLB; Jeffries; Arbor; and Javelin.

regulation may not take into account the manner in which swaps are executed.

b. Discussion

As noted previously, the Dodd-Frank Act requires the increased use of central clearing. In particular, Section 2(h) establishes procedures for the mandatory clearing of certain swaps. Central clearing will provide more stability to the markets, and increase transparency for market participants.[49] As stated in the Committee report of the Senate Committee on Banking, Housing, and Urban Affairs: ''Increasing the use of central clearinghouses * * * will provide safeguards for American taxpayers and the financial system as a whole.'' [50]

The Commission has finalized extensive risk management standards at the DCO level. Given the increased importance of clearing and the expected entrance of new products and new participants into the clearing system, the Commission believes that enhancing the safeguards at the clearing member level is necessary as well.

Bringing swaps into clearing will increase the magnitude of the risks faced by clearing members. In many cases, it will change the nature of those risks as well. Many types of swaps have their own unique set of risk characteristics. The Commission believes that the increased concentration of risk in the clearing system combined with the changing configuration of the risk warrant additional vigilance not only by DCOs but by clearing members as well.

FCMs generally have extensive experience managing the risk of futures. They generally have less experience managing the risks of swaps. The Commission believes that it is a reasonable precaution to require that certain safeguards be in place. It would ensure that FCMs, who clear on behalf of customers, are subject to standards at least as stringent as those applicable to SDs and MSPs, who clear only for themselves. Failure to require SDs, MSPs, and FCMs that are clearing members to maintain such safeguards would frustrate the regulatory regime established in the CEA, as amended by the Dodd-Frank Act. Accordingly, the Commission believes that applying the risk-management requirements in the proposed rules to SDs, MSPs, and FCMs that are clearing members are reasonably necessary to effectuate the provisions, and to accomplish the purposes, of the CEA.

The Commission does not intend to prescribe the particular means of fulfilling these obligations. As is the case with DCOs, clearing members will have flexibility in developing procedures that meet their needs. For example, items (1) and (2) could be addressed through simple numerical limits on order or position size, or through more complex margin-based limits. Further examples could include price limits that would reject orders that are too far away from the market, or limits on the number of orders that could be placed in a short time.

These proposals are consistent with international standards. In August 2010, the International Organization of Securities Commissions issued a report entitled ''Direct Electronic Access to Markets.'' [51] The report set out a number of principles to guide markets, regulators, and intermediaries. Principle 6 states that:

> A market should not permit DEA [direct electronic access] unless there are in place effective systems and controls reasonably designed to enable the management of risk with regard to fair and orderly trading including, in particular, automated pre-trade controls that enable intermediaries to implement appropriate trading limits.

Principle 7 states that:

> Intermediaries (including, as appropriate, clearing firms) should use controls, including automated pre-trade controls, which can limit or prevent a DEA Customer from placing an order that exceeds a relevant intermediary's existing position or credit limits.

Over the years, ''rogue'' traders have caused substantial financial damage to both small and large firms. The size or sophistication of the firm has not provided comprehensive protection. Traders have found ways to exploit gaps in internal controls. Automated screening procedures, such as Globex Credit Controls, are already in place in many markets and have proven to be effective tools for reducing risk. Therefore, the Commission believes that as proposed, the rule should require clearing members to use automated means for screening orders executed on automated trading systems.

In response to the comments, the Commission has determined that, for non-automated markets such as open outcry exchanges or voice brokers, the rules would permit other forms of internal controls. For example, a clearing member cannot use an automated system to screen the orders of a floor trader. Proprietary or customer orders executed by open outcry or voice broker can be screened automatically if they are routed automatically. Many orders, however, continue to be placed by telephone. It is not practicable at this time to use automated means to screen such orders. A clearing member, however, can actively monitor a trader's activities and be in communication if the trader approaches a limit. To incorporate this approach, the Commission is revising §§ 1.73(a)(2)(ii), 1.73(a)(2)(iii), and 23.609(a)(2)(ii) using language suggested by ISDA. Specifically, as amended, these rules provide that clearing members must ''establish and maintain systems of risk controls reasonably designed to ensure compliance.''

The Commission believes that, as amended, the rules will be responsive to the comments of FIA, CME, and ISDA. They will continue to emphasize the key role that order screening can play in managing risk while making accommodation for certain circumstances where automated screening may not be possible or practicable at this time.

In response to the comments, the Commission has also determined to make changes with regard to give-ups and bunched orders. Give-ups are trades where the execution function and the clearing function are performed by different firms. Revised paragraph (2)(iv) requires the clearing firm, which bears the financial risk of the trade, to set limits and communicate them to the executing firm, which would apply them. This arrangement is consistent with current practice. The uniform give-up contract contains a provision allowing a clearing firm to establish limits on the trades it will accept from the executing firm.

To the extent the executing firm is an SD or MSP, and the clearing firm is an affiliated FCM, the firms will also have to comply with the conflict of interest rules for SD/MSPs and the conflict of interest rules for FCMs.[52] Those rules address appropriate partitions between the trading units of an SD/MSP and the clearing units of an affiliated FCM. For example, recently-promulgated § 23.605(d)(1)(iv) prohibits an SD/MSP

[49] The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives, Mark Jickling & Kathleen Ann Ruane, 5 (Aug. 30, 2010).

[50] S. Rep. No. 111–176, at 32 (2010) (report of the Senate Committee on Banking, Housing, and Urban Affairs).

[51] The report can be found at *www.iosco.org.*

[52] *See* ''Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer,'' available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_4_BusConductStandardsInternal/ssLINK/federalregister022312b.*

from interfering with the setting of risk tolerance levels by an affiliated FCM.

As noted above, for bunched orders, typically one firm acts as a ''stand-by'' clearing firm for purposes of getting the trade executed, but before the end of the day, the block is broken up and assigned among multiple clearing members, each of whom is acting on behalf of a particular customer.

Revised paragraph (2)(v)(A) requires the stand-by clearing firm to establish limits for the block account and screen the order. Revised paragraph (2)(v)(B) requires each ultimate clearing firm to establish limits for each of its customers and enter an agreement with the account manager under which the account manager would screen orders for compliance. Revised paragraph (2)(v)(C) requires each ultimate clearing firm to establish controls to enforce its limits. The revisions adjust the rule to take into account the more complex procedures entailed in processing bunched orders. They narrow the scope of the screening required by various clearing participants from what was originally proposed.

To the extent the account manager or one of the customers is an SD/MSP and one of the clearing firms is an affiliated FCM, the firms also will have to comply with the conflict of interest rules for SD/MSPs and the conflict of interest rules for FCMs. As noted above, those rules address appropriate partitions between the trading units of an SD/MSP and the clearing units of an affiliated FCM.

2. Stress Tests

a. Summary of Comments

Chris Barnard and Better Markets both recommended that the Commission require specific stress tests. Barnard recommended that the Commission adopt a minimum standard and Better Markets recommended an ''extreme but plausible'' standard for stress tests. In addition, Better Markets believes that stress test results should be reported to the Commission and the relevant DCO. FHLB recommended that stress test results be publicly disclosed. FHLB believes that public disclosure of stress test results would allow customers to mitigate risk.

b. Discussion

Stress tests are an essential risk management tool. The purpose in conducting stress tests is to determine the potential for significant losses in the event of extreme market events and the ability of traders and clearing members to absorb the losses.

The Commission intentionally refrained from setting specific stress tests levels or a minimum threshold. The Commission believes that clearing members are in the best position to design stress tests based on their knowledge of markets and the types of customers they carry. In addition, the Commission believes that specifying certain stress tests might stifle innovation or cause firms to use minimum levels to meet regulatory compliance rather than implementing a vigorous risk management program. This approach is consistent with the approach recently adopted by the Commission for DCO stress tests. The Commission intends to monitor the implementation of this rule to determine whether clearing members are routinely conducting stress tests reasonably designed for the types of risk the clearing members and their customers face.

The Commission believes that the concept of ''extreme but plausible'' conditions is commonly used and was implicit in the proposal. The Commission is adding the phrase to the rule text for clarity.

The Commission believes that public disclosure of stress test results could be a disincentive to aggressive stress testing. Moreover, disclosure of results could have the effect of improper disclosure of confidential position information.

The Commission is adopting the provisions as proposed, with amendments to §§ 1.73(a)(4) and 23.609(a)(4) to incorporate the phrase ''extreme but plausible market conditions.''

3. Margin Evaluation

a. Summary of Comments

ISDA and FIA believe that the requirement to evaluate initial margin once per week is unclear. ISDA pointed out that a clearing member generally knows the amount of initial margin and collects it promptly.

The Commission received no comments regarding §§ 1.73(a)(6) and 23.609(a)(6) regarding variation margin.

b. Discussion

The purpose of this provision is to require clearing firms to evaluate their ability to deal with certain contingencies on a routine basis. For example, a DCO might raise margin requirements, or option positions might be exercised, or a customer might default on a margin call. The clearing firm should make sure that it has resources available to meet its continuing obligations under such circumstances.

The Commission is adopting §§ 1.73(a)(5), 1.73(a)(6), 23.609(a)(5), and 23.609(a)(6) as proposed.

4. Estimated Cost of Liquidation

a. Summary of Comments

FIA commented that ''even in normal markets, estimating the costs of liquidating such positions in an orderly manner will be difficult at best. In times of market stress, such estimates will be impossible.''

b. Discussion

The Commission recognizes that estimating the cost of liquidation is at times difficult. But the inevitable imprecision of any estimate does not justify abandoning efforts to quantify potential losses.

The purpose of the calculation is to alert the clearing firm to potential risks that might otherwise go undetected. This exercise could lead a clearing firm to decide: (1) To arrange for additional financing to cover a potential loss; or (2) to reduce the positions prior to a period of market stress. Commission staff perform stress tests of FCM positions and have alerted FCMs about potential losses. Based on Commission staff's experience in this area, the Commission believes that this is a topic that has not been fully addressed by some clearing members in recent years.

In response to commenters, the Commission has decided to modify § 1.73(a)(7) to require estimation of liquidation costs once per quarter, rather than once per month.

Additionally, the Commission is re-numbering § 23.609(a)(7) to § 23.609(a)(8), and renumbering § 23.609(a)(8) to § 23.609(a)(7), in order to follow the parallel structure in § 1.73.

The Commission is adopting §§ 1.73(a)(8) and 23.609(a)(7) with the modifications discussed above.

5. Testing Lines of Credit

a. Summary of Comments

The CME commented that the requirement to test lines of credit should only be done on an annual basis rather than a quarterly basis. The CME believes that quarterly testing is not cost efficient. ISDA sought clarification on whether the test requires an actual drawing of funds or an assessment of conditions precedent to drawing.

b. Discussion

The Commission accepts that quarterly testing might not be cost efficient under all circumstances. Nonetheless, the Commission encourages clearing members to test lines of credit more frequently based on

market and credit events. For instance, if a line of credit is in place with a bank that has recently suffered a credit rating downgrade, a test may be appropriate.

The Commission believes that the actual drawing of funds is essential to testing a line of credit. Among other things, the test should ensure the ability of the bank or other institution to move the funds in a timely fashion and that the clearing member can assess its ability to approve the drawing and properly make accounting entries. This approach is consistent with the approach the Commission recently adopted for DCOs.

The Commission is adopting §§ 1.73(a)(8) and 23.609(a)(7) as proposed, but with an amendment to provide for annual—rather than quarterly—testing of lines of credit.

6. Vagueness, Conflict, and/or Overlap Among Regulations

a. Summary of Comments

FIA expressed concern that paragraphs (a)(1) and (a)(4) through (6) of § 1.73 are too vague. FIA also expressed concern that the limits required by § 1.73 ''may conflict with the provisions of proposed Rule 1.72(c), which provides that an FCM may set only 'an overall limit for all positions held by the customer' at the FCM. Further, such limits may indirectly 'limit' the number of counterparties with whom a customer may enter into a trade, in apparent violation of proposed Rule 1.72(b).'' Regulation 1.72 was proposed in the customer clearing documentation rules [53] and is discussed in Part II, above.

ISDA commented that the then-proposed § 23.600 imposes a risk management program for SDs and MSPs that must include ''policies and procedures to monitor and manage, market, credit, liquidity, foreign currency, legal, operational, and settlement risk, as well as controls on business trading.'' ISDA believes that the broad requirements of § 23.600 that pertain to liquidity and funding make proposed § 23.609(a)(5)–(8) redundant. The Commission recently promulgated § 23.600 as a final rule.[54]

b. Discussion

The Commission does not believe that § 1.73 is too vague. Paragraph (a)(1) addresses risk-based limits, paragraph (a)(4) addresses stress tests, and paragraphs (a)(5) and (6) address margin. While FIA asserts that these requirements are vague, it provides no additional detail on the issue.

The regulation was intentionally drafted in a non-prescriptive manner. Risk management is a complex process that requires firms to make judgment calls on a daily basis. Moreover, each firm has a different customer base, different resources, and a different risk appetite. The Commission envisions that each clearing member will comply with § 1.73 using procedures and technology appropriate to its business model and customer base. As drafted, these provisions allow flexibility and innovation in complying with the regulation.

The Commission does not believe that §§ 1.73 and 1.72 conflict. As proposed, § 1.72(b) would prohibit limits as to the number of counterparties, whereas § 1.73 would require limits set according to criteria such as position size or margin amount. FIA asserts that the regulations could conflict because § 1.73 may ''indirectly'' limit the number of counterparties. A position limit, of course, can have the effect of limiting the number of counterparties in the sense that if a trader can only execute 100 lots, the trader cannot have more than 100 counterparties. But such an indirect result is distinguishable from the conduct prohibited by § 1.72(b)—the deliberate setting of limits on the number of counterparties. The first is a legitimate risk management tool; the second is an unnecessary impediment to the free and open trading that would promote liquidity.

Section 1.72(c) would prohibit only limits on the size of positions with specific counterparties. It does not prohibit limits tied to executing firms. Moreover, it specifically provides that overall position limits are permissible. Thus, there is no conflict between § 1.72(c) and § 1.73.

The Commission also does not believe that the broad requirements of the recently-promulgated § 23.600 make proposed § 1.73 redundant. Section 23.600 sets out broad principles applicable to all SDs and MSPs. As proposed, § 23.609 would apply only to those SDs and MSPs that are clearing members of a DCO. The Commission believes that if an SD or MSP takes on the additional risks and responsibilities of clearing, it should undertake risk management procedures similar to those undertaken by clearing FCMs for their proprietary accounts. Clearing members pose risks to DCOs and users of DCOs that are not posed by SDs and MSPs that are not clearing members.

V. Effective Dates

A. Summary of Comments

Arbor, Citadel, and Eris urged the Commission to prioritize the entire rule in the final rulemaking process.

The Banks, DB, EEI, and ISDA commented that the Commission should not rush this proposal.

Wells Fargo commented that the Commission should delay compliance until most industry systems meet the real-time acceptance standard. LCH requested that the Commission delay compliance for 9 months, if the rules are adopted as proposed. AllianceBernstein commented that the Commission's recently proposed phased implementation provides ample time for the market to make final preparations, and no ''interim'' execution documentation arrangements are necessary. Morgan Stanley stated that real-time clearing and risk limit compliance verification cannot be developed quickly enough to abandon trilateral agreements.

B. Discussion

This rulemaking includes rules applicable to FCMs, SDs, MSPs, DCMs, SEFs, and DCOs. In addressing implementation, it is important to distinguish between FCMs, DCMs, and DCOs, on the one hand, and SDs, MSPs, and SEFs, on the other.

FCMs, DCMs, and DCOs are currently involved in clearing swaps. Entity definitions are not necessary for them. Product definitions are not necessary for the implementation of the rules applicable to them. The products currently being cleared as swaps by DCOs are commonly characterized as such by market participants. To delay implementation of these rules pending implementation of the further product definition rules would be to deny market participants pricing, operational, and risk-management benefits unnecessarily.

No firms are currently registered as SDs, MSPs, or SEFs. Therefore, the rules applicable to these entities will have no practical effect until other rulemakings are completed, such as the further entity definition rulemaking. Nevertheless, many entities currently expect to operate as SDs, MSPs, or SEFs, regardless of the precise contours of the entity definitions. It would be more efficient for such entities, particularly those that are currently active in the

[53] *See* 76 FR 45730, Aug. 1, 2011.

[54] ''Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer,'' available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_4_BusConductStandardsInternal/ssLINK/federalregister022312b.*

markets, to develop their systems and procedures in anticipation of being subject to these rules as soon as they become applicable. Indeed, failing to take such measures would disadvantage those that did not prepare for the imminent regulatory framework. This approach would also avoid temporary gaps or discrepancies in the system of rules addressing client clearing documentation, trade processing, and clearing member risk management resulting from differing implementation schedules for various entities.

As discussed above, the Commission believes that implementation of these rules is essential to effective clearing of swaps. The Commission has determined that for FCMs, DCMs, and DCOs, these rules shall become effective *October 1, 2012.* For SDs and MSPs, these rules shall become effective on the later of October 1, 2012, or the date that the registration rules become effective.[55] For SEFs, these rules shall become effective on the later of October 1, 2012, or the date that the rules implementing the core principles for SEFs become effective.[56] The Commission believes that this approach strikes an appropriate balance between those commenters who urged implementation as quickly as possible and those who urged delayed implementation.

VI. Consideration of Costs and Benefits

Introduction

CEA Section 15(a) requires the CFTC to consider the costs and benefits of its action before promulgating a regulation under the CEA, specifying that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[57] To the extent that these final regulations repeat the statutory requirements of the Dodd-Frank Act, they will not create costs and benefits beyond those resulting from Congress's statutory mandates in the Dodd-Frank Act. However, to the extent that the regulations reflect the Commission's own determinations regarding implementation of the Dodd-Frank Act's provisions, such Commission determinations may result in other costs and benefits. It is these other costs and benefits resulting from the Commission's determinations pursuant to and in accordance with the Dodd-Frank Act that the Commission considers with respect to the Section 15(a) factors.

The regulations contained in this Adopting Release were proposed in four separate notices of proposed rulemaking (''NPRMs''). Sections 1.72, 1.74, 23.608, 23.610, 39.12(a)(1)(iv), and 39.12(b)(7) were proposed in Customer Clearing Documentation and Timing of Acceptance for Clearing,[58] sections 23.506, 37.702(b), and 38.601(b) were proposed in Requirements for Processing, Clearing, and Transfer of Customer Positions,[59] sections 1.73 and 23.609 were proposed in Clearing Futures Commission Merchant Risk Management,[60] and 1.35(a–1)(5)(iv) was proposed in Adaptation of Regulations to Incorporate Swaps.[61] The Commission is finalizing the rules contained in this Adopting Release together because they address three overarching, closely-connected aims: (1) Non-discriminatory access to counterparties and clearing; (2) straight-through processing; and (3) effective risk management among clearing members. Each of these provides substantial benefits for the markets and market participants.

The regulations related to non-discriminatory access concern customer clearing documentation. Specifically, they prohibit FCMs, SDs, MSPs, and DCOs from entering into agreements, including those known in the industry as ''trilateral agreements,'' with terms restricting an FCM's customer's ability to access all willing counterparties in the market and obtain a swap on reasonably competitive terms.[62] Open access, unrestrained by contractual terms of this type, is critical to the efficiency and financial integrity of the swap markets.

This first set of rules is designed to avoid the undesirable consequences likely to result from trilateral agreements, which include limits on the range of eligible counterparties with whom market participants can transact, reduced competition for customers' business, fragmentation of customers' trading limits at the FCM, and distorted price discovery.[63] Reduced competition in this context may lead to wider spreads, higher transaction fees (*i.e.,* increased costs for customers), and reduced market efficiency. Moreover, limiting a market participant's access to less than all willing counterparties, including those offering trades on terms approximating the best available in the market could undermine price discovery, and market efficiency. The first cluster of rules seeks to mitigate these problems through provisions fostering open access to all available counterparties and democratized access to clearing services. To that end, it prevents FCMs, SDs, MSPs, and DCOs from entering into any agreement that would: (a) Disclose the identity of a customer's original executing counterparty to the FCM, SD, or MSP; (b) limit the number of counterparties available to the customer; (c) set any limits on the size of position a customer may take (other than the general limit established by their FCM); (d) impede a customer's access to trades that approximate the best terms available; or (e) prevent compliance with timeframes for processing swaps that are required by other parts of these rules.

A second group of regulations mandates straight-through processing—rapid processing of swap transactions, including rapid submission to the DCO for acceptance or rejection from clearing—for swaps required to be cleared or that the counterparties elect to clear. In this regard, the regulations impose requirements on FCMs, SDs, MSPs, DCMs, SEFs, and DCOs that, taken together, are designed to ensure that counterparties know whether a swap will be accepted for clearing at, or soon after, the time of execution which is a critical condition for eliminating counterparty risk that undermines democratized access to the swap markets.[64] When two parties enter into a bilateral swap transaction with the intention of clearing a swap, each party bears counterparty risk with respect to the other until the swap enters clearing. Once the swap enters clearing, the clearinghouse becomes the counterparty to each side of the trade, which minimizes and standardizes counterparty risk.To the extent that there is a period of time between execution and clearing, counterparty risk may develop as post-execution market movements impact the swap's value and each party could face significant costs if the swap is

[55] Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[56] Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214 (Jan. 7, 2011).

[57] 7 U.S.C. 19(a).

[58] *See* 76 FR 45730 (Aug. 1, 2011).

[59] *See* 76 FR 13101 (Mar. 10, 2011).

[60] *See* 76 FR 45724 (Aug. 1 2011).

[61] *See* 76 FR 33066 (Jun. 6, 2011).

[62] *See* §§ 1.72, 23.608, and 39.12(a).

[63] Trilateral agreements were introduced in June 2011. On August 1, 2011 the Commission issued the NPRM of this rule prohibiting certain terms that are central to the trilateral agreements and as a consequence, adoption of the agreements thus far has been extremely limited.

[64] *See* §§ 1.35, 1.74, 23.506, 23.610, 37.702, 38.601, and 39.12(b) of the Commission's regulations.

eventually rejected from clearing and subsequently broken. Both counterparties run the risk that they may have to replace the swap under different, less desirable terms if the market has moved against them during the intervening time. In addition, SDs, whether providing liquidity to a non-SD or SD counterparty, may have to unwind or offset any positions they have taken on to hedge the original swap; this can also be costly, again, particularly if the market has moved against them since the execution of the original swap. Bilateral agreements typically address such ''breakage'' costs, but the effectiveness of those provisions could be compromised if either counterparty is unwilling or unable to make the other whole for losses. Such costs are potentially significant, particularly when the markets are volatile and the latency period is long, giving SDs an incentive to discriminate among counterparties on the basis of their credit quality. To mitigate those costs and promote more democratized access to the markets, it is critical that executed swap transactions be accepted or rejected from clearing quickly.

These rules contain several requirements that are designed to ensure that swaps are processed and accepted or rejected promptly from clearing, including requirements that FCMs, SDs, MSPs, SEFs, DCMs, and DCOs coordinate with one another to ensure they have the capacity to accept or reject trades ''as quickly as technologically practicable if fully automated systems were used.'' For trades executed on a DCM or SEF, the Commission anticipates that processing and submitting a trade for clearing would be near real-time, thus substantially eliminating the potential for significant counterparty risk accumulation during the latency period. For trades that are not executed on an exchange, but are required to be cleared, the rules require submission for clearing ''as soon as is technologically practicable after execution'' but no later than by the close of business on the day of execution. Similarly, swaps not executed on an exchange and for which clearing is elected by the counterparties (but not required by law) must also be submitted for clearing as soon as technologically practicable, but not later than the day following the latter of execution or the decision to clear.

The Commission expects that these rules requiring coordination to ensure rapid processing and acceptance or rejection of swaps for clearing will be beneficial in several respects. First, they will promote rapid adoption in the market of currently existing technologies that will make possible near real-time processing of exchange traded swaps. For trades that are pre-screened, or executed on an exchange, this will virtually eliminate counterparty credit risks associated with clearing rejection. The rules will also significantly reduce the amount of time needed to process swaps that are not traded on an exchange; although costs associated with latency-period counterparty credit risk cannot be completely eliminated in this context, the rules will substantially reduce the need to discriminate among potential counterparties in off-exchange trades, as well as the potential costs associated with rejected trades. By reducing or eliminating the counterparty risk that could otherwise develop during the latency period, these rules promote a market in which all eligible market participants have access to counterparties willing to trade on terms that approximate the best available terms in the market. This rule may improve price discovery and promote market integrity.

The third set of rules in this Adopting Release requires that FCMs, SDs, and MSPs who are clearing members of a DCO implement sound risk management practices that help ensure their financial strength. A DCO's financial strength depends on the continued financial strength of its clearing members. The Commission believes that requiring clearing members to engage in certain risk management procedures will provide additional assurance of their ability to meet their financial obligations to their respective DCOs, particularly in times of market stress.

The third group of rules in this Adopting Release therefore requires clearing members to establish overall risk-based position limits for their proprietary trading accounts and each of their customer accounts, and to screen trades for compliance with those limits. The rules also require clearing members to monitor for adherence to such risk-based position limits, both intra-day and overnight; to conduct rigorous stress tests on significant accounts at least once per week; to evaluate their ability to meet initial and variation margin requirements at least once per week; to evaluate the probable cost of liquidating various accounts at least once per month; to test all lines of credit at least once per year; and to establish procedures and records that ensure and verify their compliance with these requirements. Many of these requirements reflect common practices for clearing members. These rules promote consistent use of risk management best practices among clearing members, while also allowing flexibility to encourage innovation and adaptation to the specific operating requirements of diverse clearing members. The Commission anticipates that the requirements themselves will help to ensure that clearing members and their respective DCOs remain financially sound during periods of market stress. Moreover, the Commission believes that the flexibility these requirements allow will minimize attendant costs and enable members to adapt their risk management practices to new market demands and develop more effective strategies for monitoring and managing risk.

In the sections that follow, the Commission evaluates the costs and benefits relevant to each of the three groups of rules pursuant to Section 15(a) of the CEA. Each section specifically addresses the individual Section 15(a) factors with respect to the rule group and responds to comments pertaining to that group. In its analysis, the Commission has endeavored, where possible, to quantify costs and benefits. However, the costs and benefits are either indirect, highly variable, or both and therefore are not subject to reliable quantification at this time. Nevertheless, the Commission has considered all the comments received, a broad range of costs and benefits pertaining to democratized swap market access, improvements and challenges in risk management, development and implementation of necessary technology, market liquidity, and several others as detailed below.

Cost Benefit Consideration by Rule Group

1. Customer Clearing Documentation

Sections 1.72, 23.608, and 39.12(a)(1)(vi) restrict FCMs, SDs and MSPs, and DCOs, respectively, from entering into any arrangements that would (a) disclose the identity of a customer's original executing counterparty to any FCM, SD, or MSP; (b) limit the number of counterparties with whom a customer may trade; (c) restrict the size of a position that the customer may take with any individual counterparty apart from the overall limit for all positions held by the customer at the FCM; (d) limit a customer's access to trades on terms that have a reasonable relationship to the best terms available; or (e) prevents compliance with other regulations requiring rapid processing and acceptance or rejection from clearing.

The Commission believes that these rules proscribe certain terms in trilateral agreements that were proposed by some

SDs and FCMs. However, the Commission notes that trilateral agreements were not used in swap markets prior to June 2011. SDs historically have provided liquidity and managed risk without the use of trilateral agreements, and the Commission understands that such agreements have not yet been widely adopted. Therefore, it is unlikely that these rules, by preventing certain terms in trilateral agreements, will cause widespread changes in current market practices for managing counterparty risk or for negotiating bilateral agreements.[65] Moreover, the rules adopted in this Adopting Release will enhance risk management in other ways, obviating any perceived need for terms in trilateral agreements that can harm market competitiveness, efficiency, and price discovery. In that context, the Commission concludes that these changes are justified.

a. Protection of Market Participants[66] and the Public

The Commission is concerned that by giving FCMs the ability to establish and communicate sub-limits on the positions a specific SD may clear with a specific customer, the trilateral agreements may allow FCMs to influence the amount of business that a customer conducts with specific counterparties, or to constrain the number or choice of counterparties with whom a customer is able to trade. This concern is amplified because a number of FCMs have affiliated SDs who (along with other SDs with whom the FCM-affiliated SD competes for swap transaction business) are potential counterparties to the FCM's customers. To the extent that FCMs could use terms in trilateral agreements to influence a customer's choice from among potential SD counterparties, the agreements could provide a means for FCMs to direct business toward an associated SD (or to raise the cost of doing business with an unassociated SD) to the diminution of competition to provide swap liquidity generally; in this way, the agreement may work to the disadvantage of those market participants that might benefit from better competition. Moreover, by limiting a customer's range of potential counterparties and the size of positions that may be entered with specific counterparties, the FCM establishes a condition that in some circumstances could preclude matching of the customer's order with the counterparty that is willing to provide the best available terms in the market at that time. This sub-optimal outcome increases costs for the customer, and any systematic increases in costs to the customer will indirectly impact prices that the public ultimately pays for related goods and services.

In addition, such limitations also impose costs on potential counterparties who are prevented from trading with customers by restrictions in the trilateral agreements. If those counterparties are dealers, they lose the opportunity to win that customer's business. If those counterparties are non-dealers, they lose the liquidity that would have otherwise been available to them as a consequence of the customer's need to execute a swap. Last, an FCM could, intentionally or unintentionally, signal to the market information about the customer through designation notices. For example, clearing members may be more likely to reduce a customer's limits during a time of market stress. Communicating reductions on various sub-limits to potential SD counterparties may signal (perhaps wrongly) that the credit quality of the customer is deteriorating. This signal could make it more difficult for the customer to transact at a time when their ability to transact is particularly critical.

These potential costs to customers and the public will be forestalled or altogether eliminated by these rules. These benefits, however, are unquantifiable for several reasons. First, many of the potential costs and benefits associated with trilateral agreements are indirect and dispersed to a degree that they would be difficult to estimate even if there were ample data available. Second, ample data is not available. The Commission does not have any data that characterizes pricing, liquidity, or other important variables in the presence and absence of trilateral agreements. Last, trilateral agreements were introduced in mid-June 2011, and the Commission believes that adoption of trilateral agreements thus far has been extremely limited. Further, the Commission believes that the NPRM of this rule, which was released a few weeks after trilateral agreements were introduced, may be a primary factor deterring rapid adoption of these agreements.[67] To the extent that this is correct, the current rate of adoption and impact on the market is unlikely to be a reflection of what the impact of trilateral agreements would be in the absence of this rule. In other words, even if the Commission had the data necessary to estimate the current impact of trilateral agreements (which it does not), those estimates would not accurately reflect the potential impact of these agreements. However, by prohibiting contractual terms that would limit the number of potential counterparties, set sub-limits on a customer's positions, or restrict a customer's access to terms reasonably related to the best terms available in the market, these rules provide significant protection to market participants.

With respect to the customer-identity nondisclosure requirement, several commenters stated that protecting anonymity is critical as a condition for open, efficient, and competitive swap markets.[68] Maintaining the anonymity of a customer's counterparty prevents the clearing member from sharing with any affiliated SDs competitively sensitive information about its customers' counterparties—who may be competitors and/or subsequent swap counterparties to the affiliated SD—that affiliated SDs can use for their own gain (and that of the SD/FCM affiliate group). This rule, together with the rule that prevents FCMs from establishing sub-limits, prohibits arrangements that allow FCMs to share competitively sensitive information that could undermine competition to provide swap liquidity—including information that provides transparency into customer swap positions and exposures. In so doing, the rules better protect those swap counterparty market participants that benefit from greater competition (*e.g.,* as may be reflected in improved bid/ask spreads) to provide the desired swaps. The value of such protection would vary depending on the specific type and timing of information that is communicated as well as the role and incentives of the entity receiving that information relative to the entity about which the information is disclosed. These factors are highly variable and impracticable to quantify, and, as a consequence, the Commission does not have adequate information to reasonably estimate the additional costs that might be caused by such disclosures, or the value of preventing such costs.

In addition, SDs, FCMs, and FCM customers may soon expend resources negotiating trilateral agreements. By prohibiting certain provisions from inclusion in trilateral agreements, these rules reduce the likelihood that SDs, FCMs, and customers will enter into them. To the extent that this occurs,

[65] To the extent that changes will occur, the costs attendant to them are indirect and cannot be estimated without data that is not available at this time.

[66] The term ''market participants'' as it is used throughout the cost benefit considerations section includes SDs, MSPs, FCMs, and the customers of FCMs (*i.e.,* SD, MSP, and non-SD/MSP swap counterparties).

[67] *See* 76 FR 45730, Aug. 1, 2011.

[68] *See* MFA, Arbor, SIFMA, D. E. Shaw, AIMA, and Vizer.

SDs, FCMs, and customers will save the substantial costs that otherwise would be required to negotiate such agreements.[69] Vanguard, for example, estimates that, if it was forced by SDs to implement trilateral agreements, it may have to negotiate and enter into approximately 4,800 new trilateral agreements per year.[70] In addition, those agreements would create significant administrative and ongoing legal costs associated with review, periodic update, and, for customers, compliance to monitor their own activities. Some commenters suggested that the resources necessary to create and administer trilateral agreements would divert resources from implementing market infrastructure that is necessary to facilitate straight through processing.[71]

The Commission recognizes that prohibiting certain arrangements that are currently in trilateral agreements may increase counterparty risks (costs) that SDs face due to the possibility that swaps they enter could be rejected from clearing. Trilateral agreements are intended to increase the degree of the SD's certainty that trades with certain customers and within certain limits will be accepted for clearing. The prohibitions contained in the first group of rules are likely to prevent SDs from using trilateral agreements in this way, creating certain potential costs for the SDs who have established trilateral agreements with some of their customers and the customers' FCMs.[72] However, as noted above, there are also significant costs associated with trilateral agreements. Moreover, in the Commission's judgment, provisions contained within the second cluster of rules (*i.e.,* rules pertaining to straight-through processing) will mitigate the potential costs to SDs and other market participants substantially. More specifically, as discussed below, the second group of rules mitigates costs associated with pre-clearing-approval counterparty risk through straight-through-processing requirements; the Commission anticipates these rules will drive rapid implementation of existing market technology to substantially narrow the window of counterparty risk for SDs between execution and clearing acceptance/rejection.

Moreover, commenters have suggested that in certain circumstances, the sub-limits associated with trilateral agreements may actually exacerbate the counterparty risk problem by delaying processing and increasing the latency period during which counterparty exposure develops.[73] If a customer enters a swap with an SD without a trilateral agreement in place, the FCM may need to check with and adjust the limits of various SDs who do have trilateral agreements set up with that customer before making a clearing determination. The administrative requirements of these steps could delay clearing. By prohibiting agreements that create such delays, the rules reduce the latency period for some transactions, which also reduces the amount of counterparty risk that can develop during that period.

Notwithstanding the inability to quantify in dollar terms the costs of this change in risk avoidance and mitigation practice, in the Commission's judgment the change is justified by the critical benefits that the rules provide regarding open access to, and democratization of, swap markets.

b. Efficiency, Competitiveness and Financial Integrity of Markets

These rules specifically prohibit any agreement that would limit a customer's potential available counterparties. This prohibition encourages competition among SD counterparties for the customer's business, which is likely to reduce spreads and promote the customer's ability to obtain swap positions on terms approaching or equaling the best available terms in the market at that time. Accordingly, the Commission expects the spreads and terms under which customers are able to obtain swaps to improve when compared with a situation in which customers' range of potential counterparties is constrained by counterparty-specific sub-limits established by the FCM. It is possible that the effect of greater competition on spreads and terms may be mitigated by the impact of increased risk to the dealers, which is also likely to impact spreads and terms. However, the Commission believes that the latter effects will be minimized and diminish over time as the processing of trades becomes more rapid.

As suggested above, counterparty-specific sub-limits increase expenses related to monitoring and administrative requirements, and commenters have stated that in some circumstances trilateral agreements may actually slow swap processing. The prohibitions contained in these rules will prevent such arrangements, thereby leading to greater swap processing speed in those circumstances.

c. Price Discovery

If certain customers are prevented from accessing swaps on terms that approximate the best available terms in the market at that time, and then the terms of that trade are reported in real time, it risks sending misleading signals to the market about the price at which certain swaps are available. This result has the potential to undermine price discovery. The prohibitions in these rules will help ensure that customers in the market can access trades on approximately the best terms available in the market, both in general by prohibiting agreements that would prevent such an outcome, and more specifically by prohibiting any (1) agreements that would limit the number of counterparties with whom a customer may trade, and (2) counterparty-specific sub-limits on the customer's positions.

d. Sound Risk Management Practices

By ensuring that customers are able to trade with all willing counterparties in the market, the rules promote greater liquidity available to the customer and to potential counterparties, which makes it more likely they will be able to enter swaps and offset positions as needed. This result is important for maintaining effective offsetting positions as underlying positions change. Moreover, greater liquidity may push transaction costs downward, which enables market participants to execute their risk management strategies in a more cost-effective manner.

To the extent that prohibiting certain terms typical of trilateral agreements will reduce an SD's certainty about whether the swap will be cleared, it may increase the SD's risk management costs. However, as noted above, trilateral agreements did not appear until June 2011, which suggests that SDs are capable of managing their risks effectively in the absence of certain terms contained in those agreements. For example, SDs conduct due diligence in order to evaluate their counterparty's credit-worthiness, and may choose to negotiate terms in the bilateral agreement that determine what

[69] *See* AllianceBernstein, Citadel, D. E. Shaw, MFA, SIFMA, and Vanguard.

[70] *See* Vanguard.

[71] *See e.g.,* Citadel, Alliance Bernstein, and MFA.

[72] These costs, if compared against the baseline of current market practice, depend on the extent to which trilateral agreements containing terms proscribed in these rules are currently being used. Based on anecdotal feedback from market participants, the Commission believes that trilateral agreements have not yet been widely adopted. Moreover, as suggested above, the Commission believes that requiring more rapid swap processing and clearing determinations will offset these costs, diminishing them significantly over time. However, the Commission does not have sufficient data regarding the number of trilateral agreements currently in place, or the number and terms of swap transactions that they impact, to estimate these costs.

[73] *See e.g.,* AIMA, SIFMA, Vanguard, and MFA.

obligations each counterparty has in the event that a swap should be rejected from clearing. SDs may have to adjust their risk management strategies for the possibility that their counterparty may not be able to meet the terms of the bilateral agreement if the trade is rejected. If such bilateral agreements provide that the swap will be terminated when rejected from clearing, the dealer may have to unwind or offset certain aspects of positions that they have taken to offset the original position. The Commission anticipates that SDs will account for these potential additional costs in the terms and pricing of the swaps they offer. In most cases, however, the risk management strategies described above reflect current market practice. Therefore, much of the costs associated with those practices are not a function of these rules. Last, these potential costs will be mitigated by faster processing, and, in cases where prescreening or near real-time post-execution screening are possible, eliminated.[74]

Some SDs have posited that market liquidity for some customers may decrease because SDs will not provide swaps to counterparties whose credit quality is lower unless a trilateral agreement is executed. The Commission recognizes that any factor that undermines SDs' confidence that swaps will be cleared may cause them to avoid certain trades or to increase the price at which they are willing to offer swaps to certain counterparties. However, because SDs have been providing liquidity to market participants for years in the absence of trilateral agreements, and adoption of such agreements is not yet widespread, the Commission does not believe that preventing certain provisions of these agreements will significantly reduce liquidity in swap markets. Moreover, certain aspects of these rules, such as requirements for rapid swap processing and clearing determinations, are likely to promote additional liquidity by reducing the counterparty risk that could develop for SDs between the time of execution and clearing.[75]

e. Other Public Interest Considerations

The Commission has not identified additional public interest considerations beyond those discussed above.

f. Response to Comments

Several commenters noted that the benefits of the proposed rules include: reduced systemic risk;[76] reduced barriers to entry and greater competition among liquidity providers, clearing members, and execution venues;[77] enhanced market depth and liquidity;[78] substantially reduced transaction costs;[79] narrower bid-ask spreads;[80] and increased access to best execution via the freedom to execute with any counterparty in the market.[81] D. E. Shaw and MFA commented that the proposed rules would preserve anonymity among trading participants, and facilitate the development of electronic trading and central limit order books.

Additionally, several commenters remarked that without the final rules, the framework for trilateral agreements would substantially increase costs for market participants.[82] AllianceBernstein suggested that without the proposed rules, resources would be diverted from forward-looking technological solutions for clearing certainty, and instead used to prop-up legacy systems for credit intermediation.[83] Vanguard stated that the trilateral agreement will introduce significant costs and delays to the timeline for swaps clearing implementation because parties will be forced to execute a myriad of documents as a pre-condition to clearing and trading.

Moreover, multiple commenters stated that while they are generally loathe to encourage regulations that interfere with private contracts between two parties, they believe that the undesirable consequences of trilateral agreements, such as limiting a customer's choice of counterparties and trading venues, impairing their access to the best terms available, the potential for anticompetitive effects, creating barriers to entry for new liquidity providers, delaying adoption of technology that will enable real time processing and clearing determinations, and precluding anonymity that is a necessary condition for trading on central limit order books, justify these rules.[84] In this vein commenters maintained that the largest SDs have sufficient power deriving from their role as swap liquidity providers to coerce at least some market participants into signing ''optional'' trilateral agreements, and expressed concern that the agreement could rapidly become an industry standard despite the resistance of buy-side firms.[85] The Commission agrees that it is necessary, in this case, to establish rules that prevent trilateral agreements from being used to limit open and competitive swap markets.

In supporting the use of trilateral agreements some commenters have suggested that they are analogous to the FIA/FOA sponsored International Uniform Brokerage Execution Services (''Give-Up'') Agreement (''Futures Give-Up Agreement''), which is used in the futures markets. The Futures Give-Up Agreement is between an executing broker, clearing broker, and customer, and allows the clearing broker to ''place limits or conditions on the positions it will accept for the give-up for customer's account.''[86] Commenters expressed the opinion that the risks faced by executing brokers and clearing firms in futures markets are substantially similar to the risks faced by SDs and clearing members in the swap markets, and therefore the use of trilateral agreements should be acceptable.[87]

However, the Commission is not persuaded that the points of similarity between Futures Give-Up Agreements and trilateral agreements provide sufficient evidence to demonstrate that the latter may be used in swap markets without adverse effects on market participants as discussed above. The two types of agreements are distinguishable in important respects. The parties to a Futures Give-Up Agreement include a customer and two brokers acting on behalf of the customer. The parties do not include the customer's trading counterparty in the relevant transaction. Moreover, Futures Give-Up Agreements do not: (a) Disclose the identity of a customer's original executing counterparty to any FCM, SD, or MSP; (b) limit the number of counterparties with whom a customer may trade; (c) restrict the size of a position that the customer may take with any individual counterparty apart

[74] Several commenters pointed out that in an environment where real-time clearing determinations are made, bilateral execution agreements are not necessary. As evidence, commenters pointed to Clearport, Globex, and WebICE. Each of these platforms facilitate real-time clearing determinations, and each does so without bilateral execution agreements. *See e.g.,* SDMA and Javelin.

[75] *See* section 2, Timing of Acceptance of Trades for Clearing, below.

[76] *See* AllianceBernstein, Arbor, CBA, CIEBA, Citadel, D. E. Shaw, and MFA.

[77] *See* AllianceBernstein, Arbor, Citadel, D. E. Shaw, and MFA.

[78] *Id.*

[79] *See* AllianceBernstein, Arbor, and CIEBA.

[80] *See* AllianceBernstein, Citadel, D. E. Shaw, and MFA.

[81] *See* AllianceBernstein, Citadel, D. E. Shaw, and MFA.

[82] *See* AllianceBernstein, Citadel, D. E. Shaw, MFA, SIFMA, and Vanguard.

[83] *See also* MFA, Citadel.

[84] *See* SDMA, AIMA, Trading Firms, MFA, Arbor, DRW, and Jeffries.

[85] *See* AIMA, Trading Firms, CIEBA, Citadel.

[86] *See* Morgan Stanley, FIA/ISDA, Banks.

[87] *See* Morgan Stanley.

from the overall limit for all positions held by the customer at the FCM; (d) limit a customer's access to execution of trades on terms that have a reasonable relationship to the best terms available; or (e) prevent compliance with other regulations requiring rapid processing and acceptance or rejection from clearing.

Some commenters suggested that by specifying the types, size, and volume of trades that they are willing to engage in with certain customers, trilateral agreements help increase the range of counterparties with whom SDs are willing to trade.[88] There is not sufficient data available to the Commission to evaluate these assertions, and commenters did not provide any data to support them. The Commission acknowledges that factors reducing an SD's certainty about whether a swap will be cleared could prompt it to limit its business with certain counterparties or to change the terms under which it offers swaps to certain counterparties, but the trilateral agreements could also constrain either the range of counterparties with whom an SD is willing to trade, the size of positions it is willing to offer to certain counterparties, or both.[89] In other words, while some commenters are concerned that prohibiting certain terms in trilateral agreements may constrain liquidity, the Commission recognizes that trilateral agreements also constrain liquidity. It is not knowable at this time which force is likely to have the greater constrictive effect on the liquidity that an SD is willing to provide to certain counterparties. Moreover, as stated above, some aspects of these rules, including the straight-through-processing and risk management provisions, are likely to substantially reduce, if not eliminate, SD latency exposure and encourage SDs to provide greater liquidity. Accordingly, in the Commission's judgment, proscribing certain terms of trilateral agreements (with their negative implications for competition, efficiency and price discovery) is the preferable approach from a systemic standpoint to promote liquidity.

Commenters opposed to the rules stated that prohibiting trilateral agreements would require buy-side and sell-side firms to subject themselves to risks that they do not face today and would make it necessary for dealers to expend resources negotiating bilateral agreements with customers and evaluating the customer's credit prior to executing a transaction.[90] However, this would only be true to the extent that trilateral agreements are (1) being used today to mitigate certain risks, and (2) make it unnecessary to negotiate bilateral agreements and evaluate a customer's counterparty risk. As stated above, the Commission believes that trilateral agreements are not widely used at this time and, thus, are providing dealers risk protection only to a limited extent. Moreover, it does not appear that trilateral agreements obviate the need to negotiate what might happen in the event of breakage; the Commission, therefore, does not believe that prohibiting certain provisions of trilateral agreements is likely to significantly impact the expenses associated with bilateral agreements.[91]

Furthermore, commenters opposed to the rules stressed that the trilateral agreements are optional.[92] They also noted that the trilateral agreements ''do not affirmatively limit'' a customer's ability to trade with willing counterparties or prohibit dealers and customers from entering positions greater than the sub-limit established by the FCM.[93] However, even in the absence of ''affirmative'' limitations, the agreement may have much the same effect. Some commenters stated that certain dealers have expressed unwillingness to continue providing swaps to certain customers if they did not sign a trilateral agreement; the agreement itself contemplates this possibility.[94] The Commission's concern with conduct of this type is heightened by information suggesting that a relatively small number of dealers provide a significant amount of swap liquidity available.[95] Under these circumstances, each dealer that refuses to offer swaps in the absence of a trilateral agreement may significantly reduce liquidity available to a customer. Absent sufficient competition to provide liquidity, dealers may be able to impose restrictive, undesirable trilateral agreement terms on customers.

Commenters in favor of trilateral agreements suggested that concern about anti-competitive behavior could be addressed by allowing the customer to determine how their overall limit at the clearinghouse is allocated across potential counterparties. The Commission agrees that such an approach would mitigate the concern that FCMs could use trilateral agreements to influence a customer's choice of counterparties in an anti-competitive manner. However, it would not allow customers to take positions in excess of previously established sub-limits with certain counterparties without walking through the process of reallocating sub-limits, a process that could be time consuming. This result risks delay of swap processing and clearing determinations, or inducement of market participants to select suboptimal offers that comply with pre-established limits to avoid the delay. Such a delay could be particularly problematic in volatile market situations, where the ability to enter into positions quickly may be necessary in order to manage risk effectively.

2. Timing of Acceptance of Trades for Clearing

Taken as a whole, the regulations in this cluster require SEFs, DCMs, SDs, MSPs, and DCOs to coordinate in order to facilitate real-time acceptance or rejection of trades for clearing, including through development of the technology necessary to do so. In the case of cleared trades, the swaps must be processed and submitted to the DCO as soon as technologically practicable using fully automated systems. In the case of non-cleared trades, the swaps will be processed and submitted to the DCO as soon as is technologically practicable, but allows for processing to take slightly longer. More specifically:

Regarding Clearing Members

Sections 1.74 and 23.610 require that FCMs, and SDs and MSPs, respectively, coordinate with the DCO to accept or reject trades for clearing ''as quickly as

[88] *See* Morgan Stanley, UBS, and EEI.

[89] The first page of the FIA–ISDA Cleared Derivatives Execution Agreement states that ''EXECUTION PARTIES MAY REQUEST THAT A FORM OF THIS AGREEMENT (OR THE ANNEXES HERETO) BE EXECUTED AS A CONDITION TO ENTERING INTO TRANSACTIONS INTENDED TO BE CLEARED.'' *See http://www.futuresindustry.org/downloads/ClearedDerivativesExecutionAgreement_June142001.pdf.*

[90] *See* Banks, Morgan Stanley.

[91] *See http://www.futuresindustry.org/downloads/ClearedDerivativesExecutionAgreement_June142001.pdf.* The trilateral agreement template includes terms dictating what happens in the event that a swap is rejected from clearing. The CFTC believes, therefore, that these terms are likely negotiated and addressed even where trilateral agreements are used.

[92] *See* FIA/ISDA.

[93] *See* Morgan Stanley. *See also* FIA/ISDA, Banks.

[94] *See* n.71, above.

[95] *See* the OCC's Quarterly Report on Bank Trading and Derivatives Activities Third Quarter 2011, available at *http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/dq311.pdf,* which states, ''Derivatives activity in the U.S. banking system continues to be dominated by a small group of large financial institutions. Five large commercial banks represent 96% of the total banking industry notional amounts and 85% of industry net current credit exposure.'' While the report only includes data related to positions held by U.S. banks, and incorporates derivatives that are not swaps, anecdotal evidence also supports the likelihood that a relatively small dealer population accounts for significant portions of swap liquidity.

would be technologically practicable if fully automated systems were used'' and do so by one of the following methods: (1) Pre-screening orders; (2) enabling the DCO to screen orders using criteria established by the FCM, SD or MSP; or (3) setting up systems that enable the DCO to communicate with and receive a reply from the FCM, SD, or MSP as soon as would be practicable if fully automated systems were used.

Section 23.506 requires SDs and MSPs to: (1) Have the capacity to submit swaps that are not executed on a DCM or SEF (''OTC swaps'') to the DCO for clearing in a way that is acceptable to the DCO; (2) work with the DCO to process swaps in a manner that is ''prompt and efficient'' and that complies with 39.12(b)(7); (3) submit bilateral swaps to the DCO as soon as is technologically practicable but no later, if it is a swap subject to mandatory clearing, than the close of business on the day of execution, or, if it is a swap not subject to mandatory clearing, no later than the end of the following business day from the later of execution or the date when the parties decide to clear.

Section 1.35 requires that for bunched trades that are cleared, post-trade allocations must occur on the day of execution, so that clearing records properly reflect the ultimate customers. (Bunched trades that are cleared are not given a delay for post-trade allocation before being submitted for clearing.) For bunched trades that are not cleared, post-trade allocations must happen by the end of the day they are executed.

Regarding Execution Platforms

Section 38.601 requires that transactions executed on or through a DCM, other than transactions in security futures products, must be cleared on a DCO, and the DCM must work with DCOs to ensure ''prompt and efficient'' transaction processing such that the DCO can comply with § 39.12(b)(7). Section 37.702(b) requires that SEFs coordinate with DCOs in order to route transactions to the DCO in a manner acceptable to the DCO, and to develop rules and procedures that facilitate prompt transaction processing in accordance with § 39.12(b)(7).

Regarding DCOs

Section 39.12(b)(7) requires DCOs: (1) To coordinate with SEFs and DCMs to develop rules and procedures that facilitate ''prompt, efficient, and accurate'' processing of transactions received by the DCO; (2) to coordinate with FCMs, SDs, and MSPs to set up systems that enable the clearing member or the DCO acting on its behalf to accept or reject trades for clearing as swiftly as if fully automated systems were used; (3) for trades executed on SEFs or DCMs, to establish rules to accept or reject trades for clearing as fast as if fully automated systems were used, and to accept all trades for which both executing parties have a clearing member, and that satisfy the criteria of the DCO; and (4) for trades that are not executed on SEFs or DCMs, but that are for contracts listed by the DCO, to satisfy requirements similar to those applicable to trades that are executed on SEFs or DCMs.

a. Protection of Market Participants and the Public

The Commission anticipates that this group of rules will provide significant benefits to market participants. First, by requiring that SEFs, DCMs, SDs, and MSPs coordinate in ways that will lead to faster processing and acceptance or rejection of swaps for clearing, the rules reduce the latency period during which counterparty risk can accumulate for parties who have executed a swap that they intend to clear. If, following a long latency period, the swap is rejected from clearing and is cancelled as a consequence, the SD will be forced to recoup breakage costs from their counterparty to the extent that their bilateral agreement provides and their counterparty is able to meet the terms of that agreement; the SD also may need to unwind or offset any position it has established, potentially at a loss. SDs have pointed out that the size of many swap transactions, as well as the illiquidity and volatility of these markets, create the potential for these risks to be substantial,[96] so by reducing the time between execution and clearing, these rules provide considerable benefits to SDs. Moreover, for swaps where real-time acceptance or rejection from clearing occurs, the latency period, and the potential for post-execution termination costs, is eliminated.

Likewise, non-SD market participants will be able to better judge their counterparty risk and hedging strategies. The possibility exists that a non-SD market participant could have to unwind or offset other positions at a loss if a swap position is cancelled unexpectedly, or need to create the same position but on less favorable terms if the market has moved against them. It is also possible that the non-SD market participant may not be able to negotiate terms with the SD that would allow it to recoup much or all of the costs associated with the cancelled swap. Reducing or eliminating the latency period through more rapid processing and acceptance or rejection of swaps from clearing will reduce those costs to the benefit of both SD and non-SD market participants. If there is less time between execution and clearing, there will be less time for counterparty exposure to develop, which mitigates the need for extensive due diligence or for elaborate procedures to address breakage costs.

With respect to costs, some capital investment will be necessary to develop the processes and implement the technology necessary to meet the requirements specified in these rules. However, in the case of DCMs, SDs, MSPs, and DCOs, the Commission believes that many entities are already using procedures and technology that comply with the standards in some measure. The necessary investments, therefore, will be incremental and will depend significantly on the current processes and technology in place at each of these institutions. Moreover, many of these entities may have to modify or upgrade their systems in order to comply with other aspects of the Dodd-Frank Act. The costs necessary to adjust technology platforms to meet these other requirements are being considered in each of those rules, and so the costs attributable to these rules are only those that create improvements that would not otherwise be made pursuant to those other rules. The incremental costs attributable to these rules cannot be quantified, due to the flexibility the rules provide regulated entities to meet the applicable standards and to the differing technology already in use by those entities, but the Commission anticipates that the necessary capital expenditures by some entities may be significant. However, as discussed above, the benefits of such technology and procedures are substantial as well, and, based on comments, the Commission believes potentially of a magnitude to offset the costs of implementing such systems. Citadel believes the rules will save enough resources to benefit the economy as a whole, and SDMA estimates that the total benefits for corporate America will have a value of approximately $15 billion annually.[97]

[96] SDs, however, did not provide estimates of or seek to quantify such risks.

[97] *See* Citadel and SDMA. Neither commenter provided calculations to substantiate their estimates, so the Commission is not able to verify their accuracy. However, as stated above, the Commission does believe that the benefits of such systems and procedures will be substantial.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The general requirement that processing and acceptance or rejection from clearing must occur ''as quickly as is technologically practicable'' or ''as quickly as is technologically practicable if fully automated systems are used'' creates an enforceable standard that provides SEFs, DCMs, SDs, MSPs, and DCOs the freedom to establish systems that meet their unique operational needs and that is, in their judgment, most cost effective. By accommodating innovation, and further system improvements, this approach will promote continued improvements in the reliability and efficiency of these systems that, indirectly, may benefit financial market efficiency generally.

Rapid processing and acceptance or rejection from clearing will help to ensure that eligible counterparties are not exposed in transactions that are ultimately rejected from clearing and broken. With respect to dealers, this helps to ensure that they will be available to other eligible customers by reducing the amount of their balance sheet that is ''tied up'' supporting transactions that are eventually rejected from clearing and broken. By limiting the duration of transactional exposure, the rules' rapid processing requirements serve to help protect market liquidity that dealers in significant part provide.[98]

Required coordination among SEFs, DCMs, SDs, MSPs, and DCOs, together with the requirements for rapid processing and acceptance or rejection from clearing, is likely to promote broad adoption of standardized technologies and processes. The rules, in this respect, will provide an incentive to further improvements in the speed of processing, and may reduce switching costs for customers by ensuring that their technology platforms are able to interface with a wide array of FCMs and counterparties without significant modifications. Lower switching costs, in turn, are conducive to greater competition among SD counterparties and lower bid-ask spreads may result.

Limit order books[99] cannot exist in an environment where there is uncertainty about clearing because each participant will want to identify its potential counterparty and evaluate its creditworthiness in order to manage risks that could develop if the trade is rejected from clearing. Enabling clearing members and exchanges to pre-screen orders in real time for compliance with clearing member limits for each customer facilitates the development of a central limit order book and the pure price competition it affords by ensuring that each trade executed on the exchange will proceed to clearing. This certainty, and the central limit order book that it makes possible, enables anonymous, exchange-based execution. This execution method is an effective mechanism for providing all-to-all market access, placing all eligible market participants on equal footing when bidding on or offering positions; the only distinguishing characteristic among them is the price they bid or offer. Participants do not need to know the identity of entities on the other side of the trade or to concern themselves with the creditworthiness of those entities because each participant knows they will be facing the clearinghouse as their counterparty.

Efficiency, certainty of clearing, and liquidity in the U.S. based swap markets are attractive characteristics that may prompt additional customers and dealers to send business to U.S.-based exchanges. To the extent that this occurs, it will promote greater liquidity and competition.

c. Price Discovery

Pre-trade price transparency is enhanced by central limit order books, where market participants can view the prices at which market participants are willing to ''buy'' or ''sell'' certain positions. Pre-screening capabilities help to ensure that only bids and offers from parties whose transactions will be accepted for clearing are represented in the central limit order book. This promotes the integrity of the order book, and the informational value of the bids and offers contained within it, which promotes effective price discovery.

To the extent that a swap moves from execution to acceptance or rejection from clearing and receives an answer in real time that speed eliminates the need for SDs to price idiosyncratic counterparty risk (*i.e.* risk that is different than that posed by the clearinghouse as a counterparty) into the swap. This result means that the price at which a swap is transacted more accurately reflects the price that other market participants would receive for the same product at that time. Therefore, the prices reported in real time have greater informational value for all market participants.

d. Sound Risk Management Practices

If an SD is uncertain whether a trade will clear, it will not know whether it should account for idiosyncratic counterparty risk because it will not know whether the clearinghouse or their counterparty will face them for the life of the swap.[100] Or, if the agreement between the SD and the customer counterparty calls for the trade to be cancelled in the event of clearing rejection, the SD's hedging strategies will be complicated by uncertainty until the clearing outcome is known. Faster processing and acceptance or rejection of trades from clearing facilitates sound risk management by eliminating these uncertainties, or at least by reducing the period of time during which they are relevant. This result makes it easier and potentially less costly for dealers to develop and execute sound risk management strategies.

Similarly, faster processing and acceptance or rejection from clearing makes it easier and potentially less costly for other non-SD market participants to manage their risk effectively. The more certainty SDs have that a trade will clear, the less they need to charge for clearing-acceptance risk. This result makes it less expensive for non-SD market participants to acquire the positions they need to execute their risk management strategies. It also obviates the need that an SD would otherwise have to evaluate counterparty credit-worthiness, which may decrease the amount of time required for a market participant to execute a needed trade. In volatile markets, this increased speed can be valuable, if not essential, when managing complex risks.

On the other hand, some processes will still be manual even after these rules are adopted. This result may be true particularly for swap transactions that are executed bilaterally and then communicated to clearing members. Speed requirements may increase the possibility of errors in manual processes. The potential range of mistakes and range of costs associated with those mistakes is broad, and impossible to estimate. However, market participants have an incentive to avoid such mistakes, and the Commission anticipates that the requirements related to the timing of acceptance or rejection from clearing will encourage automated, straight-through processing, which over time is likely to reduce the number of manual processes and therefore the number of opportunities for errors.

Also, while these rules require clearing members, SEFs, DCMs, and

[98] *See* n. 77, above.

[99] A Central Limit Order Book (CLOB) is a system used by many exchanges to consolidate and match orders. An open CLOB exposes available pricing and market depth for listed products. Market participants are allowed to see limit orders that have been placed but have not yet been executed or cancelled. Usually, exchanges use open CLOBs to match customer trade orders with a ''price time priority.''

[100] *See* DB.

DCOs to develop the ability to process swaps and make clearing determinations in a timeframe that is likely to be a matter of milliseconds, seconds, or at most, a few minutes, bilateral transactions will still take some amount of time to submit to the appropriate clearing member. The rules require SDs and MSPs to submit OTC swaps for clearing as soon as is technologically practicable and in no case later than the close of business on the date of execution for swaps that are required to be cleared, and in no case later than the end of the business day following execution or the decision to clear (whichever is later) for swaps that are not required to be cleared. Moreover, until the mandatory clearing regime becomes effective, all OTC swaps will be subject to the requirement that they be submitted for clearing as soon as is technologically practicable but in no case later than the day following execution or the decision to clear (whichever is later). Therefore, some time lapse between execution and clearing as well as some breakage risk will remain for OTC swaps and that risk may be greater prior to the mandatory clearing regime becoming effective.

However, the Commission notes that these rules establish timelines for submission to clearing that are considerably shorter than what some market participants practice today. Moreover, the close of business on the date of execution and the end of the business day following execution or the decision to clear (whichever is later) are outer bounds on the timeline for submitting swaps to clearing. The rules still require these swaps to be submitted ''as soon as is technologically practicable,'' which in many cases will likely be sooner than these outer limits. Last, to the extent that market participants bear breakage cost risk, they have an incentive to submit OTC swaps for clearing promptly and to implement and promote technological improvements that will allow them to do so. Each of these considerations are likely to significantly reduce the amount of time between execution and submission for clearing for OTC swaps, and therefore, are likely to mitigate the breakage risks that counterparties face when engaging in OTC transactions.

e. Other Public Interest Considerations

As described above, rapid and predictable clearing provides substantial benefits for both SDs and other market participants. As market entities come into compliance with these rules, the Commission anticipates that rapid processing and clearing determinations will make the U.S. markets more attractive to foreign entities, which could further increase liquidity and reduce spreads.

Also, the Commission observes that much of the technology that will be necessary to meet these requirements has been implemented in certain venues with marked success.[101] This circumstance, together with the fact that many market participants already may have systems capable of at least partial compliance, will serve to limit the overall outlay necessary to bring regulated entities into compliance.

f. Response to Comments

Many commenters agreed that the technology for real time acceptance or rejection already exists in other cleared derivatives markets and is currently being rolled out for cleared OTC swaps.[102] Commenters also noted that the benefits of the rules far exceed any incremental costs in upgrading infrastructure, and that any required infrastructure upgrades would be minimal due to existing industry capabilities.[103] Furthermore, Citadel stated that any costs to upgrade existing infrastructure have already been factored into industry investment plans, because many SDs, FCMs, DCOs, and SEFs are already launching real-time acceptance.

Eris noted that it is currently able to execute and clear interest rate swaps. Arbor stated that it supports both the Globex and Clearport solutions for swaps because they are proven, work well, and would be inexpensive alternatives for market participants to implement. Arbor continued to state that because such workflow and technology are currently used by clearinghouses and clearing members today, these technologies could be ported quickly into the cleared swaps context. Finally, Arbor remarked that by compelling market adoption of workflow and systems currently deployed in other cleared markets, implementation will be less costly and more rapid.

Javelin calculated that Clearport's daily trade volume increased from 139,177 contracts in 2005 to over 450,000 contracts today. Javelin also noted that Clearport covers multiple asset classes including credit and interest rates, and is interfacing with over 16,000 registered users, and Globex had average daily volume of 6,368,000 contracts in interest rates during August 2011 and total exchange average daily volume of 14,420,000 contracts during the same period.

Commenters opposed to the rules doubted that ''market-wide real-time'' clearing and risk limit compliance verification can be developed quickly enough or provided with sufficient reliability to eliminate the ''functional benefits'' of trilateral agreements.[104] One commenter posited that to provide real-time clearing on a broad basis would require systems that have the capacity to share information, calculate risk metrics on a portfolio basis, adjust limits accordingly, and disseminate information in ways that are not currently possible and that are unlikely to be possible in the near future.[105]

However, the Commission is not persuaded by these opposing commenters' arguments, which pivot on an assumption that the Commission's determination to prohibit certain provisions commonly contained in trilateral agreements is premised on a faulty belief that the functional benefits of trilateral agreements will be entirely eliminated in the near term. Such a belief, however, is not the premise for the Commission's determination. Rather, after careful consideration of costs and benefits associated with trilateral agreements, the Commission believes that certain provisions common to these agreements generate unacceptable costs and, thus, should be prohibited. In reaching this determination, the Commission has not concluded, and need not conclude, that the trilateral agreements, judged in isolation, are devoid of value.

Moreover, the Commission believes that significant improvements in straight through processing and in the speed of processing and clearing determinations can be achieved even when the ideal is not yet attainable. In that regard, the Commission notes that the system requirements delineated by commenters opposed to the rules describe ''requirements'' that the Commission does not believe are necessary to straight through processing or real time clearing determinations.[106] Several commenters noted that some technologies existing today provide near real-time clearing determinations with respect to certain swaps.[107] Those

[101] *See e.g.,* Arbor, Eris, CME, SDMA, Vanguard, and Javelin.

[102] *See* AllianceBernstein, Arbor, Citadel, D.E. Shaw, Eris, Javelin, MFA, SDMA, and State Street.

[103] *See* AllianceBernstein, Arbor, D.E. Shaw, MFA, and SDMA.

[104] *See* Morgan Stanley, and Banks.

[105] *See* Morgan Stanley.

[106] *Id.*

[107] *See* SDMA, Vanguard, State Street, Arbor, Eris, CME, and Javelin. Multiple commenters cited Clearport as an example of immediate post-trade (or ''low latency'') solution that is already providing clearing acceptance/rejection decisions within milliseconds of execution in some markets.

Continued

systems function effectively despite the fact that they do not achieve the ideal system requirements described by other commenters. The Commission, therefore, believes that while many of the ''requirements'' described by some commenters are desirable, they are not essential to swap processing and clearing determinations that comply with these rules. Furthermore, the Commission believes that improvements that significantly mitigate the risks associated with counterparty exposure that trilateral agreements seek to address are possible with existing technology.

One commenter suggested that sub-limits with individual dealers need not delay clearing of swaps because the same technology that is used to satisfy the Commission's requirements for clearing in real time could be used to automate the sub-limits.[108] However, commenters generally agreed that real-time clearing determinations would mitigate or eliminate any legitimate need for sub-limits or the agreements necessary to establish them, a perspective that the Commission finds persuasive.[109] Once the technology necessary for straight through processing and real time clearing determinations is in place, the economic rationale that commenters have advanced in favor of sub-limits will no longer be relevant, and therefore the elements of trilateral agreements that are prohibited in the first part of these rules will not assist SDs with risk management.

3. Clearing Member Risk Management

This cluster of rules establishes risk management requirements for FCMs, SDs, and MSPs who are clearing members. Section 1.73 of the Commission's regulations requires FCMs who are clearing members to: (1) Establish limits for proprietary accounts and customer accounts based on position size, order size, margin requirements, etc.; (2) ensure that trades received by the FCM for automated or non-automated execution, that are executed bilaterally then delivered to the FCM, or that are executed by a broker and then delivered to the FCM, are screened by either the FCM or the broker (whichever encounters the transaction first) for compliance with overall position limits at the FCM for each customer; (3) monitor for compliance with overall position limits at the FCM for each customer both intraday and overnight; (4) conduct stringent stress tests for all positions that could impact its financial strength at least once per week; (5) evaluate its ability to meet initial margin requirements at least once per week; (6) evaluate its ability to, and the cost of, liquidating positions in its proprietary and customer accounts at least once per month; (7) test all lines of credit at least once per year; and (8) establish procedures and maintain records to ensure and document compliance with these requirements.

Section 23.609 requires SDs and MSPs who are clearing members to do all the same things to manage risk, with the exception that bilateral execution, ''give up'' agreements, and bunched orders are not addressed in this section, because SDs and MSPs may only clear customer trades if they are also registered as FCMs.

a. Protection of Market Participants

Several reported incidents over the last 15 years involving so called ''rogue traders''[110] highlight the protective import of these rules. The rules in the second group require FCMs to establish overall position limits for each of their customers and promote the establishment of systems capable of more effectively pre-screening orders for compliance with these overall position limits. Automated screening mechanisms that are external to those of an FCM's customer provide a second layer of defense against evasion by rogue traders within the customer's organization. The Commission believes that these measures will help protect against rogue trading, thereby protecting market participants, who past events have shown to be vulnerable to harm from such conduct.[111]

With respect to the risk management requirement that each clearing member establish overall position limits for each customer, the rules promote restrictions that help prevent individual customers from establishing positions sufficiently large to jeopardize the financial health of their clearing member if they were to default. This is a critical safeguard that, due to its importance and relative simplicity, the Commission anticipates many clearing members may already have in place. But, by implementing these rules, the Commission is ensuring that every clearing member uses such safeguards to help ensure that they, and the DCOs on which they clear trades, remain financially sound even during times of financial market turbulence.

The risk management requirements do prescribe certain timelines for regular testing and evaluation; however, they do not dictate (1) specific levels for position limits set by clearing members, or (2) specific methodologies of testing with respect to the clearing member's ability to meet margin requirements, the cost of liquidating positions, or stress testing positions that could have a material impact on the entity's financial strength. This flexibility gives market participants the opportunity to implement the requirements in ways that are suited to their operational patterns and minimize costs associated with changes and upgrades to existing technology systems. Moreover, it allows market participants ample room to innovate and adapt the most effective procedures as the market continues to evolve. This flexibility for innovation and adaptation is critical to the long term success of risk management practices. Over time the markets will continue to evolve with changes in products, connections among institutions, regulatory requirements, and broader economic realities. Each of these dynamic realities has the potential to impact the effectiveness of specific risk management strategies, making it essential for firms to continue adapting their approaches. The rules benefit FCMs, their counterparties, and the public by giving FCMs the flexibility they need to continue developing effective risk management strategies that address current market realities.

Clearing members that do not currently practice one or more of the requirements established by this cluster of rules will incur some incremental costs to comply with them. Some initial investment will be required to develop

Similarly, commenters cited Globex and WebICE as examples of platforms that provide pre-trade screens against customer limits set by FCMs, which enables ''perfect settlement'' (*i.e.* every trade that is executed is accepted immediately for clearing) for the markets in which they operate. Commenters generally cited these examples as evidence that the requisite technology for real time clearing determinations already exists, and could be applied more broadly in order to facilitate compliance with the rules adopted in this release.

[108] *See* Morgan Stanley.

[109] *See e.g.,* SDMA, AIMA, Vanguard, AllianceBernstein, Trading Firms, and MFA. In addition, Morgan Stanley, ISDA/FIA, Banks, and EEI implicitly acknowledge that real-time clearing determinations mitigate the need for trilateral agreements by arguing that trilateral agreements are a useful risk management tool because real-time clearing determinations are not yet possible in all parts of the market.

[110] *See e.g., Report of the Board of Banking Supervision Inquiry Into the Circumstances of the Collapse of Barings,* (Jul. 18, 1995), available at: http://www.prmia.org/pdf/Case_Studies/Barings_Case_Study.pdf; *Factbox: Rise and Fall of the SocGen Rogue Trader,* Reuters (Jan. 27, 2008), available at http://www.reuters.com/article/2008/01/27/us-socgen-factbox-idUSL2733740320080127.

[111] A key purpose of risk management procedures is to minimize the chance of a firm incurring losses that exceed its risk appetite. For example, in 1999, a CFTC-regulated futures commission merchant filed bankruptcy after a trader exceeded his trading limits. This event highlights the potential damage that occurs from a poorly designed risk management program or from a lack internal controls.

and implement processes necessary for compliance, and ongoing costs will be incurred as such entities engage in repeated testing. The incremental cost for each entity will depend on the degree to which its current practices are or are not in compliance, as well as the procedures they select and implement in order to comply. The Commission does not have, and has not been provided by commenters with, the information required to estimate those costs either on a per-entity or aggregate basis. However, the Commission expects that while the costs may be material for a small number of entities, most clearing members are currently using risk management strategies that are largely compliant with these requirements and, therefore, the incremental cost for most entities and for the market as a whole is likely to be relatively low.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

With clearing mandates in place, the financial integrity of swap markets will depend significantly on the financial strength of DCOs. Moreover, the financial health of a DCO is dependent upon the strength of its clearing members and those members' ability to meet any obligations pursuant to the terms of their agreement with the DCO. By requiring clearing members to implement sound risk management practices, the rules mitigate the risk that those members could experience financial strain that could undermine the financial strength of the DCO.

In addition, by requiring that DCOs coordinate with clearing members and that clearing members coordinate with account managers who execute trades before submitting them to the clearing member, the rules promote market integrity by making it more difficult for market participants to circumvent the overall position limit established by their clearing member.

c. Price Discovery

The Commission does not expect these rules to materially affect price discovery.

d. Sound Risk Management Practices

As mentioned above, prescreening of trades for compliance with overall position limits set by the clearing member will help guard against the activities of rogue traders, particularly those that may be operating within one of the clearing members' customers. Intraday and overnight monitoring of compliance with overall position limits is an additional line of defense against the same risk, but also serves to help protect the clearing member against any such activities within its own ranks. In this way, the rules mandate processes that provide a deterrent against and a screen for rogue trading, and help to protect market participants from these relatively infrequent, but potentially catastrophic, risks.

Moreover, in situations where automated screening may not be possible, such as with bunched trades and give-up trades, the rules still specify requirements that should effect pre-screening of trades against overall position limits with the clearing member. Non-automated systems may be slightly slower, but the manual screens still provide some measure of protection against the activities of rogue traders. Even in situations where non-automated screening occurs post-execution, as is the case with screens on floor traders, manual systems—if carefully and rigorously practiced—can provide effective protection against excessive exposure. In the case of floor traders, the clearing member may monitor the trader's positions throughout the day and intervene in person when the trader exceeds allowable limits, forcing him to close out positions immediately in order to come under such limits, even if he must close out those positions at a loss. Such monitoring reduces the opportunity that the trader has to exceed appropriate limits, and the amount of time that such excesses can last, thus limiting the associated potential risk for his firm and the clearing member.

Also, as stated above, the flexibility that is implicit in these requirements is particularly critical as a precondition to innovation regarding testing methodologies. Clearing members might develop many different approaches to stress tests, one or more of which may be particularly well suited to a particular firm and set of market conditions, but which may not be well suited to other firms and market conditions. Flexibility is critical to enabling continued development and testing of new methodologies. It is likely to benefit the individual entities that engage in such innovation and testing, as well as a broader array of market participants introduced to developments at industry gatherings and through informal transfer of intellectual capital as personnel move between firms.

The requirement for each clearing member to evaluate its ability to meet margin requirements at least once per week is a valuable tool to help clearing firms avoid liquidity crises, which could jeopardize the solvency of otherwise healthy clearing members. Margin calls can come as a result of significant movements in the price of the underlying commodity, or as a consequence of changes in price volatility. Counterparties may choose to exercise options at unanticipated times, which may have significant repercussions for a clearing member's margin requirements. Additionally, a clearing member's cash position may be negatively impacted if one of its customers becomes unable to meet margin calls on large positions. Clearing members must have sufficient liquidity to meet margin calls from the DCO, even at a time when the clearing member may have a depleted cash position due to the failure of its customers to meet margin requirements. Such stress tests may help to ensure that the clearing member has a clear sense for how much liquidity may be necessary in such circumstances, and may encourage them to preserve ample liquidity.

Testing lines of credit also helps clearing members to ensure that (1) the credit provider is able to honor its commitment, and (2) the clearing member can access the line in a timely fashion. Liquidity crises seldom play out in slow motion, and time is likely to be of the essence when a clearing member needs to access its credit line. Therefore, it is important for the clearing member's staff to know how to access the line quickly and reliably when it is needed. By requiring annual testing, the rules guard against the danger that an episode of financial strain for the member could be exacerbated by an inability to access its credit line in a timely manner. Such preventable problems could be fatal for the firm in the midst of a liquidity crisis.

e. Other Public Interest Considerations

The Commission understands that the past several years' events in the financial markets have tested and strained the public's confidence in financial institutions' management of risks. To the extent that these regulations promote broader implementation of sound risk-management practices, they may serve to strengthen such public confidence in the integrity of the affected markets. Such public confidence, if justified by improved risk-management practices, is critical to the overall health and functioning of the swaps and commodity markets.

To the extent that sound risk management practices are broadened, these regulations will help to promote such confidence, and as such will benefit the financial markets and the American public who ultimately

benefits from the health of these markets.

f. Response to comments

Chris Barnard and Better Markets both recommend that the Commission require specific stress tests, and FHLB recommends that stress test results be publicly disclosed.[112] FHLB believes that public disclosure of stress test results would allow customers to mitigate risk.

The purpose of stress tests is for clearing members to monitor the potential losses they would face in the event of extreme market events as well as their ability to absorb such losses.

The Commission has chosen not to set specific thresholds or specifying methodologies for stress tests for three reasons. First, appropriate thresholds and methodologies depend, at least in part, on the types of customers and positions that characterize each clearing member's business. The clearing member is best positioned to account for these factors when developing an appropriate test. Second, the Commission believes that specifying certain stress test thresholds could prompt firms to focus tests on those minimum levels in order to meet regulatory requirements rather than establishing thresholds that further achieve the goal of maintaining a vigorous risk management program. Third, the Commission believes that specifying particular methodologies for stress testing would stifle innovation, which would undermine the effectiveness of stress tests as the swap markets and their clearing members continue to evolve.[113]

The Commission considered FHLB's recommendation but believes that public disclosure of stress test results could be a disincentive to aggressive stress testing, which would undermine the intent of this rule and the strength of the FCM's risk management program, and in so doing, increase risk to the DCO. Moreover, disclosure of results could have the effect of improper disclosure of confidential position information. Last, additional rules have been enacted limiting the range of assets in which FCMs can invest customer funds,[114] and requiring careful segregation of customer funds,[115] both of which are designed to protect customers in the event that an FCM should become insolvent. With these considerations in view, the Commission has chosen not to require FCMs to make the results of their stress tests public.

The CME commented that clearing members should only be required to test lines of credit on an annual basis rather than a quarterly basis because they believe that more frequent testing is not cost efficient. ISDA inquired as to whether an institution must actually draw funds in order to properly test a line of credit.

The Commission agrees that quarterly testing might not be cost efficient in every situation, and therefore has established an annual testing requirement in the Adopting Release. However, the Commission encourages clearing members to test lines of credit more frequently based on any developments that might impact the ability of the lender to provide the line of credit, or the clearing member's ability to access it in a timely manner. Various market events, credit events, and operational changes could lead to a situation where testing lines of credit would be appropriate. For example, if, the clearing member changes personnel or reorganizes in a manner that changes the individuals who would be responsible for accessing the credit line, the Commission believes that it would be beneficial to test lines of credit.

The Commission believes that the actual drawing of funds is essential to testing a line of credit. Among other things, the test should ensure the ability of the bank or other institution to move the funds in a timely fashion, which is likely to be particularly important at times when the firm most needs the additional liquidity provided by the line of credit.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities.[116] The final rules set forth in this release would affect FCMs, SDs, MSPs, DCOs, DCMs, and SEFs. The Commission has already established certain definitions of ''small entities'' to be used in evaluating the impact of its rules on such entities in accordance with the RFA.

In the Commission's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act,'' [117] the Commission concluded that registered FCMs should not be considered to be small entities for purposes of the RFA. The Commission's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the Commission. Likewise, the Commission determined ''that, for the basic purpose of protection of the financial integrity of futures trading, Commission regulations can make no size distinction among registered FCMs.'' [118] Thus, with respect to registered FCMs, the Commission believes that the final rules will not have a significant economic impact on a substantial number of small entities.

Like FCMs, SDs will be subject to minimum capital and margin requirements, and are expected to comprise the largest global firms. Moreover, the Commission is required to exempt from designation as an SD any entity that engages in a de minimis level of swaps dealing in connection with transactions with or on behalf of customers. Based, in part, on that rationale, the Commission previously has determined that SDs should not be considered to be ''small entities'' for purposes of the RFA.[119] Thus, with respect to SDs, the Commission believes that the final rules will not have a significant economic impact on a substantial number of small entities.

Further, the Commission previously has determined that large traders are not ''small entities'' for RFA purposes, with the Commission considering the size of a trader's position to be the only appropriate test for the purpose of large trader reporting. The Commission similarly has noted that MSPs, by definition, will maintain substantial positions in swaps, creating substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Based, in part, on those facts, the Commission previously has determined that MSPs should not be considered to be ''small entities'' for purposes of the RFA.[120]

[112] See section IV.B(2)(a), above.

[113] The Commission also notes that the approach taken in this rule is consistent with the approach recently adopted by the Commission for DCO stress tests. The Commission intends to monitor to determine whether the tests conducted by clearing members are reasonably designed for the types of risk the clearing members and their customers face.

[114] *See* Investment of Customer Funds and Funds Held in an Account for Foreign Futures and Foreign Options Transactions, 76 FR 78776 (Dec. 19, 2011).

[115] *See* Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336 (Feb. 7, 2012).

[116] 5 U.S.C. 601 *et seq.*

[117] 47 FR 18618 (Apr. 30, 1982).

[118] *Id.* at 18619.

[119] *See* ''Registration of Swap Dealers and Major Swap Participants,'' 77 FR 2613, 2620 (Jan. 19, 2012); ''Business Conduct Standards for Swap Dealers and Major Swap Participants with Counterparties,'' 77 FR 9734, 9803–04 (Feb. 17, 2012).

[120] *Id.*

Thus, with respect to MSPs, the Commission believes that the final rules will not have a significant economic impact on a substantial number of small entities.[121]

Certain of the final rules set forth in this release will affect DCMs, SEFs, and DCOs, some of which will be designated as systemically important DCOs. The Commission previously has determined that DCMs, SEFs, and DCOs are not ''small entities'' for purposes of the RFA.[122] In determining that these registered entities are not ''small entities,'' the Commission reasoned that it designates a contract market, or registers a DCO or SEF, only if the entity meets a number of specific criteria, including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program.[123] Because DCMs, SEFs, and DCOs are required to demonstrate compliance with Core Principles, including principles concerning the maintenance or expenditure of financial resources, the Commission determined that such registered entities are not ''small entities'' for the purposes of the RFA. Thus, with respect to DCMs, SEFs, and DCOs, the Commission believes that the final rules will not have a significant economic impact on a substantial number of small entities.

Accordingly, pursuant to Section 605(b) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these rules and rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Customer Clearing Documentation

Pursuant to the Paperwork Reduction Act (''PRA''),[124] the Commission may not conduct or sponsor, and a registrant 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 final rules set forth in this Adopting Release relating to Customer Clearing Documentation will result in new collection of information requirements within the meaning of the PRA.

Accordingly, the Commission requested control numbers for the required collection of information. The Commission has submitted this notice of final rulemaking along with supporting documentation for OMB's review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is ''Customer Clearing Documentation and Timing of Acceptance for Clearing.'' The OMB has assigned this collection control number 3038–0092.

The collection of information under these regulations is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act. Specifically, it is essential to reducing risk and fostering open access to clearing and execution of customer transactions on a DCM or SEF on terms that have a reasonable relationship to the best terms available by prohibiting restrictions in customer clearing documentation of SDs, MSPs, FCMs, or DCOs that could delay or block access to clearing, increase costs, and reduce market efficiency by limiting the number of counterparties available for trading. These regulations are also crucial both for effective risk management and for the efficient operation of trading venues among SDs, MSPs, FCMs, and DCOs.

Many responses to this collection of information will be mandatory. The Commission protects proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

a. Information Provided by Reporting Entities/Persons

SDs, MSPs, FCMs, and DCOs will be required to develop and maintain written customer clearing documentation in compliance with §§ 1.72, 23.608, and 39.12. Section 39.12(b)(7)(i)(B) requires DCOs to coordinate with clearing members to establish systems for prompt processing of trades. Sections 1.74(a) and 23.610(a) require reciprocal coordination with DCOs by FCMs, SDs, and MSPs that are clearing members.

The annual burden associated with these regulations is estimated to be 16 hours, at an annual cost of $1,600 for each FCM, SD, and MSP. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The Commission has characterized the annual costs as initial costs because the Commission anticipates that the cost burdens will be reduced dramatically over time as the documentation and procedures required by these regulations become increasingly standardized within the industry.

Sections 1.72 and 23.608 require each FCM, SD, and MSP to ensure compliance with these regulations. Maintenance of contracts is prudent business practice and the Commission anticipates that SDs and MSPs already maintain some form of this documentation. Additionally, the Commission believes that much of the existing customer clearing documentation already complies with these rules, and therefore that compliance will require a minimal burden.

In addition to the above, the Commission anticipates that FCMs, SDs, and MSPs will spend an average of another 16 hours per year drafting and, as needed, updating customer clearing documentation to ensure compliance required by §§ 1.72 and 23.608.

For each DCO, the annual burden associated with these regulations is estimated to be 40 hours, at an annual cost of $4,000. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The Commission has characterized the annual costs as initial costs because the Commission anticipates that the cost burdens will be reduced dramatically over time as the documentation and procedures required by the regulations

[121] In a recent rulemaking, the Commission discussed the applicability of the RFA with respect to SDs and MSPs as follows: ''The Commission is carrying out Congressional mandates by proposing these rules. The Commission is incorporating registration of SDs and MSPs into the existing registration structure applicable to other registrants. In so doing, the Commission has attempted to accomplish registration of SDs and MSPs in the manner that is least disruptive to ongoing business and most efficient and expeditious, consistent with the public interest, and accordingly believes that these registration rules will not present a significant economic burden on any entity subject thereto.'' ''Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer,'' available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/Rulemakings/DF_4_BusConductStandardsInternal/ssLINK/federalregister022312b.*

[122] 76 FR 44776, 44789 (July 27, 2011) (''Provisions Common to Registered Entities''); *see* 66 FR 45604, 45609 (Aug. 29, 2001); 47 FR 18618, 18619 (Apr. 30, 1982).

[123] *See, e.g.,* Core Principle 2 applicable to SEFs under Section 733 of the Dodd-Frank Act.

[124] 44 U.S.C. 3501 *et seq.*

are implemented. Any additional expenditure related to § 39.12 likely would be limited to the time required to review—and, as needed, amend—existing documentation and procedures.

Section 39.12(b)(7) requires each DCO to coordinate with clearing members to establish systems for prompt processing of trades. The Commission believes that this is currently a practice of DCOs. Accordingly, any additional expenditure related to § 39.12(b)(7) likely would be limited to the time initially required to review—and, as needed, amend—existing trade processing procedures to ensure that they conform to all of the required elements and to coordinate with FCMs, SDs, and MSPs to establish reciprocal procedures.

The Commission anticipates that DCOs will spend an average of 20 hours per year drafting—and, as needed, updating—the written policies and procedures to ensure compliance required by § 39.12, and 20 hours per year coordinating with FCMs, SDs, and MSPs on reciprocal procedures.

The hour burden calculations below are based upon a number of variables such as the number of FCMs, SDs, MSPs, and DCOs in the marketplace and the average hourly wage of the employees of these registrants that would be responsible for satisfying the obligations established by the proposed regulation.

There are currently 134 FCMs and 14 DCOs based on industry data. SDs and MSPs are new categories of registrants. Accordingly, it is not currently known how many SDs and MSPs will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective. The Commission believes there will be approximately 125 SDs and MSPs who will be required to comply with the recordkeeping requirements of the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11–3031, ''Financial Managers,'' (which includes operations managers) that is employed by the ''Securities and Commodity Contracts Intermediation and Brokerage'' industry is $74.41.[125] Because SDs, MSPs, FCMs, and DCOs include large financial institutions whose operations management employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these proposed regulations based upon an average salary of $100 per hour.

Accordingly, the estimated hour burden was calculated as follows:

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for SDs and MSPs. This hourly burden arises from the requirement that SDs and MSPs make and maintain records documenting compliance related to client clearing documentation.

Number of registrants: 125.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 125.

Estimated annual hour burden per registrant: 16 hours.

Estimated aggregate annual hour burden: 2,000 burden hours [125 registrants × 16 hours per registrant].

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for FCMs. This hourly burden arises from the requirement that FCMs make and maintain records documenting compliance related to client clearing documentation.

Number of registrants: 134.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 134.

Estimated annual hour burden per registrant: 16 hours.

Estimated aggregate annual hour burden: 2,144 burden hours [134 registrants × 16 hours per registrant].

Drafting and Updating Trade Processing Procedures for DCOs. This hour burden arises from the time necessary to develop and periodically update the trade processing procedures required by the regulations.

Number of registrants: 14.

Frequency of collection: Initial drafting, updating as needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 14.

Estimated annual hour burden per registrant: 40 hours.

Estimated aggregate annual hour burden: 560 burden hours [14 registrants × 40 hours per registrant].

Based upon the above, the aggregate hour burden cost for all registrants is 4,704 burden hours and $470,400 [4,704 × $100 per hour].

2. Time Frames for Acceptance into Clearing

The Commission believes that the final rules set forth in this Adopting Release relating to the Time Frames for Acceptance into Clearing will not impose any new information collection requirements that require approval of OMB under the PRA.

3. Clearing Member Risk Management

The final rules contained in this Adopting Release relating to Clearing Member Risk Management will result in new collection of information requirements within the meaning of the PRA. Accordingly, the Commission requested control numbers for the required collection of information. The Commission has submitted this notice of final rulemaking along with supporting documentation for OMB's review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is ''Clearing Member Risk Management.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB has assigned this collection control number 3038–0094.

The collection of information under these regulations is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act. Specifically, it is essential both for effective risk management and for the efficient operation of trading venues on which SDs, MSPs, and FCMs participate. The position risk management requirement established by the rules diminishes the chance for a default, thus ensuring the financial integrity of markets as well as customer protection.

Responses to this collection of information will be mandatory. The Commission protects proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

a. Information Provided by Reporting Entities/Persons

SDs, MSPs, and FCMs will be required to develop and monitor procedures for position risk management in accordance with §§ 1.73 and 23.609.

[125] *http://www.bls.gov/oes/current/oes113031.htm.*

The annual burden associated with these regulations is estimated to be 524 hours, at an annual cost of $52,400 for each FCM, SD, and MSP. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. The Commission has characterized the annual costs as initial costs because the Commission anticipates that the cost burdens will be reduced dramatically over time as the documentation and procedures required by the regulations become increasingly standardized within the industry.

This hourly burden primarily results from the position risk management obligations that will be imposed by §§ 1.73 and 23.609. Sections 1.73 and 23.609 will require each FCM, SD, and MSP to establish and enforce procedures to establish risk-based limits, conduct stress testing, evaluate the ability to meet initial and variation margin, test lines of credit, and evaluate the ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation. The Commission believes that each of these items is currently an element of existing risk management programs at a DCO or an FCM. Accordingly, any additional expenditure related to §§ 1.73 and 23.609 likely will be limited to the time initially required to review and, as needed, amend, existing risk management procedures to ensure that they encompass all of the required elements and to develop a system for performing these functions as often as required.

In addition, §§ 1.73 and 23.609 will require each FCM, SD, and MSP to establish written procedures to comply, and maintain records documenting compliance. Maintenance of compliance procedures and records of compliance is prudent business practice and the Commission anticipates that FCMs, SDs, and MSPs already maintain some form of this documentation.

With respect to the required position risk management, the Commission estimates that FCMs, SDs, and MSPs will spend an average of 2 hours per trading day, or 504 hours per year, performing the required tests. The Commission notes that the specific information required for these tests is of the type that would be performed in a prudent market participant's ordinary course of business.

In addition to the above, the Commission anticipates that FCMs, SDs, and MSPs will spend an average of 16 hours per year drafting and, as needed, updating the written policies and procedures to ensure compliance required by §§ 1.73 and 23.609, and 4 hours per year maintaining records of the compliance.

The hour burden calculations below are based upon a number of variables such as the number of FCMs, SDs, and MSPs in the marketplace and the average hourly wage of the employees of these registrants that will be responsible for satisfying the obligations established by the regulations.

There are currently 134 FCMs based on industry data. SDs and MSPs are new categories of registrants. Accordingly, it is not currently known how many SDs and MSPs will become subject to these rules, and this will not be known to the Commission until the registration requirements for these entities become effective. The Commission believes there will be approximately 125 SDs and MSPs who will be required to comply with the recordkeeping requirements of the proposed rules. The Commission estimated the number of affected entities based on industry data.

According to recent Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 11–3031, ''Financial Managers,'' (which includes operations managers) that is employed by the ''Securities and Commodity Contracts Intermediation and Brokerage'' industry is $74.41.[126] Because SDs, MSPs, and FCMs include large financial institutions whose operations management employees' salaries may exceed the mean wage, the Commission has estimated the cost burden of these regulations based upon an average salary of $100 per hour.

Accordingly, the estimated hour burden was calculated as follows:

Developing and Conducting Position Risk Management Procedures for SDs and MSPs. This hourly burden arises from the requirement that SDs and MSPs establish and perform testing of clearing member risk management procedures.

Number of registrants: 125.

Frequency of collection: Daily.

Estimated number of responses per registrant: 252 [252 trading days].

Estimated aggregate number of responses: 31,500 [125 registrants × 252 trading days].

Estimated annual burden per registrant: 504 hours [252 trading days × 2 hours per record].

Estimated aggregate annual hour burden: 63,000 hours [125 registrants × 252 trading days × 2 hours per record].

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for SDs and MSPs. This hourly burden arises from the requirement that SDs and MSPs make and maintain records documenting compliance related to clearing member risk management.

Number of registrants: 125.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 125.

Estimated annual hour burden per registrant: 20 hours.

Estimated aggregate annual hour burden: 2,500 burden hours [125 registrants × 20 hours per registrant].

Developing and Conducting Position Risk Management Procedures for FCMs. This hourly burden arises from the requirement that FCMs establish and perform testing of clearing member risk management procedures.

Number of registrants: 134.

Frequency of collection: Daily.

Estimated number of responses per registrant: 252 [252 trading days].

Estimated aggregate number of responses: 33,768 [134 registrants × 252 trading days].

Estimated annual burden per registrant: 504 hours [252 trading days × 2 hours per record].

Estimated aggregate annual hour burden: 67,536 hours [134 registrants × 252 trading days × 2 hours per record].

Developing Written Procedures for Compliance, and Maintaining Records Documenting Compliance for FCMs. This hourly burden arises from the requirement that FCMs make and maintain records documenting compliance related to clearing member risk management.

Number of registrants: 134.

Frequency of collection: As needed.

Estimated number of annual responses per registrant: 1.

Estimated aggregate number of annual responses: 134.

Estimated annual hour burden per registrant: 20 hours.

Estimated aggregate annual hour burden: 2,680 burden hours [134 registrants × 20 hours per registrant].

Based upon the above, the aggregate hour burden cost for all registrants is 135,716 burden hours and $13,571,600 [227,416 × $100 per hour].

In addition to the per hour burden discussed above, the Commission anticipates that SDs, MSPs, and FCMs may incur certain start-up costs in connection with the recordkeeping obligations. Such costs may include the expenditures related to re-programming or updating existing recordkeeping technology and systems to enable the SD, MSP, or FCM to collect, capture,

[126] *http://www.bls.gov/oes/current/oes113031.htm.*

process, maintain, and re-produce any newly required records. The Commission believes that SDs, MSPs, and FCMs generally could adapt their current infrastructure to accommodate the new or amended technology and thus no significant infrastructure expenditures would be needed. The Commission estimates the programming burden hours associated with technology improvements to be 60 hours.

According to recent Bureau of Labor Statistics, the mean hourly wages of computer programmers under occupation code 15–1021 and computer software engineers under program codes 15–1031 and 1032 are between $34.10 and $44.94.[127] Because SDs, MSPs, and FCMs generally will be large entities that may engage employees with wages above the mean, the Commission has conservatively chosen to use a mean hourly programming wage of $60 per hour. Accordingly, the start-up burden associated with the required technological improvements is $3,600 [$60 × 60 hours] per affected registrant or $932,400 [$3,600 × 259 registrants] in the aggregate.

List of Subjects

17 CFR Part 1

Conflicts of interest, Futures commission merchants, Major swap participants, Swap dealers.

17 CFR Part 23

Conflicts of interests, Futures commission merchants, Major swap participants, Swap dealers.

17 CFR Part 37

Swaps, Swap execution facilities.

17 CFR Part 38

Block transaction, Commodity futures, Designated contract markets, Transactions off the centralized market.

17 CFR Part 39

Derivatives clearing organizations, Risk management, Swaps.

For the reasons stated in the preamble, amend 17 CFR parts 1, 23, 37, 38, and 39 as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

■ 1. Revise the authority citation for part 1 to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Amend § 1.35 by revising paragraph (a–1)(5)(iv) to read as follows:

§ 1.35 Records of commodity interest and cash commodity transactions.

* * * * *

(a–1) * * *

(5) * * *

(iv) *Allocation.* Orders eligible for post-execution allocation must be allocated by an eligible account manager in accordance with the following:

(A) Allocations must be made as soon as practicable after the entire transaction is executed, but in any event no later than the following times: For cleared trades, account managers must provide allocation information to futures commission merchants no later than a time sufficiently before the end of the day the order is executed to ensure that clearing records identify the ultimate customer for each trade. For uncleared trades, account managers must provide allocation information to the counterparty no later than the end of the calendar day that the swap was executed.

(B) Allocations must be fair and equitable. No account or group of accounts may receive consistently favorable or unfavorable treatment.

(C) The allocation methodology must be sufficiently objective and specific to permit independent verification of the fairness of the allocations using that methodology by appropriate regulatory and self-regulatory authorities and by outside auditors.

* * * * *

■ 3. Add § 1.72 to read as follows:

§ 1.72 Restrictions on customer clearing arrangements.

No futures commission merchant providing clearing services to customers shall enter into an arrangement that:

(a) Discloses to the futures commission merchant or any swap dealer or major swap participant the identity of a customer's original executing counterparty;

(b) Limits the number of counterparties with whom a customer may enter into a trade;

(c) Restricts the size of the position a customer may take with any individual counterparty, apart from an overall limit for all positions held by the customer at the futures commission merchant;

(d) Impairs a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or

(e) Prevents compliance with the timeframes set forth in § 1.74(b), § 23.610(b), or § 39.12(b)(7) of this chapter.

■ 4. Add § 1.73 to read as follows:

§ 1.73 Clearing futures commission merchant risk management.

(a) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:

(1) Establish risk-based limits in the proprietary account and in each customer account based on position size, order size, margin requirements, or similar factors;

(2) Screen orders for compliance with the risk-based limits in accordance with the following:

(i) When a clearing futures commission merchant provides electronic market access or accepts orders for automated execution, it shall use automated means to screen orders for compliance with the limits;

(ii) When a clearing futures commission merchant accepts orders for non-automated execution, it shall establish and maintain systems of risk controls reasonably designed to ensure compliance with the limits;

(iii) When a clearing futures commission merchant accepts transactions that were executed bilaterally and then submitted for clearing, it shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits;

(iv) When a firm executes an order on behalf of a customer but gives it up to another firm for clearing,

(A) The clearing futures commission merchant shall establish risk-based limits for the customer, and enter into an agreement in advance with the executing firm that requires the executing firm to screen orders for compliance with those limits in accordance with paragraph (a)(2)(i) or (ii) as applicable; and

(B) The clearing futures commission merchant shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits.

(v) When an account manager bunches orders on behalf of multiple customers for execution as a block and post-trade allocation to individual accounts for clearing:

(A) The futures commission merchant that initially clears the block shall establish risk-based limits for the block account and screen the order in accordance with paragraph (a)(2)(i) or (ii) as applicable;

(B) The futures commission merchants that clear the allocated trades

[127] *http://www.bls.gov/oes/current/oes113031.htm.*

on behalf of customers shall establish risk-based limits for each customer and enter into an agreement in advance with the account manager that requires the account manager to screen orders for compliance with those limits; and

(C) The futures commission merchants that clear the allocated trades on behalf of customers shall establish and maintain systems of risk management controls reasonably designed to ensure compliance with the limits.

(3) Monitor for adherence to the risk-based limits intra-day and overnight;

(4) Conduct stress tests under extreme but plausible conditions of all positions in the proprietary account and in each customer account that could pose material risk to the futures commission merchant at least once per week;

(5) Evaluate its ability to meet initial margin requirements at least once per week;

(6) Evaluate its ability to meet variation margin requirements in cash at least once per week;

(7) Evaluate its ability to liquidate, in an orderly manner, the positions in the proprietary and customer accounts and estimate the cost of the liquidation at least once per quarter; and

(8) Test all lines of credit at least once per year.

(b) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall:

(1) Establish written procedures to comply with this regulation; and

(2) Keep full, complete, and systematic records documenting its compliance with this regulation.

(3) All records required to be maintained pursuant to these regulations shall be maintained in accordance with Commission Regulation 1.31 (17 CFR 1.31) and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

■ 5. Add § 1.74 to read as follows:

§ 1.74 Futures commission merchant acceptance for clearing.

(a) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall coordinate with each derivatives clearing organization on which it clears to establish systems that enable the futures commission merchant, or the derivatives clearing organization acting on its behalf, to accept or reject each trade submitted to the derivatives clearing organization for clearing by or for the futures commission merchant or a customer of the futures commission merchant as quickly as would be technologically practicable if fully automated systems were used; and

(b) Each futures commission merchant that is a clearing member of a derivatives clearing organization shall accept or reject each trade submitted by or for it or its customers as quickly as would be technologically practicable if fully automated systems were used; a clearing futures commission merchant may meet this requirement by:

(1) Establishing systems to pre-screen orders for compliance with criteria specified by the clearing futures commission merchant;

(2) Establishing systems that authorize a derivatives clearing organization to accept or reject on its behalf trades that meet, or fail to meet, criteria specified by the clearing futures commission merchant; or

(3) Establishing systems that enable the clearing futures commission merchant to communicate to the derivatives clearing organization acceptance or rejection of each trade as quickly as would be technologically practicable if fully automated systems were used.

■ 6. Add § 1.75 to read as follows:

§ 1.75 Delegation of authority to the Director of the Division of Clearing and Risk to establish an alternative compliance schedule to comply with futures commission merchant acceptance for clearing.

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, the authority to establish an alternative compliance schedule for requirements of § 1.74 for swaps that are found to be technologically or economically impracticable for an affected futures commission merchant that seeks, in good faith, to comply with the requirements of § 1.74 within a reasonable time period beyond the date on which compliance by such futures commission merchant is otherwise required.

(b) A request for an alternative compliance schedule under this section shall be acted upon by the Director of the Division of Clearing and Risk within 30 days from the time such a request is received, or it shall be deemed approved.

(c) An exception granted under this section shall not cause a registrant to be out of compliance or deemed in violation of any registration requirements.

(d) Notwithstanding any other provision of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an alternative compliance schedule should be established. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section.

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 7. Revise the authority citation for part 23 to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

■ 8. Add subpart I to read as follows:

Subpart I—Swap Documentation

Sec.
23.500–23.505 [Reserved]
23.506 Swap processing and clearing.

Subpart I—Swap Documentation

§§ 23.500–23.505 [Reserved]

§ 23.506 Swap processing and clearing.

(a) *Swap processing.* (1) Each swap dealer and major swap participant shall ensure that it has the capacity to route swap transactions not executed on a swap execution facility or designated contract market to a derivatives clearing organization in a manner acceptable to the derivatives clearing organization for the purposes of clearing; and

(2) Each swap dealer and major swap participant shall coordinate with each derivatives clearing organization to which the swap dealer, major swap participant, or its clearing member submits transactions for clearing, to facilitate prompt and efficient swap transaction processing in accordance with the requirements of § 39.12(b)(7) of this chapter.

(b) *Swap clearing.* With respect to each swap that is not executed on a swap execution facility or a designated contract market, each swap dealer and major swap participant shall:

(1) If such swap is subject to a mandatory clearing requirement pursuant to section 2(h)(1) of the Act and an exception pursuant to 2(h)(7) is not applicable, submit such swap for clearing to a derivatives clearing organization as soon as technologically practicable after execution of the swap, but no later than the close of business on the day of execution; or

(2) If such swap is not subject to a mandatory clearing requirement pursuant to section 2(h)(1) of the Act but is accepted for clearing by any derivatives clearing organization and

the swap dealer or major swap participant and its counterparty agree that such swap will be submitted for clearing, submit such swap for clearing not later than the next business day after execution of the swap, or the agreement to clear, if later than execution.

■ 9. Add § 23.608 to subpart J, as added at 77 FR 20128, April 3, 2012, effective June 4, 2012, to read as follows:

§ 23.608 Restrictions on counterparty clearing relationships.

No swap dealer or major swap participant entering into a swap to be submitted for clearing with a counterparty that is a customer of a futures commission merchant shall enter into an arrangement that:

(a) Discloses to the futures commission merchant or any swap dealer or major swap participant the identity of a customer's original executing counterparty;

(b) Limits the number of counterparties with whom a customer may enter into a trade;

(c) Restricts the size of the position a customer may take with any individual counterparty, apart from an overall limit for all positions held by the customer with the swap dealer or major swap participant;

(d) Impairs a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or

(e) Prevents compliance with the timeframes set forth in § 1.74(b), § 23.610(b), or § 39.12(b)(7) of this chapter.

■ 10. Add § 23.609 to subpart J, as added at 77 FR 20128, April 3, 2012, effective June 4, 2012, to read as follows:

§ 23.609 Clearing member risk management.

(a) With respect to clearing activities in futures, security futures products, swaps, agreements, contracts, or transactions described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i) of the Act, commodity options authorized under section 4c of the Act, or leveraged transactions authorized under section 19 of the Act, each swap dealer or major swap participant that is a clearing member of a derivatives clearing organization shall:

(1) Establish risk-based limits based on position size, order size, margin requirements, or similar factors;

(2) Screen orders for compliance with the risk-based limits in accordance with the following:

(i) For transactions subject to automated execution, the clearing member shall use automated means to screen orders for compliance with the risk-based limits; and

(ii) For transactions subject to non-automated execution, the clearing member shall establish and maintain systems of risk controls reasonably designed to ensure compliance with the limits.

(3) Monitor for adherence to the risk-based limits intra-day and overnight;

(4) Conduct stress tests under extreme but plausible conditions of all positions at least once per week;

(5) Evaluate its ability to meet initial margin requirements at least once per week;

(6) Evaluate its ability to meet variation margin requirements in cash at least once per week;

(7) Evaluate its ability to liquidate the positions it clears in an orderly manner, and estimate the cost of the liquidation; and

(8) Test all lines of credit at least once per year.

(b) Each swap dealer or major swap participant that is a clearing member of a derivatives clearing organization shall:

(1) Establish written procedures to comply with this regulation; and

(2) Keep full, complete, and systematic records documenting its compliance with this regulation.

(3) All records required to be maintained pursuant to these regulations shall be maintained in accordance with Commission Regulation § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of applicable prudential regulators.

■ 11. Add § 23.610 to subpart J, as added at 77 FR 20128, April 3, 2012, effective June 4, 2012, to read as follows:

§ 23.610 Clearing member acceptance for clearing.

(a) Each swap dealer or major swap participant that is a clearing member of a derivatives clearing organization shall coordinate with each derivatives clearing organization on which it clears to establish systems that enable the clearing member, or the derivatives clearing organization acting on its behalf, to accept or reject each trade submitted to the derivatives clearing organization for clearing by or for the clearing member as quickly as would be technologically practicable if fully automated systems were used; and

(b) Each swap dealer or major swap participant that is a clearing member of a derivatives clearing organization shall accept or reject each trade submitted by or for it as quickly as would be technologically practicable if fully automated systems were used; a clearing member may meet this requirement by:

(1) Establishing systems to pre-screen orders for compliance with criteria specified by the clearing member;

(2) Establishing systems that authorize a derivatives clearing organization to accept or reject on its behalf trades that meet, or fail to meet, criteria specified by the clearing member; or

(3) Establishing systems that enable the clearing member to communicate to the derivatives clearing organization acceptance or rejection of each trade as quickly as would be technologically practicable if fully automated systems were used.

■ 12. Add § 23.611 to subpart J, as added at 77 FR 20128, April 3, 2012, effective June 4, 2012, to read as follows:

§ 23.611 Delegation of authority to the Director of the Division of Clearing and Risk to establish an alternative compliance schedule to comply with clearing member acceptance for clearing.

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, the authority to establish an alternative compliance schedule for requirements of § 23.610 for swaps that are found to be technologically or economically impracticable for an affected swap dealer or major swap participant that seeks, in good faith, to comply with the requirements of § 23.610 within a reasonable time period beyond the date on which compliance by such swap dealer or major swap participant is otherwise required.

(b) A request for an alternative compliance schedule under this section shall be acted upon by the Director of the Division of Clearing and Risk within 30 days from the time such a request is received, or it shall be deemed approved.

(c) An exception granted under this section shall not cause a registrant to be out of compliance or deemed in violation of any registration requirements.

(d) Notwithstanding any other provision of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether an alternative compliance schedule should be established. Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising the authority delegated in this section.

■ 13–14. Revise part 37 to read as follows:

PART 37—SWAP EXECUTION FACILITIES

Sec.

Subparts A–G [Reserved]

Subpart H—Financial Integrity of Transactions

37.700 [Reserved]
37.701 [Reserved]
37.702 General financial integrity.
37.703 [Reserved]

Subparts I–K [Reserved]

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3 and 12a, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

Subparts A–G [Reserved]

Subpart H—Financial Integrity of Transactions

§ 37.700 [Reserved]

§ 37.701 [Reserved]

§ 37.702 General financial integrity.

(a) [Reserved]

(b) For transactions cleared by a derivatives clearing organization:

(1) By ensuring that the swap execution facility has the capacity to route transactions to the derivatives clearing organization in a manner acceptable to the derivatives clearing organization for purposes of clearing; and

(2) By coordinating with each derivatives clearing organization to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of § 39.12(b)(7) of this chapter.

§ 37.703 [Reserved]

Subparts I–K [Reserved]

PART 38—DESIGNATED CONTRACT MARKETS

■ 15. Revise the authority citation for part 38 to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6c, 6d, 6e, 6f, 6g, 6i, 6j, 6k, 6l, 6m, 6n, 7, 7a–2, 7b, 7b–1, 7b–3, 8, 9, 15, and 21, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 16. Designate existing §§ 38.1 through 38.6 as the contents of added subpart A under the following heading:

Subpart A—General Provisions

* * * * *

■ 17. Add subpart L to read as follows:

Subpart L—Financial Integrity of Transactions

Sec.
38.600 [Reserved]
38.601 Mandatory clearing.
38.602–38.606 [Reserved]

Subpart L—Financial Integrity of Transactions

§ 38.601 [Reserved]

§ 38.601 Mandatory clearing.

(a) Transactions executed on or through the designated contract market, other than transactions in security futures products, must be cleared through a registered derivatives clearing organization, in accordance with the provisions of part 39 of this chapter.

(b) A designated contract market must coordinate with each derivatives clearing organization to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing in accordance with the requirements of § 39.12(b)(7) of this chapter.

§§ 38.602–38.606 [Reserved]

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

■ 18. Revise the authority citation for part 39 to read as follows:

Authority: 7 U.S.C. 2, and 7a–1 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

Subpart B—Compliance With Core Principles

■ 19. In § 39.12, add paragraphs (a)(1)(vi) and (b)(7) to read as follows:

§ 39.12 Participant and product eligibility.

(a) * * *

(1) * * *

(vi) No derivatives clearing organization shall require as a condition of accepting a swap for clearing that a futures commission merchant enter into an arrangement with a customer that:

(A) Discloses to the futures commission merchant or any swap dealer or major swap participant the identity of a customer's original executing counterparty;

(B) Limits the number of counterparties with whom a customer may enter into trades;

(C) Restricts the size of the position a customer may take with any individual counterparty, apart from an overall limit for all positions held by the customer at the futures commission merchant;

(D) Impairs a customer's access to execution of a trade on terms that have a reasonable relationship to the best terms available; or

(E) Prevents compliance with the time frames set forth in § 1.74(b), § 23.610(b), or § 39.12(b)(7) of this chapter.

* * * * *

(b) * * *

(7) *Time frame for clearing.* (i) *Coordination with markets and clearing members.*

(A) Each derivatives clearing organization shall coordinate with each designated contract market and swap execution facility that lists for trading a product that is cleared by the derivatives clearing organization in developing rules and procedures to facilitate prompt, efficient, and accurate processing of all transactions submitted to the derivatives clearing organization for clearing.

(B) Each derivatives clearing organization shall coordinate with each clearing member that is a futures commission merchant, swap dealer, or major swap participant to establish systems that enable the clearing member, or the derivatives clearing organization acting on its behalf, to accept or reject each trade submitted to the derivatives clearing organization for clearing by or for the clearing member or a customer of the clearing member as quickly as would be technologically practicable if fully automated systems were used.

(ii) *Transactions executed competitively on or subject to the rules of a designated contract market or swap execution facility.* A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept or reject for clearing as quickly after execution as would be technologically practicable if fully automated systems were used, all contracts that are listed for clearing by the derivatives clearing organization and are executed competitively on or subject to the rules of a designated contract market or a swap execution facility. The derivatives clearing organization shall accept all trades:

(A) For which the executing parties have clearing arrangements in place with clearing members of the derivatives clearing organization;

(B) For which the executing parties identify the derivatives clearing organization as the intended clearinghouse; and

(C) That satisfy the criteria of the derivatives clearing organization, including but not limited to applicable

risk filters; provided that such criteria are non-discriminatory across trading venues and are applied as quickly as would be technologically practicable if fully automated systems were used.

(iii) *Swaps not executed on or subject to the rules of a designated contract market or a swap execution facility or executed non-competitively on or subject to the rules of a designated contract market or a swap execution facility.* A derivatives clearing organization shall have rules that provide that the derivatives clearing organization will accept or reject for clearing as quickly after submission to the derivatives clearing organization as would be technologically practicable if fully automated systems were used, all swaps that are listed for clearing by the derivatives clearing organization and are not executed on or subject to the rules of a designated contract market or a swap execution facility or executed non-competitively on or subject to the rules of a designated contract market or a swap execution facility. The derivatives clearing organization shall accept all trades:

(A) That are submitted by the parties to the derivatives clearing organization, in accordance with § 23.506 of this chapter;

(B) For which the executing parties have clearing arrangements in place with clearing members of the derivatives clearing organization;

(C) For which the executing parties identify the derivatives clearing organization as the intended clearinghouse; and

(D) That satisfy the criteria of the derivatives clearing organization, including but not limited to applicable risk filters; provided that such criteria are non-discriminatory across trading venues and are applied as quickly as would be technologically practicable if fully automated systems were used.

* * * * *

Issued in Washington, DC, on March 20, 2012, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, and Wetjen voted in the affirmative; Commissioner O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gensler

I support today's final rulemaking on clearing which will promote market participants' access to central clearing, increase market transparency, foster competition, support market efficiency, and bolster risk management. These rules include provisions on client clearing documentation, so-called 'straight-through' processing, bunched orders, and clearing member risk management.

These final rules have all benefited from broad public comment.

One of the primary goals of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) is to lower risks to the public by increasing the use of central clearing and to promote the financial integrity of the markets and the clearing system. These rules are an important step in furtherance of these goals.

First, the final rule does so by establishing requirements for the documentation between a Futures Commission Merchant (FCM) and its customers and between a Swap Dealer and its counterparties. This rule will foster bilateral clearing arrangements between customers and their FCM. The rule will promote competition in the provision of clearing services and swap liquidity to the broad public by limiting one FCM or Swap Dealer from restricting a customer or counterparty access to other market participants.

Second, the final rule does so by setting standards for the timely processing of trades through so-called 'straight-through' processing or sending transactions promptly to the clearinghouse upon execution. This lowers risk to the markets by minimizing the time between submission and acceptance or rejection of trades for clearing. These regulations would require and establish uniform standards for prompt processing, submission and acceptance for clearing of swaps eligible for clearing. Such uniform standards, similar to the practices in the futures markets, lower risk because they allow market participants to get the prompt benefit of clearing rather than having to first enter into a bilateral transaction that would subsequently be moved into a clearinghouse.

Third, the final rule does so by allowing asset managers to allocate bunched orders for swaps consistent with long established rules for allocating bunched orders for futures. This will help promote access to clearing of swaps for pension funds, mutual funds and other clients of asset managers.

Lastly, the final rule does so by strengthening the risk management procedures of clearing members. One of the primary goals of the Dodd-Frank Act was to reduce the risk that swaps pose to the economy. The final rule would require clearing members that are FCMs, Swap Dealers, and major swap participants to establish risk-based limits on their customer and house accounts. The rule also would require clearing members to establish procedures to, amongst other provisions, evaluate their ability to meet margin requirements, as well as liquidate positions as needed. These risk filters and procedures would help secure the financial integrity of the markets and the clearing system.

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Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Parts 229 and 238

Locomotive Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229 and 238

[Docket No. FR–2009–0095; Notice No. 3]

RIN 2130–AC16

Locomotive Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is revising the existing regulations containing Railroad Locomotive Safety Standards. The revisions update, consolidate, and clarify the existing regulations. The final rule incorporates existing industry and engineering best practices related to locomotives and locomotive electronics. This includes the development of a safety analysis for new locomotive electronic systems. FRA believes this final rule will modernize and improve its safety regulatory program related to locomotives. In accordance with the requirements of the Executive Order 13563 (E.O. 13563), this final rule also modifies the existing locomotive safety standards based on what has been learned from FRA's retrospective review of the regulation. As a result, FRA is reducing the burden on the industry by modifying the regulations related to periodic locomotive inspection and headlights.

DATES: This final rule is effective June 8, 2012. Petitions for reconsideration must be received on or before June 8, 2012. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before July 23, 2012.

ADDRESSES: Petitions for reconsideration or comments on such petitions: Any petitions and any comments to petitions related to Docket No. FRA–2009–0095, may be submitted by any of the following methods: Web site: Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., W12–140, Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Charles Bielitz, Office of Safety Assurance and Compliance, Motive Power & Equipment Division, RRS–14, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC (telephone 202–493–6314, email *charles.bielitz@dot.gov*), or Michael Masci, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC (telephone 202–493–6037).

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Statutory and Regulatory Background
III. Railroad Safety Advisory Committee (RSAC) Overview
IV. Proceedings to Date
V. General Overview of Final Rule Requirements
  A. Remote Control Locomotives
  B. Electronic Recordkeeping
  C. Brake Maintenance
  D. Brakes, General
  E. Locomotive Cab Temperature
  F. Headlights
  G. Alerters
  H. Locomotive Electronics
  I. Periodic Locomotive Inspection
  J. Rear End Markers
  K. Locomotive Horn
  L. Risk Analysis Standardization and Harmonization
  M. Locomotive Cab Securement
  N. Diesel Exhaust in Locomotive Cabs
  O. Federalism Implications
  P. E.O. 13563 Retrospective Review
VI. Section-by-Section Analysis
  A. Amendments to Part 229 Subparts A, B, and C
  B. Part 229 Subpart E—Locomotive Electronics
  C. Amendments to Part 238
VII. Regulatory Impact and Notices
  A. Executive Orders 12866, 13563, and DOT Regulatory Policies and Procedures
  B. Regulatory Flexibility Act and Executive Order 13272
  C. Paperwork Reduction Act
  D. Federalism Implications
  E. Environmental Impact
  F. Unfunded Mandates Reform Act of 1995
  G. Privacy Act

I. Executive Summary

The requirements that are being established by this final rule are based on: existing waivers that have been granted by FRA's Safety Board; existing clarifications of requirements that are currently being enforced; new developments in technology related to locomotives; and in part, on a Railroad Safety Advisory Committee recommendation. On February 22, 2006, FRA presented, and the RSAC accepted, the task of reviewing existing locomotive safety needs and recommending consideration of specific actions useful to advance the safety of rail operations. The RSAC established the Locomotive Safety Standards Working Group (Working Group) to handle this task. The Working Group met twelve times between October 30, 2006, and April 16, 2009. The Working Group successfully reached consensus on the following locomotive safety issues: locomotive brake maintenance, pilot height, headlight operation, danger markings placement, load meter settings, reorganization of steam generator requirements, and the establishment locomotive electronics requirements based on industry best practices. The full RSAC voted to recommend the consensus issues to FRA on September 10, 2009.

The Working Group did not reach consensus on several locomotive safety issues. Thus, FRA independently developed a proposal containing requirements related to: remote control locomotives, alerters, locomotive cab securement, equipping new and remanufactured locomotive cabs with air conditioning units, and a minimum permissible locomotive cab temperature. FRA also independently developed a proposal for locomotive securement. FRA has incorporated the Working Group's views to the extent possible.

In accordance with the requirements of E.O. 13563, this final rule also modifies the existing locomotive safety standards based on what has been learned from FRA's retrospective review of the regulation. E.O. 13563 requires agencies to review existing regulations to identify rules that are overly burdensome, and when possible, modify them to reduce the burden. As a result its retrospective review, FRA is reducing the burden on the industry by

modifying the regulations related to periodic locomotive inspection and headlights. FRA believes that the modifications related to periodic locomotive inspection and headlights in this final rule will not reduce safety.

Overview of Final Rule Requirements

Remote Control Locomotives

The rule related to remote control locomotives includes design and operation requirements, as well as, inspection, testing, and repair requirements. FRA's Remote Control Locomotive Safety Advisory, published in 2001, is the basis for the requirements. All of the major railroads have adopted the recommendations contained in the advisory, with only slight modifications to suit their individual operations, and the Association of American Railroads (AAR) issued an industry standard that adopted the most significant requirements of the Safety Advisory. During several productive meetings, the Working Group identified many areas of agreement regarding the regulation of remote control locomotive equipment. On issues that produced disagreement, FRA gathered useful information. Informed by the Working Group discussions and the comments to the NPRM related to this proceeding, this final rule will codify the industry's best practices related to the use and operation of remote control locomotives.

Electronic Recordkeeping

The development and improved capability of electronic recordkeeping systems has led to the potential for safe electronic maintenance of records required by part 229. Since April 3, 2002, FRA has granted a series of waivers permitting electronic recordkeeping with certain conditions intended to ensure the safety, security and accessibility of such systems. *See* FRA–2001–11014. Based on the information gathered under the experiences of utilizing the electronic records permitted under these existing waivers, the Working Group discussed, and agreed to, generally applicable requirements for electronic recordkeeping systems. This final rule will establish generally applicable requirements based on the Working Group's recommendation.

Brake Maintenance

The revisions to locomotive air brake maintenance are based on this extensive history of study and testing. Over the last several decades, FRA has granted several conditional waivers extending the air brake cleaning, repair, and test requirements of §§ 229.27 and 229.29. These extensions were designed to accommodate testing of the reliability of electronic brake systems and other brake system components, with the intent of moving toward performance based test criterion with components being replaced or repaired based upon their reliability. This final rule will establish generally applicable requirements based on the Working Group's recommendation.

Brakes, General

At a MP&E Technical Resolution Committee (TRC) meeting in December of 1999, the representatives from NYAB Corporation, a brake manufacturer, asserted that a problem with a faulty automatic or independent brake valve will not create an unsafe condition when the locomotive is operating in the trail position, provided the locomotive consist has a successful brake test (application and release) from the lead unit. The reason offered was that in order for a locomotive to operate in the trailing position, the automatic and independent brake valves must be cut-out. FRA agrees, and currently applies this rationale in regards to performing a calendar day inspection. The calendar day inspection does not require that the operation of the automatic and independent brake controls be verified on trailing locomotives. The Working Group agreed, and recommended adding a tagging requirement to prevent a trailing, non-controlling locomotive with defective independent or automatic brakes from being used as a controlling locomotive. FRA adopted this recommendation in the NPRM and retains it in this final rule.

Locomotive Cab Temperature

In 1998, FRA led an RSAC Working Group to address various cab working condition issues. To aid the Working Group discussions, FRA conducted a study to determine the average temperature in each type of locomotive cab commonly used at the time. The study concluded that at the location where the engineer operates the locomotive, each locomotive maintained an average temperature of at least 60 degrees. The window and door gaskets were maintained in proper condition on the locomotives that were studied. Now that the locomotive safety standards are in the process of being revised, FRA is incorporating existing industry practice into the regulation in an effort to maintain the current conditions. In addition to increasing the minimum cab temperature from 50 °F to 60 °F, FRA believes that requiring railroads to continue their current practice of equipping new locomotives with air conditioning units inside the locomotive cab and maintaining those units during the periodic inspection required by § 229.23, will maintain the existing level of railroad safety.

Headlights

The revisions to the headlight requirements incorporate waiver FRA 2005–23107 into part 229. The waiver permits a locomotive with one failed 350-watt incandescent lamp to operate in the lead until the next daily inspection, if the auxiliary lights remain continuously illuminated. Under the existing requirements, a headlight with only one functioning 200-watt lamp is not defective and its condition does not affect the permissible movement of a locomotive. However, the existing requirements are more restrictive for a 350-watt lamp. A locomotive with only one functioning 350-watt lamp in the headlight can be properly moved only under the conditions of § 229.9. This final rule modifies the treatment of locomotives with a failed 350-watt lamp to allow flexibility, and be consistent with the current treatment of 200-watt lamps. In accordance with E.O. 13563, this modification will reduce the downtime for locomotives with certain headlight defects, and thereby, reduce the burden on the rail industry.

Alerters

An alerter is a common safety device that is intended to verify that the locomotive engineer remains vigilant and capable of accomplishing the tasks that he or she must perform while operating a locomotive. An alerter will initiate a penalty brake application to stop the train if it does not receive the proper response from the engineer. As an appurtenance to the locomotive, an alerter must operate as intended when present on a locomotive. Section 20701 of Title 49 of the United States Code prohibits the use of a locomotive unless the entire locomotive and its appurtenances are in proper condition and safe to operate in the service to which they are placed. Under this authority, FRA has issued many violations against railroads for operating locomotives equipped with a non-functioning alerter. Alerters are currently required on passenger locomotives pursuant to § 238.237 (67 FR 19991), and are present on most freight locomotives. A long-standing industry standard currently contains various requirements for locomotive alerters. *See* AAR Standard S–5513, ''Locomotive Alerter Requirements,'' (November 26, 2007). FRA believes that the requirements proposed in the NPRM

and retained in this final rule related to alerters incorporate existing railroad practices and locomotive design, and address each of the National Transportation Safety Board (NTSB) recommendations discussed below in section v., ''General Overview of the Final Rule Requirements.''

Locomotive Electronics

This final rule retains requirements proposed in the NPRM that prescribe safety standards for safety-critical electronic locomotive control systems, subsystems, and components including requirements to ensure that the development, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those products will achieve and maintain an acceptable level of safety. This final rule is also establishing standards to ensure that personnel working with safety-critical products receive appropriate training. Of course, each railroad would be able to prescribe additional or more stringent rules, and other special instructions, provided they are consistent with the proposed standards.

Periodic Locomotive Inspection

The Working Group was unable to reach consensus on whether current locomotive inspection intervals and procedures are appropriate to current conditions. On June 22, 2009, FRA granted the Burlington Northern Santa Fe's (BNSF) request for waiver from compliance with the periodic locomotive inspection requirements. *See* Docket FRA–2008–0157. BNSF stated in their request that each of the subject locomotives are equipped with new self-diagnostic technology and advanced computer control, and that the locomotives were designed by the manufacturer to be maintained at a six month interval.

Based on the initial results of the waiver, FRA identified the periodic locomotive inspection as a potential candidate for reducing the regulatory burden on the rail industry, as required by E.O. 13563. FRA's continued observations of test during joint inspections of the brake systems shows that the waiver has been successful. As there is no material difference between the locomotive models covered by the BNSF waiver and other self diagnostic microprocessor-based locomotives, FRA is modifying the existing periodic inspection requirements to provide for a 184-day inspection interval for all locomotives equipped with microprocessor-based control systems with self-diagnostic capabilities.

Locomotive Cab Securement

By letter dated September 22, 2010, in response to a conductor being shot and killed during an attempted robbery on June 20, 2010, the Brotherhood of Locomotive Engineers and Trainmen (BLET) requested that FRA require door locks on locomotive cab doors. Under current industry practice, many locomotive cab doors are not locked. According to BLET's letter, requiring the use of door locks would impede unauthorized access to the locomotive cab and reduce the risk of violence to the train crew when confronted by a potential intruder.

In the NPRM, FRA requested comments on the various securement options that are currently available on locomotive cab doors, and whether equipping the locomotive cab with a securement device would improve safety. Based on its review of comments received, FRA believes that locomotive cab securement can potentially prevent unauthorized access to the locomotive cab, and thereby increase train crew safety. Consequently, FRA is establishing in this final rule a requirement for new and remanufactured locomotives to be equipped with a securement device.

Expected Benefits

This final rule includes numerous regulatory clarifications and adoption of most current part 229 waivers. The primary costs or burdens in this final rule are from the alerters, periodic inspection change and revised minimum (*i.e.,* cold weather) cab temperature requirements. The savings will accrue from fewer train accidents, fewer future waivers, and waiver renewals. In addition, savings would also accrue from a reduction in downtime for locomotives due to changes to headlight and brake requirements. Finally the railroad industry will accrue significant cost savings from a change in the periodic inspection requirement for micro-processor based locomotives. For the 20-year period analyzed, the estimated quantified costs total $56.2 million, and the present value (PV) (7 percent) of the estimated costs is $27.7 million. The uniform adoption of some waivers will provide cost savings from a reduction in locomotive downtime. For example, the headlight and brake maintenance waiver incorporations will reduce future industry-wide locomotive downtime, because locomotives that are not currently covered by the waivers will be permitted to continue in use. FRA also anticipates a small reduction in future accidents from the proposed alerter requirements. For the 20-year period, the estimated quantified benefits total $806.8 million, and the PV (7 percent) of the estimated quantified benefits is $385 million.

COSTS FOR FINAL RULE

[Note dollars are discounted (7%) and all costs are for a 20-year period]

Periodic Inspection	$20,820,604
AFM Calibration	136,335
Alerters—Requirement and Trip Test	4,495,455
Cab Temperature: Heaters, Maintenance & Insulation	889,503
Locomotive Electronics: File Notice & Training Documents	1,338,763
End Plates	21,187
Total	27,701,846

BENEFITS FOR FINAL RULE

[Note dollars are discounted (7%) and all benefits are for a 20-year period]

Reduction in Locomotive Downtime—Headlights	$1,588,995
Reduction in Locomotive Downtime—Brakes	2,118,660
Reduced Train Accidents—Due to Alerter Requirement	2,318,972
Cost Savings—Reduction in Waivers	975,325
Savings: High Voltage Danger Signs/Markings	317,799
Periodic Inspection: Increased Time Interval	377,825,552
Total	385,145,303

II. Statutory and Regulatory Background

FRA has broad statutory authority to regulate railroad safety. The Federal railroad safety laws (formerly the Locomotive Boiler Inspection Act at 45 U.S.C. 22–34, repealed and recodified at 49 U.S.C. 20701–20703) prohibit the use of unsafe locomotives and authorize FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (Safety Act) (formerly 45 U.S.C. 421, 431 et seq., now found primarily in chapter 201 of Title 49). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49). Until July 5, 1994, the

Federal railroad safety statutes existed as separate acts found primarily in title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into title 49 of the United States Code. All references to parts and sections in this document shall be to parts and sections located in Title 49 of the Code of Federal Regulations.

Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address the safety of, inter alia, railroad track, signal systems, communications, rolling stock, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In 1980, FRA issued the majority of the regulatory provisions currently found at 49 CFR part 229 addressing various locomotive related topics including: inspections and tests; safety requirements for brake, draft, suspension, and electrical systems, and locomotive cabs; and locomotive cab equipment. Since 1980, various provisions currently contained in part 229 have been added or revised on an ad hoc basis to address specific safety concerns or in response to specific statutory mandates.

Topics for new regulation typically arise from several sources. FRA continually reviews its regulations and revises them as needed to address emerging technology, changing operational realities, and to bolster existing standards as new safety concerns are identified. It is also common for the railroad industry to introduce regulatory issues through FRA's waiver process. Several of FRA's requirements contained in this final rule have been partially or previously addressed through FRA's waiver process. As detailed in part 211, FRA's Railroad Safety Board (Safety Board) reviews, and approves or denies, waiver petitions submitted by railroads and other parties subject to the regulations. Petitions granted by the Safety Board can be utilized only by the petitioning party. By incorporating existing relevant regulatory waivers into part 229, FRA intends to extend the reach of the regulatory flexibilities permitted under those waivers. Although, FRA is altering a number of regulatory requirements, the comprehensive safety regulatory structure remains unchanged.

The requirement that a locomotive be safe to operate in the service in which it is placed remains the cornerstone of Federal regulation. Title 49 U.S.C. 20701 provides that ''[a] railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances: (1) are in proper condition and safe to operate without unnecessary danger of personal injury; (2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and (3) can withstand every test prescribed by the Secretary under this chapter.''

The statute is extremely broad in scope and makes clear that each railroad is responsible for ensuring that locomotives used on its line are safe. Even the extensive requirements of part 229 are not intended to be exhaustive in scope, and with or without that regulatory structure, the railroads remain directly responsible for finding and correcting all hazardous conditions. For example, even without these regulations, a railroad would be responsible for repairing an inoperative alerter and an improperly functioning remote control transmitter, if the locomotive is equipped with these devices.

On July 12, 2004, the AAR, on behalf of itself and its member railroads, petitioned FRA to delete the requirement contained in 49 CFR 229.131 related to locomotive sanders. The petition and supporting documentation asserted that contrary to popular belief, depositing sand on the rail in front of the locomotive wheels will not have any significant influence on the emergency stopping distance of a train. While contemplating the petition, FRA and interested industry members began identifying other issues related to the locomotive safety standards. The purpose of this task was to develop information so that FRA could potentially address the issues through the RSAC.

The locomotive sanders final rule was published on October 19, 2007 (72 *FR* 59216). FRA continued to utilize the RSAC process to address additional locomotive safety issues. On September 10, 2009, after a series of detailed discussions, the RSAC approved and provided recommendations on a wide range of locomotive safety issues including, locomotive brake maintenance, pilot height, headlight operation, danger markings, and locomotive electronics. FRA generally proposed the consensus rule text for these issues with minor clarifying modifications on January 12, 2011. *See* 76 FR 2199. The RSAC was unable to reach consensus on the issues related to remote control locomotives, cab temperature, and locomotive alerters. Based on its consideration of the information and views provided by the RSAC Locomotive Safety Standards Working Group, FRA also proposed rule text related to the non-consensus items. *Id.* Many comments were submitted to the public docket in response to the NPRM. The comment period closed on March 14, 2011. FRA is issuing this final rule after considering the comments.

III. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from interested parties, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AAPRCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Association (ATDA)
Amtrak
AAR
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
BLET
Brotherhood of Maintenance of Way Employes Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA) *
High Speed Ground Transportation Association (HSGTA)
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA) *
League of Railway Industry Women *
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women *
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
National Railroad Passenger Corporation (Amtrak)
NTSB *
Railway Supply Institute (RSI)
Safe Travel America (STA)
Secretaria de Communicaciones y Transporte *
Sheet Metal Workers International Association (SMWIA)
Tourist Railway Association Inc.
Transport Canada*
Transport Workers Union of America (TWU)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)

* Indicates associate membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or the RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through conventional practices including traditional rulemaking proceedings.

IV. Proceedings to Date

On February 22, 2006, FRA presented, and the RSAC accepted, the task of reviewing existing locomotive safety needs and recommending consideration of specific actions useful to advance the safety of rail operations. The RSAC established the Working Group to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, included the following:

APTA
ASLRRA
Amtrak
AAR
ASRSM
BLET
BMWE
BRS
BNSF Railway Company (BNSF)
California Department of Transportation
Canadian National Railway (CN)
Canadian Pacific Railway (CP)
Conrail
CSX Transportation (CSXT)
Florida East Coast Railroad
General Electric (GE)
Genesee & Wyoming Inc.
International Association of Machinists and Aerospace Workers
IBEW
Kansas City Southern Railway (KCS)
Long Island Rail Road
Metro-North Railroad
MTA Long Island
National Conference of Firemen and Oilers
Norfolk Southern Corporation (NS)
Public Service Commission of West Virginia
Rail America, Inc.
Southeastern Pennsylvania Transportation Agency
SMWIA
STV, Inc.
Tourist Railway Association Inc.
Transport Canada
Union Pacific Railroad (UP)
UTU
Volpe Center
Wabtec Corporation
Watco Companies

The task statement approved by the full RSAC sought immediate action from the Working Group regarding the need for, and usefulness of, the existing regulation related to locomotive sanders. The task statement established a target date of 90 days for the Working Group to report back to the RSAC with recommendations to revise the existing regulatory sander provision. The Working Group conducted two meetings that focused almost exclusively on the sander requirement. The meetings were held on May 8–10, 2006, in St. Louis, Missouri, and on August 9–10, 2006, in Fort Worth, Texas. Minutes of these meetings have been made part of the docket in this proceeding. After broad and meaningful discussion related to the potential safety and operational benefits provided by equipping locomotives with operative sanders, the Working Group reached consensus on a recommendation for the full RSAC.

On September 21, 2006, the full RSAC unanimously adopted the Working Group's recommendation on locomotive sanders as its recommendation to FRA. The next twelve Working Group meeting addressed a wide range of locomotive safety issues. The meetings were held at the following locations on the following days:

Kansas City, MO, October 30 & 31, 2006;
Raleigh, NC, January 9 & 10, 2007;
Orlando, FL, March 6 & 7, 2007;
Chicago, IL, June 6 & 7, 2007;
Las Vegas, NV, September 18 & 19, 2007;
New Orleans, LA, November 27 & 28, 2007;
Fort Lauderdale, FL, February 5 & 6, 2008;
Grapevine, TX, May 20 & 21, 2008;
Silver Spring, MD, August 5 & 6, 2008;
Overland Park, KS, October 22 & 23, 2008;
Washington, DC, January 6 & 7, 2009; and
Arlington, VA, April 15 & 16, 2009.

At the above listed meetings, the Working Group successfully reached consensus on the following locomotive safety issues: locomotive brake maintenance, pilot height, headlight operation, danger markings placement, load meter settings, reorganization of steam generator requirements, and the establishment locomotive electronics requirements. Throughout the preamble discussion in the NPRM and this final rule, FRA refers to commentsviews, suggestions, or recommendations made by members of the Working Group. When using this terminology, FRA is referring to views, statements, discussions, or positions identified or contained in the minutes of the Working Group meetings. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the **ADDRESSES** portion of this document. These points are discussed to show the origin of certain issues and the course of discussions on those issues at the task force or working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions.

The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is primarily acting in this proceeding. As discussed above, the Working Group reported its findings and recommendations to the RSAC at its September 10, 2009 meeting. The RSAC approved the recommended consensus regulatory text proposed by the Working Group, which accounts for the majority of the NPRM issued in this proceeding. 76 FR 2199. The specific regulatory language recommended by the RSAC was amended slightly for clarity and consistency. FRA independently developed proposals related to remote control locomotives, alerters, and locomotive cab temperature, issues that the Working Group discussed, but ultimately did not reach consensus. *Id.* Many comments were submitted to the public docket in response to the NPRM. The comment period closed on March 14, 2011. FRA is issuing this final rule after considering the comments.

V. General Overview of Final Rule Requirements

The retrospective review requirements of E.O. 13563, trends in locomotive operation, concern about the safe design of electronics, technology advances, and experience applying Federal regulations provide the main impetus for the revisions to FRA's existing standards related to locomotive safety. An overview of some of the major areas addressed in this final rule is provided below.

A. Remote Control Locomotives

Remote control devices have been used to operate locomotives at various locations in the United States for many years, primarily within yards and certain industrial sites. Railroads in Canada have extensively used remote control locomotives for more than a decade. FRA began investigating remote control operations in 1994 and held its first public hearing on the subject in mid-1990s to gather information and examine the safety issues relating to this new technology. On July 19, 2000, FRA conducted a technical conference in which interested parties, including rail unions, remote control systems suppliers, and railroad representatives, shared their views and described their experiences with remote control operations.

On February 14, 2001, FRA published a Safety Advisory in which FRA issued recommended guidelines for conducting remote control locomotive operations. *See* 66 *FR* 10340, Notice of Safety Advisory 2001–01, Docket No. FRA–2000–7325. By issuing these recommendations, FRA sought to identify a set of ''best practices'' to guide the rail industry when implementing this technology. As this was an emerging technology, FRA believed the approach served the railroad industry by providing flexibility to both manufacturers designing the equipment and to railroads using the technology in their operations, while reinforcing the importance of complying with all existing railroad safety regulations. All of the major railroads have adopted the recommendations contained in the advisory, with only slight modifications to suit their individual operations.

In the Safety Advisory, FRA addressed the application and enforcement of the Federal regulations to remote control locomotives. FRA discussed the existing Federal locomotive inspection requirements and the application of those broad requirements to remote control locomotive technology. The Safety Advisory explains that: ''although compliance with this Safety Advisory is voluntary, nothing in this Safety Advisory is meant to relieve a railroad from compliance with all existing railroad safety regulations [and] [t]herefore, when procedures required by regulation are cited in this Safety Advisory, compliance is mandatory.'' *Id.* at 10343. For example, the Safety Advisory states that the remote control locomotive ''system must be included as part of the calendar day inspection required by section 229.21, since this equipment becomes an appurtenance to the locomotive.'' *Id.* at 10344. Another example of a mandatory requirement mentioned in the Safety Advisory is that the remote control locomotive ''system components that interface with the mechanical devices of the locomotive, e.g., air pressure monitoring devices, pressure switches, speed sensors, etc., should be inspected and calibrated as often as necessary, but not less than the locomotive's periodic (92-day) inspection.'' *Id.; see also* 49 CFR 229.23. Thus, the Safety Advisory made clear that the existing Federal regulations require inspection of the remote control locomotive equipment.

The Safety Advisory also addressed the application of various requirements related to the operators of remote control locomotives. The Safety Advisory states that ''each person operating an RCL [remote control locomotive] must be certified and qualified in accordance with part 240 [FRA's locomotive engineer rule] if conventional operation of a locomotive under the same circumstances would require certification under that regulation.'' *Id.* at 10344. In 2006, FRA codified additional requirements to address specific operational issues such as situational awareness. *See* 71 *FR* 60372.

During several productive meetings, the Working Group identified many areas of agreement regarding the regulation of remote control locomotive equipment. On issues that produced disagreement, FRA gathered useful information. Informed by the Working Group discussions and the comments to the NPRM related to this proceeding, this final rule will codify the industry's best practices related to the use and operation of remote control locomotives.

B. Electronic Recordkeeping

The development and improved capability of electronic recordkeeping systems has led to the potential for safe electronic maintenance of records required by part 229. Since April 3, 2002, FRA has granted a series of waivers permitting electronic recordkeeping with certain conditions intended to ensure the safety, security and accessibility of such systems. *See* FRA–2001–11014. Based on the information gathered under the experiences of utilizing the electronic records permitted under these existing waivers, the Working Group discussed, and agreed to, generally applicable requirements for electronic recordkeeping systems. This final rule establishes generally applicable requirements based on the Working Group's recommendation.

C. Brake Maintenance

Advances in technology have increased the longevity of locomotive brake system components. In conjunction with several railroads and the AAR, FRA has monitored the performance of new brake systems since the Locomotive Safety Standards regulation was first published in 1980. *See* 45 *FR* 21092. The revisions to locomotive air brake maintenance are based on this extensive history of study and testing. Over the last several decades, FRA has granted several conditional waivers extending the air brake cleaning, repair, and test requirements of §§ 229.27 and 229.29. These extensions were designed to accommodate testing of the reliability of electronic brake systems and other brake system components, with the intent of moving toward performance based test criterion with components being replaced or repaired based upon their reliability.

In 1981, FRA granted a test waiver (H–80–7) to eight railroads, permitting them to extend the annual and biennial testing requirements contained in §§ 229.27 and 229.29, in order to conduct a study of the safe service life and reliability of the locomotive brake components. On January 29, 1985, FRA expanded the waiver to permit all railroads to inspect the 26–L type brake equipment on a triennial basis. In the 1990's, the Canadian Pacific Railroad (CP) and the Canadian National Railroad (CN) petitioned the FRA to allow them to operate locomotives into the United States that received periodic attention every four years. The requests were based on a decision by Transport Canada to institute a four-year inspection program following a thorough test program in Canada. In November 2000, FRA granted conditional waivers to both the CN and CP, extending the testing interval to four years for Canadian-based locomotives equipped with 26–L type brake systems and air dryers. The waiver also requires all air brake filtering devices to be changed annually and the air

compressor to be overhauled not less than every six years. In 2005, this waiver was extended industry-wide. *See* FRA–2005–21325.

In 2009, AAR petitioned for a waiver that would permit four year testing and maintenance intervals for locomotives that are equipped with 26–L type brake equipment and not equipped with air dryers. The petition assumed that the testing and maintenance intervals that are appropriate for locomotives equipped with air dryers are also appropriate for locomotives without air dryers. FRA denied the request, but granted a limited test program to determine whether the addition of operative air dryers on a locomotive merits different maintenance and testing requirements. FRA recognizes that the results of the test plan may indicate that locomotives that are not equipped with air dryers merit the same treatment as locomotives that operate without air dryers.

The New York Air Brake Corporation (NYAB) sought by waiver, and was granted, an extension of the cleaning, repairing, and testing requirements for pneumatic components of the CCBI and CCBII brake systems (FRA–2000–7367, formerly H–95–3), and then modification of that waiver to include its new CCB–26 electronic airbrake system. The initial waiver, which was first granted on September 13, 1996, extended the interval for cleaning, repairing, and testing pneumatic components of the NYAB Computer Controlled Brake (CCB, now referred to as CCB–I) locomotive air brake system under 49 CFR 229.27(a)(2) and 49 CFR 229.29(a) from 736 days to five years. The waiver was modified to include NYAB's CCB–II electronic air brake system on August 20, 1998.

To confirm that the extended brake maintenance interval did not have a negative effect on safety, FRA required quarterly reports listing air brake failures, both pneumatic and electrical, of all locomotives operating under the waiver including: Locomotive reporting marks; and the cause and resolution of the problem. All verified failures were required to be reported to FRA prior to disassembly, so that NYAB, the railroad, and FRA could jointly witness the disassembly of the failed component to determine the cause. The last quarterly submission to FRA listed 1,889 CCBI and 1,806 CCBII equipped locomotives in the United States, all of which were operating at high levels of reliability and demonstrated safety. All past tests and teardown inspections confirm the safety and reliability of the five year interval.

Based on successful performance of the two NYAB electronic air brake systems under the conditions of the 1996 and 1998 waivers, the waiver was extended for another five years on September 10, 2001 and the conditions of the waiver were modified on September 22, 2003. NYAB described the new CCB–26 electronic air brake system as an adaptation of the CCB–II system designed to be used on locomotives without integrated cab electronics. It used many of the same sub-assemblies of pneumatic valves, electronic controls and software (referred to as line replaceable units or LRUs) as the CCB–II. Some changes were made to simplify the system while maintaining or increasing the level of safety. For example, the penalty brake interface was changed to mimic the 26L system interface, allowing for a fully pneumatic penalty brake application. Also, the brake cylinder pilot pressure development has been simplified from an electronic control to a fully pneumatic version based on proven components.

Much of the software and diagnostic logic which detects critical failures and takes appropriate action to effect a safe stop has been carried over from CCB–II. Overall, NYAB characterized the CCB–26 as being more similar to CCB–II than CCB–II is to CCB–I. As a final check on the performance of the CCB–26 system, it was included in the existing NYAB failure monitoring and recording systems. For the reasons above, FRA extended the waiver of compliance with brake maintenance requirements to locomotives equipped with CCB–26 brake systems.

Similarly, WABCO Locomotive Products (WABCO), a Wabtec company, sought and was granted an extension of the cleaning, repairing, and testing requirements for pneumatic components of the EPIC brake systems (FRA–2002–13397, formerly H–92–3), and then modification of that waiver to include its new FastBrake line of electronic airbrake systems. The initial waiver conditionally extended to five years the clean, repair and test intervals for certain pneumatic air brake components contained in §§ 229.27(a)(2) and 229.29(a) for WABCO's EPIC electronic air brake equipment. WABCO complied with all of the conditions of the waiver. Specifically, WABCO provided regular reports to FRA including summaries of locomotives equipped with EPIC brake systems and all pneumatic and electronic failures. FRA participated in two joint teardown inspections of EPIC equipment after five years of service in June 2000 and May 2002. After five years of service, the EPIC brake systems were found to function normally. No faults were found during locomotive tests, and the teardown revealed that the parts were clean and in working condition.

In support of its proposal to extend brake maintenance for FastBrake brake systems, WABCO stated that virtually all of the core pneumatic technology that has been service proven in EPIC from the time of its introduction and documented as such under the provisions of the above waiver and were transferred into FastBrake with little or no change. They asserted that a further reduction of pneumatic logic devices had been made possible by the substitution of computer based logic. WABCO also provided a discussion of the similarities between the EPIC and FastBrake systems as well as the differences, which are primarily in the area of electronics rather than pneumatics. In conclusion, WABCO stated that the waiver could be amended without compromising safety. For the reasons above, FRA granted the waiver petition.

Over time, several brake systems have been brought into a performance based standard. FRA, along with railroads and brake valve manufacturers, has participated in a series of brake valve evaluations. Each evaluation was performed after extended use of a particular brake valve system to determine whether it can perform safely when used beyond the number of days currently permitted by part 229. The Working Group agreed with the evidence of success and the overall approach taken by FRA. As a result, the Working Group reached consensus on the brake maintenance standards. That consensus recommendation was included in the NPRM and is retained in this final rule.

D. Brakes, General

In December of 1999, a TRC, consisting of FRA and industry experts, met in Kansas City to consider the proper application of the phrase ''operate as intended'' contained in § 229.46 when applied to trailing, non-controlling locomotives. Extensive discussion failed to reach consensus on this issue, but revealed valuable insight into the technical underpinnings and operational realities surrounding the issue. The Working Group revived this issue, and after lengthy discussion, reached consensus.

Generally, even if a locomotive has a defective brake valve that prevents it from functioning as a lead locomotive, its brakes will still properly apply and release when it is placed and operated as a trailing locomotive. This situation can apply on either a pneumatic 26–L application or on the electronic versions

of the locomotive brake. The electronic brake often will have the breaker turned off, thus making the brake inoperative unless it is being controlled by another locomotive.

Based on reading the plain language of the existing regulation, it is not clear under what conditions a trailing, non-controlling locomotive operates as intended. The existing regulation provides that ''the carrier shall know before each trip that the locomotive brakes and devices for regulating all pressures, including but not limited to the automatic and independent brake valves, operate as intended * * *'' *See* 49 CFR 229.46. One could reasonably argue that a trailing non-controlling locomotive is operating as intended when the brakes are able to apply and release in response to a command from a controlling locomotive, because the locomotive is not intended to control the brakes when it is used in the trailing position. It could also be argued that the trailing, non-controlling locomotive's automatic and independent brake valves must be able to control the brakes whenever it is called on to do so. Under this reading, a trailing, non-controlling locomotive does not operate as intended when it is not able to control the brakes.

At the TRC meeting, the representatives from NYAB Corporation, a brake manufacturer, asserted that a problem with a faulty automatic or independent brake valve will not create an unsafe condition when the locomotive is operating in the trail position, provided the locomotive consist has a successful brake test (application and release) from the lead unit. The reason offered was that, in order for a locomotive to operate in the trailing position, the automatic and independent brake valves must be cut-out. FRA agrees, and currently applies this rationale in regards to performing a calendar day inspection. The calendar day inspection does not require that the operation of the automatic and independent brake controls be verified on trailing locomotives. The Working Group agreed, and recommended adding a tagging requirement to prevent a trailing, non-controlling locomotive with defective independent or automatic brakes from being used as a controlling locomotive. FRA adopted this recommendation in the NPRM and retains it in this final rule.

E. Locomotive Cab Temperature

In 1998, FRA led an RSAC Working Group to address various cab working condition issues. To aid the Working Group discussions, FRA conducted a cold weather study to determine the average temperature in each type of locomotive cab commonly used at the time. The study concluded that at the location where the engineer operates the locomotive, each locomotive maintained an average temperature of at least 60 degrees. The window and door gaskets were maintained in proper condition on the locomotives that were studied. Now that the locomotive safety standards are in the process of being revised, FRA is incorporating existing industry practice into the regulation in an effort to maintain the current conditions. For review, the 1998 study has been included in the public docket related to this proceeding.

In addition to increasing the minimum cab temperature from 50 °F to 60 °F, FRA believes that requiring railroads to continue their current practice of equipping new locomotives with air conditioning units inside the locomotive cab and maintaining those units during the periodic inspection required by § 229.23, will maintain the existing level of railroad safety. Current literature regarding the effect of low temperature on human performance indicates that performance decreases when the temperature decreases below 60 °F. Similarly, the literature regarding the effect of high temperature and humidity indicates that performance decreases when temperatures increase above 80 °F, and that performance decreases to an even greater extent when the temperature increases above 90 °F. *Ergonomics,* 2002 vol. 45, no. 10, 682–698. Please note that when discussing high temperatures in the research about the effects on human performance, the term temperature means the Wet Bulb Globe temperature or WBGT. When discussing accident statistics the temperatures reported were ambient not accounting for humidity and radiant heat sources.

In many occupational settings, it is desirable to minimize the health and safety effects of temperature extremes. Depending upon the workplace, engineering controls may be employed as well as the management of employee exposure to excess cold or heat using such methods as work-rest regimens. Because of the unique nature of the railroad operating environment, the locomotive cab can be viewed as a captive workplace where the continuous work of the locomotive crew takes place in a relatively small space. For this reason, in an excessively hot cab, a locomotive crew member may have no escape from extreme temperatures, since they cannot be expected to readily disembark the train and rest in a cooler environment as part of a work-rest regimen without prior planning by the railroad. As such, FRA expects reliance upon engineering controls to limit temperature extremes. When FRA considered controls for cold and hot temperature cab environments, FRA learned that there is a range of engineering controls available that can be employed. Some of these controls are presently employed to affect the cab temperature environment. Controls include isolation from heat sources such as the prime mover; reduced emissivity of hot surfaces; insulation from hot or cold ambient environments; heat radiation shielding including reflective shields, absorptive shielding, transparent shielding, and flexible shielding; localized workstation heating or cooling; general and spot (fan) ventilation; evaporative cooling; chilled coil cooling systems.

Locomotive crew performance is directly linked to railroad safety through the safe operation of trains. Locomotive engineers are responsible for operating trains in a safe and efficient manner. This requires the performance of cognitive tasks, including the mathematical information processing required for train handling, constant vigilance, and accurate perception of the train and outside environment. Conductors are responsible for maintaining accurate train consists, including the contents and position of hazardous materials cars, for confirming the aspects and indications of signals, and for ensuring compliance with written orders and instructions. A decrease in performance of any of these tasks that can be anticipated from relevant scientific findings should be avoided where amelioration can be applied.

Based on the preceding discussion and its review of existing literature on the subject, FRA believes it is appropriate to limit minimum locomotive cab temperature and also require that new locomotives be equipped with an air conditioning unit inside the locomotive cab. To ensure that an air conditioning unit is properly maintained, the unit should be inspected and maintained so that it works properly and meets or exceeds the manufacturer's minimum operating specifications during the periodic inspection that is required by § 229.23. Comments by AAR indicate that this is consistent with the current industry schedule. FRA believes that requiring the railroads to maintain their air conditioning units in a manner that meets or exceeds the manufacturer's minimum operating specifications should result in the sufficient maintenance of the units. FRA will monitor air conditioning maintenance performed by railroads to ensure that it

is being properly an adequately performed. If FRA determines that the prescribed level of maintenance is insufficient to ensure the proper functioning of the air conditioning units, FRA will consider taking regulatory action to address the issue in a future rulemaking.

AAR submitted comments stating that new locomotives have been ordered with air conditioning units for many years and that they are maintained at the periodic inspection, and that these practices are expected to continue. FRA believes that requiring railroads to continue to equip new locomotives with air conditioning units inside the locomotive cab and maintaining those units during the periodic inspection required by § 229.23, will maintain the existing level of railroad safety.

AAR and the U.S. Army's Joint Munitions Command submitted comments stating that a maximum temperature requirement that is intended to prevent excessive heat stress from affecting locomotive crew performance inside the locomotive cab: would not address a safety issue; would be difficult to accurately measure inside the locomotive cab; and, would be overly burdensome. The UTU and the BLET submitted comments supporting the establishment of a maximum temperature requirement. The comments stated that such a requirement would improve locomotive crew performance during operation of the locomotive. FRA believes that the issues need to be considered further before a determination can be made as to whether a maximum temperature requirement would be appropriate. The RSAC has recently tasked a working group with addressing issues related to fatigue management. FRA believes that the fatigue management working group is an appropriate forum for further exploring issues related to the potential benefits that could result from requiring a limit to the permissible maximum locomotive cab temperature.

F. Headlights

The revisions to the headlight requirements incorporate waiver FRA 2005–23107 into part 229. The waiver permits a locomotive with one failed 350-watt incandescent lamp to operate in the lead until the next daily inspection, if the auxiliary lights remain continuously illuminated. Under the existing requirements, a headlight with only one functioning 200-watt lamp is not defective and its condition does not affect the permissible movement of a locomotive. However, the existing requirements are more restrictive for a 350-watt lamp. A locomotive with only one functioning 350-watt lamp in the headlight can be properly moved only under the conditions of section 229.9. This final rule modifies the treatment of locomotives with a failed 350-watt lamp to allow flexibility, and be consistent with the current treatment of 200-watt lamps. In accordance with E.O. 13563, this modification will reduce the downtime for locomotives with certain headlight defects, and thereby, reduce the burden on the rail industry.

Testing showed that production tolerances for the 350-watt incandescent lamp cause most individual lamps to fall below the 200,000 candela requirement at the center of the beam. As such, two working 350-watt lamps are required to ensure 200,000 candela at the center of the beam. Testing also showed that the 350-watt incandescent lamp produced well over 100,000 candela at the center of the beam, and its high power and the position of the filament within the reflector causes the lamp to be brighter than the 200-watt incandescent lamp at all angles greater than approximately 2.5 degrees off the centerline. In other words, the only area in which the 350-watt lamp produces insufficient illumination is within 2.5 degrees of the centerline. The new requirement compensates for the reduced amount of illumination by requiring the auxiliary lights to be aimed parallel to the centerline of the locomotive and illuminate continuously.

Significantly, in 1980, when FRA promulgated the 200,000 candela requirement it could not take into consideration the light produced by auxiliary lights, because they were not required and not often used. Today, there is light in front of a locomotive produced by both the headlight and the auxiliary lights. When discussing AAR's request that the final rule permit locomotives with a nonfunctioning 350-watt lamp to operate without restriction, FRA stated that AAR's comments ''may have merit when considering locomotives with auxiliary lights aimed parallel to the centerline of the locomotive.'' *See* 69 FR 12533. While the auxiliary lights on some locomotives are aimed parallel to the centerline, on many others the auxiliary lights are aimed so that their light will cross 400 feet in front of the locomotive. The regulations only require auxiliary lights to be aimed within 15 degrees of the centerline. FRA is not aware of a basis for assuming that the light from two auxiliary lights complying with the regulations in any fashion would be insufficient, when combined with a 350-watt headlight lamp.

G. Alerters

An alerter is a common safety device that is intended to verify that the locomotive engineer remains vigilant and capable of accomplishing the tasks that he or she must perform while operating a locomotive. An alerter will initiate a penalty brake application to stop the train if it does not receive the proper response from the engineer. As an appurtenance to the locomotive, an alerter must operate as intended when present on a locomotive. Section 20701 of Title 49 of the United States Code prohibits the use of a locomotive unless the entire locomotive and its appurtenances are in proper condition and safe to operate in the service to which they are placed. Under this authority, FRA has issued many violations against railroads for operating locomotives equipped with a non-functioning alerter. Alerters are currently required on passenger locomotives pursuant to § 238.237 (67 FR 19991), and are present on most freight locomotives. A long-standing industry standard currently contains various requirements for locomotive alerters. *See* AAR Standard S–5513, ''Locomotive Alerter Requirements,'' (November 26, 2007).

After several productive meetings, the Working Group reached partial consensus on requirements related to the regulation of alerters. For those areas where agreement could not be reached, FRA has fully considered the information and views of the Working Group members and the recommendations made by the NTSB in developing the requirements related to locomotive alerters.

On July 10, 2005, at about 4:15 a.m., two Canadian National (CN) freight trains collided head-on in Anding, Mississippi. The collision occurred on the CN Yazoo Subdivision, where the trains were being operated under a centralized traffic control signal system on single track. Signal data indicated that the northbound train, IC 1013 North, continued past a stop (red) signal at North Anding and collided with the southbound train, IC 1023 South, about ¼ mile beyond the signal. The collision resulted in the derailment of six locomotives and 17 cars. Approximately 15,000 gallons of diesel fuel were released from the locomotives and resulted in a fire that burned for roughly 15 hours. Two crewmembers were on each train; all four were killed. As a precaution, about 100 Anding residents were evacuated; fortunately, they did not report any injuries. Property damages exceeded $9.5 million and

clearing and environmental cleanup costs totaled approximately $616,800.

The NTSB has issued a series of safety recommendations that would require freight locomotives to be equipped with an alerter. On April 25, 2007, the NTSB determined that a contributing cause of the head-on collision in Anding, Mississippi, was the lack of an alerter on the lead locomotive, which if present, could have prompted the crew to be more attentive to their operation of the train. *See* Recommendation R–07–1. That recommendation provides as follows: ''[r]equire railroads to ensure that the lead locomotives used to operate trains on tracks not equipped with a positive train control system are equipped with an alerter.''

Another NTSB recommendation relating to locomotive alerters was issued as a result of an investigation into the collision of two Norfolk Southern Railway freight trains at Sugar Valley, Georgia, on August 9, 1990. In that incident, the crew of one of the trains failed to stop at a signal. The NTSB concluded that the engineer of that train was probably experiencing a micro-sleep or was distracted. Based on testing, it was determined that as the train approached the stop signal, the alerter would have initiated an alarm cycle. The NTSB concluded that the engineer ''could have cancelled the alerter system while he was asleep by a simple reflex action that he performed without conscious thought.'' As a result of the investigation, the NTSB made the following recommendation to the FRA: ''[i]n conjunction with the study of fatigue of train crewmembers, explore the parameters of an optimum alerter system for locomotives. *See* NTSB Recommendation R–91–26.

Typically, alerter alarms occur more frequently as train speed increases. Unlike the Sugar Valley, Georgia, accident in which the train had slowed and entered a siding before overrunning a signal, the northbound train in the Anding, Mississippi, remained on the main track at higher speeds. Had an alerter been installed, there was a four minute time period after passing the approach signal during which the alerter would have activated four to five times. It seems unlikely that the engineer could have reset the alerter multiple times by reflex action without any increase in his awareness. Therefore, the NTSB determined that an alerter likely would have detected the lack of activity by the engineer and sounded an alarm that could have alerted one or both crewmembers. Had the crew been incapacitated or not responded to the alarm, the alerter would have automatically applied the brakes and brought the train to a stop. The NTSB concluded that had an alerter been installed on the lead locomotive of the northbound train, it may have prevented the collision.

The NTSB also closely examined the use of locomotive alerters when investigating the sideswipe collision between two Union Pacific Railroad (UP) freight trains in Delia, Kansas, on July 2, 1997. In that accident, a train entered a siding but did not stop at the other end, and it collided with a passing train on the main track. The NTSB concluded that ''had the striking locomotive been equipped with an alerter, it may have helped the engineer stay awake while his train traveled through the siding.'' As a result of its investigation, the NTSB made the following recommendation to the FRA: ''[r]evise the Federal regulations to require that all locomotives operating on lines that do not have a positive train separation system be equipped with a cognitive alerter system that cannot be reset by reflex action.'' *See* NTSB Recommendation R–99–53.

FRA believes that the requirements proposed in the NPRM and retained in this final rule related to alerters incorporate existing railroad practices and locomotive design, and address each of the NTSB recommendations discussed above. As with all of FRA's regulatory requirements, the requirements related to alerters are minimum Federal safety requirements that do not prohibit railroads from doing more to improve railroad safety. Based on industry meetings, FRA understands that the industry is considering establishing industry requirements that would be more restrictive than the Federal requirements. FRA fully supports such an effort by the industry.

H. Locomotive Electronics

After extensive discussion, the Working Group reached consensus on the requirements related to locomotive electronic systems that were proposed in the NPRM. Advances in electronics and software technology have resulted in changes to the implementation of locomotive control systems. Technology changes have allowed the introduction of new functional capabilities as well as the integration of different functions in ways that advance the building, operation, and maintenance of locomotive control systems. FRA encourages the use of these advanced technologies to improve safe, efficient, and economical operations. However, the increased complexities and interactions associated with these technologies increase the potential for unintentional and unplanned consequences, which could adversely affect the safety of rail operations.

The NPRM proposed requirements that would prescribe safety standards for safety-critical electronic locomotive control systems, subsystems, and components including requirements to ensure that the development, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those products will achieve and maintain an acceptable level of safety. The NPRM also proposed standards to ensure that personnel working with safety-critical products receive appropriate training. Of course, each railroad would be able to prescribe additional or more stringent rules, and other special instructions, provided they are consistent with the final rule.

FRA also recognizes that advances in technology may further eliminate the traditional distinctions between locomotive control and train control functionalities. Indeed, technology advances may provide for opportunities for increased or improved functionalities in train control systems that run concurrent with locomotive control. Train control and locomotive control, however, remain two fundamentally different operations with different objectives. FRA does not want to restrict the adoption of new locomotive control functions and technologies by establishing regulations for locomotive control systems intended to address safety issues associated with train control.

I. Periodic Locomotive Inspection

The Locomotive Safety Standards Working Group was unable to reach consensus on whether current locomotive inspection intervals and procedures are appropriate to current conditions. On June 22, 2009, FRA granted the BNSF request for waiver from compliance with the periodic locomotive inspection requirements. *See* Docket FRA–2008–0157. BNSF stated in their request that each of the subject locomotives are equipped with new self-diagnostic technology and advanced computer control, and that the locomotives were designed by the manufacturer to be maintained at a six month interval.

The modern locomotive equipped with microprocessor-based controls has diagnostics that monitor the functioning of locomotive equipment and record faults, particularly with respect to features relevant to the periodic inspection. Major faults are instantly addressed. Minor faults are addressed through later data analysis. In some cases, railroads have the capability of

analyzing the data remotely, without the need for the locomotive to be shopped. Among the features addressed by the self-diagnostic equipment on the locomotive models covered by this petition are the ground relay, locked power axle, slipped pinion, and traction motor flashover. Other faults monitored include contactor faults, electrical feedback signal faults, and electronic air brake faults. If the system detects an air brake system failure, the system goes into fail-safe mode. Another feature of these models is that the maintenance interval recommended by the manufacturers is 184 days. In 1980, the 92-day periodic-inspection interval instituted by FRA reflected the maintenance intervals recommended by the manufacturers at that time.

The model locomotives that are the subject of the above noted waiver use a very viscous oil instead of grease to lubricate the pinions and bull gears on traction-motor wheel assemblies. The oil does not degrade with age or thicken or thin as ambient temperature varies. Years of use have demonstrated that there is no need to check oil levels or replenish the lubricant frequently. Other relevant features of the modern locomotive include:

- Traction motor brushes last well over 184 days (most last one year);
- Improved seals and gaskets, greatly reducing the occurrence of fluid leaks and the need to inspect gusseted and sealed joints;
- Improved insulation protecting against the deterioration of locomotive wiring (microprocessors have reduced the generation of heat, which also enhances wiring life); and,
- The traction motor support bearings are completely sealed roller bearings, with lubrication only required when wheels are changed.

In the waiver petition, BNSF requested that the required 92-day periodic inspection be performed at 184-day intervals on subject locomotives, if qualified mechanical forces perform at least one of the required daily inspections every 31 days and FRA non-complying conditions that are discovered en-route or during any daily inspection are moved to a mechanical facility capable of making required repairs. Pursuant to the conditions of the waiver, data were collected on the locomotives' performance and joint FRA/BNSF inspections were conducted. The data show that safety was not impacted by extending the periodic inspection interval to 184 days. Based on the initial results of the waiver, FRA identified the periodic locomotive inspection as a potential candidate for reducing the regulatory burden on the rail industry, as required by E.O. 13563. FRA's continued observations of tests during joint inspections of the brake systems shows that the waiver has been successful. As there is no material difference between the locomotive models covered by the BNSF waiver and other self diagnostic microprocessor-based locomotives, FRA is modifying the existing periodic inspection requirements to provide for a 184-day inspection interval for all locomotives equipped with microprocessor-based control systems with self-diagnostic capabilities.

J. Rear End Markers

In 2003, the U.S. DOT's Office of Governmental Affairs received a letter from Senator Feinstein on behalf of one of her constituents. The individual suggested a revision to FRA's rear end marker regulation, which is found in part 221. Specifically, the constituent suggested that Federal regulations should require trains with distributive power on the rear to have a red marker, because a red marker would make for a safer operating environment by giving a rail worker a better indication of whether he or she is looking at the rear or front end of the train. The individual made reference to a recent fatality involving a BNSF conductor who jumped from his train because he observed a headlight that he mistakenly believed was a train on the same track, directly ahead of his train. As FRA is currently reviewing its existing requirements for locomotive safety standards, FRA requested comments on this rear end marker issue. AAR submitted the only comment related to this issue, stating that no changes should be made to the existing requirements based on the single incident mentioned above. FRA agrees that at this time there is not enough evidence to merit a change to the existing requirements.

K. Locomotive Horn

In the NPRM, FRA solicited comments regarding methods currently being used by railroads to test locomotive horns as required by § 229.129. More than one method of testing could satisfy the current testing requirements. AAR submitted the only comment on this issue, stating that an accepted ANSI or SAE standard should satisfy the requirement. However, based on AAR's comment, it is unclear which specific ANSI and SAE standards would be applicable to locomotive horn testing. FRA has been considering whether certain current methods of testing should be preferred, or additional methods should be permitted. AAR's comment did not provide enough specific information to justify modifying the existing locomotive horn requirements. At this point, the great majority of initial locomotive horn testing has been performed, and there is no clear need to modify the requirements.

L. Risk Analysis Standardization and Harmonization

FRA notes that it has been actively implementing, whenever practical, performance regulations based on the management of risk. In the process of doing so, a number of different system safety requirements, each unique to a particular regulation, have been promulgated. While this approach is consistent with the widely, and deeply, held conviction that risk management efforts should be specifically tailored for individual situations, it has resulted in confusion regarding the applicable regulatory requirements. This, in turn, has defeated one of the primary objectives of using performance based regulations, reduction in costs from simplifying regulations.

The problem is not the concept of tailoring, but the lack of standard terms, basic tools, and techniques. Numerous directives, standards, regulations, and regulatory guides establish the authority for system safety engineering requirements in the acquisition, development, and maintenance of hardware and software-based systems. The lack of commonality makes extremely difficult the task of training system safety personnel, evaluating and comparing programs, and effectively monitoring and controlling system safety efforts for the railroads, their vendors, and the government. Even though tailoring will continue to be an important system safety concept, at some point FRA believes the proliferation of techniques, worksheets, definitions, formats, and approaches has to end, or at least some common ground has to be established.

To accomplish this, FRA is harmonizing risk management process requirements across all regulations that have been promulgated by the agency. This will implement a systematic approach to hardware and software safety analysis as an integral part of a project's overall system safety program for protecting the public, the worker, and the environment. Harmonization enhances compliance and improves the efficiency of the transportation system by minimizing the regulatory burden. Harmonization also facilitates interoperability among products and systems, which benefits all

stakeholders. By overcoming institutional and financial barriers to technology harmonization, stakeholders could realize lower life-cycle costs for the acquisition and maintenance of systems. FRA will pursue appropriate, cost effective, performance based standards containing precise criteria to be used consistently as rules, guidelines, or definitions of characteristics, to ensure that materials, products, processes and services are fit for purpose, and present an acceptable level of risk that are applicable across all elements of the railroad industry. FRA believes that establishing a safety analysis requirement in this final rule that is based on best engineering practices and standards in section 237.307 is consistent with goal of standardization and harmonization.

M. Locomotive Cab Securement

On June 20, 2010, a CSX Conductor was shot and killed in the cab of the controlling locomotive of his standing train in New Orleans, during an attempted robbery. The Locomotive Engineer assigned to that train was also wounded by gunfire during the incident. This incident was particularly tragic, because it resulted in a fatality. By letter dated September 22, 2010, in response to this incident, the BLET requested that FRA require door locks on locomotive cab doors. Under current industry practice, many locomotive cab doors are not locked. According to BLET's letter, requiring the use of door locks would impede unauthorized access to the locomotive cab and reduce the risk of violence to the train crew when confronted by a potential intruder.

In the NPRM, FRA requested comments on the various securement options that are currently available on locomotive cab doors, and whether equipping the locomotive cab with a securement device would improve safety. Based on its review of comments received, FRA believes that locomotive cab securement can potentially prevent unauthorized access to the locomotive cab, and thereby increase train crew safety.

The BLET and UTU submitted comments stating that locks should be designed to open from within the locomotive cab without the use of a key. Locomotive cab securement demands a careful and balanced approach, because when emergencies requiring emergency egress or rescue access occur, securement systems must not hinder rapid and easy egress by train crews or access by emergency responders without undue delay. A latching device (e.g., a dead-bolt arrangement) is sufficient to satisfy this requirement. This final rule requires that each locomotive or remanufactured locomotives ordered on or after the effective date of the final rule, or placed in service for the first time on or after six months from the effective date of the rule, be equipped with a securement device. However, FRA believes that the decision whether to use the securement device is best left to the discretion of each railroad.

AAR submitted comments stating that the railroad industry is currently developing a securement standard that will address safety concerns. Based on information gathered while attending industry meetings, FRA understands that the railroad industry is working on producing a standard that will require a securement device on the outside of an unattended locomotive cab. FRA believes that the industry is moving in the right direction on this issue and will continue to monitor the development of a new standard. If FRA determines that the actions currently being undertaken by the industry are not sufficient to ensure the proper securement of locomotive cabs from the outside, FRA will consider taking regulatory action to address this issue in a future rulemaking.

A Battalion Fire Chief from Fairfax County, Virginia, submitted comments stating that a rapid-entry box system (similar to a realtor's lock-box system) would ensure access by emergency responders into a locked locomotive cab. FRA believes that a rapid-entry box system could improve emergency responder access into the locomotive cab. However, at this time, FRA believes it would be impractical to require such a system, due to the potential cost of equipping all locomotives with the locks, the significant logistic challenges involved with distributing keys to emergency responders throughout the country, and the inability of FRA to ensure that those keys are secure.

N. Diesel Exhaust in Locomotive Cabs

In response to the NPRM, AAR submitted comments requesting that FRA clarify the meaning of existing § 229.43. Section 229.43 requires that locomotives be built with exhaust systems that are properly designed to convey engine exhaust from the engine and release it outside of the locomotive, and to ensure that the exhaust system is maintained to prevent leaks of exhaust into an occupied locomotive cab. FRA has been consistent in its enforcement of this requirement. FRA has not discovered locomotive exhaust systems that have noncompliant designs. However, FRA has found mechanical defects (*e.g.,* a cracked exhaust manifold) in locomotive exhaust systems that permit exhaust to be released into an occupied locomotive cab, and has routinely issued violations for the railroads' failure to comply with § 229.43.

Diesel exhaust from the locomotive engine that is released into an occupied locomotive cab causes a safety risk. The exhaust can adversely affect the train crew and their ability to operate the locomotive safely. Inside the locomotive cab, the exhaust causes an inhalation hazard and will reduce the train crew's vision and comfort. However, FRA did not intend for § 229.43 to prevent any and all diesel exhaust from being present in an occupied locomotive cab. It would be impracticable to try to eliminate all diesel exhaust in the locomotive cab. A locomotive that is standing with its windows open and its engine not running next to an active highway will most likely be found to have some measurable quantity of diesel exhaust in the cab, due to the traffic from the highway. The same would be found if the locomotive were located in a similar circumstance in an active marine port. Similarly, FRA does not believe that it is possible to prevent the re-entry of diesel exhaust into the locomotive cab through windows or ventilation system intakes, and has never enforced the existing regulation in such a manner.

O. Federalism Implications

One commenter suggested that FRA should add language to its discussion of the federalism implications of this final rule to clarify the pre-emptive effect of the rule. The discussion of federalism contained in the NPRM explains the federalism implications of the Locomotive Inspection Act and the existing Locomotive Safety Standards. *See* 76 FR 2224. FRA believes that the discussion of federalism implications is clear, and that changes to the final rule regarding the pre-emptive effect of the rule are not necessary.

P. E.O. 13563 Retrospective Review

In accordance with the requirements of E.O. 13563, this final rule modifies the existing locomotive safety standards based on what has been learned from FRA's retrospective review of the regulation. E.O. 13563 requires agencies to review existing regulations to identify rules that are overly burdensome, and when possible, modify them to reduce the burden. As a result of its retrospective review, FRA is reducing the burden on the industry by modifying the regulations related to periodic locomotive inspection and

headlights. FRA believes that the modifications related to periodic locomotive inspection and headlights in this final rule will not reduce safety.

VI. Section-by-Section Analysis

This section-by section analysis of the final rule is intended to explain the rationale for each section of the final rule. The analysis includes the requirements of the rule, the purpose that the rule will serve in enhancing locomotive safety, the current industry practice, and other pertinent information. The regulatory changes are organized by section number. FRA sought comments on all proposals made in the NPRM and considered the comments in issuing this final rule.

A. Amendments to Part 229 Subparts A, B, and C

Section 229.5 Definitions

This section contains a set of definitions that are being introduced into the regulation. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the final rule. The definitions are carefully worded in an attempt to minimize the potential for misinterpretation of the rule. The definition of alerter introduces an unfamiliar term which requires further discussion.

''Alerter'' means a device or system installed in the locomotive cab to promote continuous, active locomotive engineer attentiveness by monitoring select locomotive engineer-induced control activities. If fluctuation of a monitored locomotive engineer-induced control activity is not detected within a predetermined time, a sequence of audible and visual alarms is activated so as to progressively prompt a response by the locomotive engineer. Failure by the locomotive engineer to institute a change of state in a monitored control, or acknowledge the alerter alarm activity through a manual reset provision, results in a penalty brake application that brings the locomotive or train to a stop. For regulatory consistency FRA is utilizing the same definition as the one provided in part 238. FRA intends for a device or system that satisfies an accepted industry standard including, but not limited to, AAR Standard S–5513, ''Locomotive Alerter Requirements,'' dated November 26, 2007, to constitute an alerter under this definition.

New definitions for terms related to remote control locomotives are also being established. The terms, ''Assignment Address,'' ''Locomotive Control Unit,'' ''Operator Control Unit,'' ''Remote Control Locomotive,'' ''Remote Control Operator,'' and ''Remote Control Pullback Protection'' are common to the industry. FRA notes that new technology may lead to new systems that fit these definitions. For example, ''Remote Control Pullback Protection'' is currently a form of global positioning system containment system that uses automated equipment identifier tags to either stop the RCL or limit its speed so that the RCL remains within its work zone. A system that utilizes new technology that either stops the RCL or limits its speed so that the RCL remains within its work zone could also satisfy the definition. On February 14, 2001, FRA published a Safety Advisory in which FRA issued recommended guidelines for conducting remote control locomotive operations. *See* 66 FR 10340, Notice of Safety Advisory 2001–01, Docket No. FRA–2000–7325. The Safety Advisory includes definitions for each of the terms. FRA's definitions for these terms are informed by the Safety Advisory and Working Group discussions.

''Controlling locomotive'' means a locomotive from where the operator controls the traction and braking functions of the locomotive or locomotive consist, normally the lead locomotive. This definition is being added to help identify which locomotives are required to be equipped with an alerter, and when the alerter is required to be tested.

Section 229.7 Prohibited Acts and Penalties

Minimal changes are being made in this section to update the statutory reference and the statutory penalty information.

Section 229.15 Remote Control Locomotives

After working with the railroad industry for many years to provide a framework for the safe use, development, and operation of remote control devices, FRA is formally codifying safety standards for remote control operated locomotives. For convenience, this section is being divided into two headings: design and operation; and inspection and testing.

Generally, the design and operation requirements are intended to prevent interference with the remote control system, maintain critical safety functions if a crew is conducting a movement that involves the pitch and catch of control between more than one operator, tag the equipment to notify anyone who would board the cab that the locomotive is operating in remote control, and bring the train to a stop if certain safety hazards arise. The inspection and testing requirements are intended to ensure that each remote control locomotive would be tested each time it is placed in use, and ensure that the operator is aware of the testing and repair history of the locomotive. It is FRA's understanding that virtually all railroads that operate remote control locomotives have already adopted similar standards, and that they have proven to provide consistent safety for a number of years.

A comment was received suggesting that FRA should add an introductory paragraph to proposed § 229.15 to address the applicability of the section. FRA believes that the applicability of this section is clear based on the description of applicability contained in § 229.6. FRA does not intend to apply the requirements of § 229.15 differently than other requirements contained in part 229.

Another comment was received stating that the language of proposed § 229.15, if it remains unchanged in the final rule, would establish requirements that result in existing legacy configurations becoming noncompliant. According to the commentor, the legacy systems that they identify have been operating safely and to the railroads' satisfaction for years, and therefore, should be permitted to continue in operation as compliant systems under the requirements contained in § 229.15. It is not clear which requirements would affect these legacy systems, but FRA does not intend this final rule to make any specific legacy configurations noncompliant.

BLET and UTU submitted comments stating that FRA should replace the proposed language of paragraph § 229.15(a)(12)(ii), ''throttle or speed control,'' with ''speed selector.'' FRA is not adopting this suggestion. FRA believes that the suggested language change would exclude throttle/brake units. In the proposed rule, FRA did not intend to exclude throttle/brake units. The Working Group reached consensus on this specific issue, and FRA continues to believe that an OCU should have throttle capabilities in order to safely operate throttle/brake units.

AAR and HCRQ submitted comments stating that FRA should clarify proposed paragraph § 229.15(a)(7). Proposed paragraph § 229.15(a)(7) requires an RCL to initiate a full service application of the locomotive and train brakes, and eliminate locomotive tractive effort, when main reservoir pressure drops below 90 psi. The proposed language did not specifically exclude an RCL that is stationary. Under specific conditions, such as charging a lengthy cut of cars in

winter conditions, it is not uncommon for the main reservoir pressure to drop marginally. In such cases when the main reservoir pressure drops below 90 psi, it's not a sign of a system failure. Instead, the drop in pressure is an acceptable consequence given the conditions. FRA intended paragraph § 229.15(a)(7) to apply to moving RCLs and not stationary RCLs. To clarify FRA's intent, the language of this paragraph has been amended to include the words ''while RCL is moving.''

AAR also submitted comments stating that there is no wheel slide issue on RCLs, and that currently wheel slip is often indicated by the RCL equipment and not by the OCU. FRA's proposal, in paragraph § 229.15(a)(12)(xi), would have required the OCU to provide an audio/visual indication of wheel slip/slide. FRA agrees with AAR's comment and is amending the final rule by removing the wheel slide requirement that was in the proposal, and by permitting wheel slip to be indicated by the RCL as well as the OCU.

HCRQ submitted comments stating that FRA should permit the OCU to provide either an audio or visual indication of RCL movement. Proposed § 229.15(a)(12)(xii) would require an audio indication of RCL movement. HCRQ asserts that a visual notification should be sufficient, because it is equally effective. The Working Group reached consensus on this specific issue, and FRA continues to believe that an audio indication is the most effective method for indicating RCL movement. People, who are present in the yard where the RCL movement is taking place, are more likely to hear a warning than they are to see a warning. In a yard, vision can be obstructed by equipment or structures. Thus, FRA is retaining the proposed provision in this final rule.

In § 229.15(a)(13)(iii)(B) of the NPRM, FRA proposed requiring primary OCUs to be equipped with a 15 second tilt bypass feature, and secondary OCUs to be equipped with a 60 second tilt bypass feature. Based on its review of comments received, FRA is modifying the proposed provision in this final rule and is requiring the tilt bypass on both OCUs to be set at 60 seconds. AAR and HCRQ submitted comments stating that the requirement for the length of the tilt bypass should be 60 seconds, because all but one of the existing OCU models have a tilt bypass feature that is set to 60 seconds and some actions commonly performed by OCU operators exhaust more than 15 seconds and up to 60 seconds. An OCU operator may take longer than 15 seconds to throw a switch, set brakes, or lace together brake hoses. FRA agrees that 15 seconds may not be enough time for an OCU operator to complete certain actions, but also understands that in most instances the operator of the secondary OCU will be the one who is responsible for those actions and that in general pushing a button on an OCU will extend the length of the tilt bypass for an additional 15 seconds. However, in the proposal FRA did not consider the fact that the majority of OCUs are set at 60 seconds, and that it would add a cost to the industry to modify some OCUs to 15 seconds. FRA also recognizes that during a RCL operation, a crew member may switch from operating the primary OCU to operating the secondary OCU, and vice versa. Allowing both the primary and secondary OCUs to be set to 60 seconds, consistent with the great majority of existing models, will avoid confusion during such a switch.

Section 229.19 Prior Waivers

FRA is updating the language in § 229.19 to address the handling of prior waivers of requirements in part 229 under the final rule. A number of existing waivers are incorporated into the final rule and others may no longer be necessary in light of the rule. The NPRM allowed railroads the opportunity to assert that their existing waiver is necessary, and should be effective after the final rule is adopted. No comments were received related to this section, and FRA is retaining the language as proposed. As a result, waivers from any requirement of this part, issued prior to effective date of this final rule will terminate on the date specified in the letter granting the waiver, and if no date is specified, then the waiver will automatically terminate 5 years from the effective date of the rule.

On February 28, 2007, in a notice, FRA proposed the sunset of certain waivers granted for the existing locomotive safety standards. 72 *FR* 9059. The proposal urged grantees to submit existing waivers for consideration for renewal in light of potential revisions to the regulation, and explained FRA's interest in treating older waivers consistently with newer waivers that were limited to five years. The five-year limitations were issued as far back as March of 2000. The notice also established a docket to receive waivers for consideration.

In addition, the notice discussed the possibility of requiring current grantees to re-register waivers. To streamline the process, FRA did not include a re-registration requirement.

Section 229.20 Electronic Recordkeeping

As explained in paragraph (a), FRA is establishing standards for electronic recordkeeping that a railroad may elect to utilize to comply with many of the recordkeeping provisions contained in this part. As with any records, replacing a paper system that requires the physical filing of records with an electronic system and the large and convenient storage capabilities of computers, will result in greater efficiency. Increased safety will also result, as railroads will be able to access and share records with appropriate employees and FRA quicker than with a paper system. To be acceptable, electronic recordkeeping systems must satisfy all applicable regulatory requirements for records maintenance with the same degree of confidence as is provided with paper systems. The requirements are consistent with a series of waivers that FRA has granted since April 3, 2002 (Docket Number FRA–2001–11014), permitting electronic recordkeeping with certain conditions intended to ensure safety. In this section, FRA is adopting the Working Group's consensus regulatory text for electronic recordkeeping that was approved and recommended to FRA by the RSAC on September 10, 2009. The standards are organized into three categories: (1) Design requirements, (2) operational requirements, and (3) availability and accessibility requirements.

To properly serve the interest of safety, records must be accurate. Inspection of accurate records will reveal compliance or non-compliance with Federal regulations and general rail safety practices. To ensure the authenticity and integrity of electronic records, it is important that security measures be in place to prevent unauthorized access to the data in the electronic record and to the electronic system. Paragraphs (b)(1) through (5) are intended to help secure the accuracy of the electronic records and the electronic system by preventing tampering, and other forms of interference, abuse, or neglect.

Paragraphs (c)(1) and (2) are intended to utilize the improved safety capabilities of electronic systems. The requirements of paragraph (c)(1) cover both inspection and repair records. AAR submitted comments in response to the NPRM stating that the person who is performing the activity, and therefore required to make the record within 24 hours as required by paragraph (c)(1), may be prevented from making the record by Hours of Service laws. FRA

believes that the proposal addressed this issue. In the proposal, for situations when the Hours of Service laws would potentially be violated, the electronic system would be required to prompt the person to input the data as soon as he or she returns to duty. Because the issue was addressed in the proposal, FRA does not believe that any changes related to the issue are warranted.

To properly serve the interest of safety, the electronic records and the electronic recordkeeping system must be made available and accessible to the appropriate people. FRA must have access to the railroads' electronic records and limited access to the electronic recordkeeping systems to carry out its investigative responsibilities. During Working Group discussions, a member representing railroad management explained that his railroad currently can produce an electronic record within ten minutes, but that a paper record may take up to two weeks. As such, the rule provides up to fifteen days to produce paper copies and requires that the electronic records will be provided upon request.

Section 229.23 Periodic Inspection: General

This section requires railroads that choose to maintain and transfer records as provided for in § 229.20, to print the name of the person who performed the inspections, repairs, or certified work on the Form FRA F 6180–49A that is displayed in the cab of each locomotive. This will allow the train crew to know who did the previous inspection when they board the locomotive cab. This requirement was proposed in the NPRM and is being retained in the final rule. As discussed above in section I., ''Periodic Locomotive Inspection,'' FRA is also modifying the existing periodic inspection requirements contained in this section to provide for a 184-day inspection interval for all locomotives equipped with microprocessor-based control systems with self-diagnostic capabilities.

Section 229.25 Test: Every Periodic Inspection

Paragraphs (e) and (f) are added to this section to include inspection requirements for remote control locomotives and locomotive alerters during the periodic inspection. As discussed above, FRA is establishing new regulations for remote control locomotives, *see* § 229.15, and locomotive alerters, *see* § 229.140. For convenience, the maintenance for remote control locomotives and locomotive alerters that would properly be conducted at intervals matching the periodic inspection are being incorporated into this section. As proposed in the NPRM, the existing paragraph (d) related to steam generators has been removed from this section and added to § 229.114. As discussed below, FRA is consolidating all of the requirements related to steam generators into § 229.114. The other paragraphs in this section are also being reorganized to accommodate the removal of paragraph (d).

Section 229.27 Annual Tests

FRA is amending paragraph (b) of this section by deleting the following previous language: ''The load meters shall be tested'' from the paragraph. The modification clarifies the regulatory language to reflect the current understanding and application of the load meter requirement. FRA issued a clarification for load meters on AC locomotives on June 15, 1998. In a letter to GE Transportation Systems in March 2005, FRA issued a similar clarification of the requirements related to testing load meters on DC locomotives. The letter explained that on locomotives that are not equipped with load meters there are no testing requirements. Similarly, if a locomotive is equipped with a load meter but is using a proven alternative method for providing safety, and no longer needs to ascertain the current or amperage that is being applied to the traction motors, there are no testing requirements for the dormant load meter. Load meters have been eliminated or deactivated on many locomotives because the locomotives are equipped with thermal protection for traction motors and no longer require the operator to monitor locomotive traction motor load amps.

FRA is also removing the existing paragraph (a) from this section and merging it into the brake requirements contained in § 229.29 of this final rule. Section 229.29 concerns brake maintenance, and as discussed below, is being reorganized by this final rule to consolidate all existing locomotive brake maintenance into one regulation.

Section 229.29 Air Brake System Calibration, Maintenance, and Testing

This section is re-titled by this final rule, and existing requirements are now consolidated and better organized to improve clarity. Because § 229.29 concerns only brakes, it is be re-titled, ''Air Brake System Calibration, Maintenance, and Testing'' to more accurately reflect the section's content. Existing § 229.27(a), which also addresses brake maintenance is being integrated into this section for convenience and clarity. Recordkeeping requirements for this section are being moved from existing paragraphs (a) and (b), and merged into a single new paragraph (g). The date of air flow method (AFM) indicator calibration is being added to this section and will be required to be recorded and certified in the remarks section of Form F6180–49A under paragraph (g) of this final rule.

The brake maintenance requirements contained in this section of the final rule extend the intervals at which required brake maintenance is performed for several types of locomotive brake systems. The length of the intervals reflects the results of studies and performance evaluations related to a series of waivers that have been granted by FRA, starting in 1981 and continuing to present day. Overall, the type of brake maintenance that is required remains the same. The existing regulation provides for two levels of brake maintenance. Existing § 229.27(a) required routine maintenance for filters and dirt collectors, and brake valves and existing § 229.29(a) requires maintenance for certain brake components including parts that can deteriorate quickly and pieces of equipment that contain moving parts. To better tailor the maintenance requirements to the equipment needs and based on information ascertained from various studies and performance evaluations conducted by FRA over the last decade, filters and dirt collector maintenance are now being required more frequently than brake valve maintenance. As a result, this final rule establishes three levels of brake maintenance instead of two.

In the NPRM, FRA stated that it was studying the effect, if any, that air dryers have on the maintenance of brake systems, and FRA sought comment. AAR submitted comments stating that there is no safety reason to treat the air dryer equipped locomotives differently than locomotives that are not equipped with air dryers. As evidence, AAR cites the results of the joint teardown tests that railroads have conducted with FRA as a condition to existing brake maintenance waivers. FRA believes that early indications from teardown testing of electronic air brake systems beyond five years in service support AAR's comments. However, because many tests and teardowns remain to be done, FRA believes that it is premature to discount the potential positive effects of air dryers on extending the life of certain brake components.

Paragraph (f)(2) sets maintenance intervals at four years for slug units that are semi-permanently attached to a host locomotive. Slugs are used in situations where high tractive effort is more

important than extra power, such as switching operations in yards. A railroad slug is an accessory to a diesel-electric locomotive. It has trucks with traction motors but is unable to move about under its own power, as it does not contain a prime mover to produce electricity. Instead, it is connected to a locomotive, called the host, which provides current to operate the traction motors.

In this final rule, FRA is incorporating locomotive brake maintenance requirements from part 238 into this section for convenience. FRA believes that there is some benefit to moving all of the locomotive brake maintenance requirements, including MU locomotives, from part 238 to part 229. Amtrak submitted comments stating that moving the requirements into part 229 would force them to remove entire Acela trainsets from service when any defects are found on a power car. In addition, Amtrak requested that Acela power cars be reclassified so that requirements from part 229 do not apply to Acela power cars. FRA believes that the reclassification of power cars would be outside of the scope of this rulemaking proceeding, and therefore, cannot be properly addressed in this final rule. However, FRA is open to discussing this issue further, outside of this rulemaking proceeding. FRA does not believe that moving the brake maintenance requirements into part 229 results in any change to the treatment of Acela power cars under the Federal railroad safety laws. It appears that Amtrak's concern is based on a misinterpretation of FRA's proposal. Contrary to Amtrak's assertion, FRA is not changing the existing Inspection, Testing, and Maintenance (ITM) requirements for Tier II passenger equipment under part 238. Only brake maintenance requirements are being moved to part 229, and their movement does not affect the Tier II ITM.

Paragraph (g)(1) requires that the date of AFM indicator calibration shall be recorded and certified in the remarks section of Form F6180–49A. AAR submitted comments stating that there is no need to keep a separate record of the AFM calibration date, because the date would be the same as the date of the periodic inspection. FRA understands that, although the frequency of the periodic inspection and the AFM indicator calibration may be the same for some locomotives, they may not be conducted on the same day, because the AFM indicator calibration is not part of the periodic inspection. FRA recognizes that many railroads choose to perform the AFM indicator calibration and the periodic inspection at the same time, but other railroads may choose to schedule the AFM calibration on a date other than the date of the periodic inspection. Therefore, FRA believes a separate record of the AFM indicator calibration date is necessary and is retaining paragraph (g)(2) of the final rule as proposed.

Section 229.46 Brakes: General

FRA is clarifying this section, and establishing standards for the safe use of a locomotive with an inoperative or ineffective automatic or independent brake control system. The section permits a locomotive with a defective air brake control valve to run until the next periodic inspection that is required by § 229.23. However, the requirement to place a tag on the isolation switch will notify the crew that the locomotive can be used only if it complies with the conditions contained in paragraph 229.46(b) until it is repaired.

The conditions contained in paragraphs (b)(2) through (6) clarify what it means for the brakes to operate as intended, as required by this section. Some Working Group members stated that the automatic and independent brake valves are not intended to function on a trailing unit that is isolated from the train's air brake system, therefore they were ''operating as intended'' when not operating at all. Generally, when a unit is found with an automatic or independent brake defect, the railroad may choose to move the unit to a trailing position, and because it is in a trailing position, it may be dispatched without record of the need for maintenance. Paragraph (b)(1) explicitly permits units with inoperative or ineffective automatic and/or independent brake valves to be used in the trailing position. Generally, paragraphs (b)(2) through (6) ensure that the trailing unit is handled safely, and that appropriate records are kept and repairs are made. Paragraph (b)(2) requires that the railroad and the locomotive, and/or air brake manufacturer determine that the control locomotive can safely operate with the defective unit in the trailing position.

AAR submitted comments stating that the railroad should not be required to consult with the locomotive or air brake manufacturer, because the railroad is capable of making the safety determination on its own. FRA believes that input from the manufacturers will improve the safety determination. The manufacturers are experts on the sophisticated electronically controlled air brake systems that are currently in use in the railroad industry (e.g. air brake systems that contain forced lead software). It is only prudent to consult with the manufacturer when assessing the capabilities of the air brake system.

GE submitted comments asking what kind of documentation will be required from the locomotive manufacturer in support of the determination required by paragraph (b)(2). The requirement contained in (b)(2) is intended to ensure that a proper safety determination is made based on the relevant knowledge of the manufacturer and the railroad. The locomotive and/or airbrake manufacturer should provide the railroad with technical information that is sufficient to establish the proper means for isolating or disabling the inoperative or ineffective automatic and/or independent air brake control valve, explaining how it does not pose a risk to the safe control of the automatic and independent brake systems by the controlling locomotive and, any other information that the manufacturer believes is relevant.

Section 229.61 Draft System

FRA is removing the requirement related to MCB contour 1904 couplers currently contained in paragraph (a)(1), because it is out dated. The existing requirement prohibits the use of a MCB contour 1904 coupler, if the distance between the guard arm and the knuckle nose is more than 5⅛ inches. FRA understands that the MCB contour 1904 coupler design has not been used in the railroad industry since the 1930s. Most, if not all, of the current locomotive fleet are equipped with Type E couplers. For these couplers, the maximum distance permitted between the guard arm and the knuckle nose is 5⁵⁄₁₆ inches, as identified in existing paragraph (a)(1). In the NPRM, FRA sought comments as to whether any locomotives are currently being operated with MCB contour 1904 couplers, and whether the requirement related to MCB contour 1904 couplers should be removed from the locomotive safety standards. FRA also proposed the reorganize the remaining paragraphs in this section to accommodate the removal of paragraph (a)(1). AAR submitted the only comment on this issue, stating that it is unaware of any locomotives that are currently operating with MCB contour 1904 couplers, and AAR suggested removing the requirement from the locomotive safety standards. FRA agrees with AAR's comment and believes that the MCB contour 1904 coupler design is no longer being used in the railroad industry, and therefore, the requirement is no longer needed. Consequently, the final rule adopts the provision as proposed.

Section 229.85 High Voltage Markings: Doors, Cover Plates, or Barriers

FRA is clarifying this section. The purpose of this section is to warn people of a potential shock hazard before the high voltage equipment is exposed. A conspicuous marking on the last cover, door, or barrier guarding the high voltage equipment satisfies the purpose of this section. Many locomotives have multiple doors in front of high voltage equipment. Often there is a door on the car body that provides access to the interior of the car body which contains high voltage equipment that is guarded by an additional door, for example, main generator covers and electrical lockers. FRA's intent has been to require the danger marking only on the last door that guards the high voltage equipment. Thus, FRA has slightly modified the language currently contained in this section to make this intent clear and unambiguous. To further clarify the intent of this section, FRA is also changing the title.

MTA submitted comments stating that the proposed wording did not make clear the intent of the change, which as noted in the preamble, is to require the warning marking on the last object before accessing the high voltage equipment. According to MTA, if one did not read the preamble, it would not be apparent that ''direct'' was meant to convey this intent and the wording would be too subjective. MTA did not explain why it believes that the word ''direct'' is too subjective or provide language that would better clarify the intent of this section. FRA continues to believe that the word ''direct,'' as used in the proposed language, sufficiently identifies the cover, door, or barrier that is located immediately in front of the high voltage equipment. The Working Group reached consensus on the proposed language with agreement that the proposed language would require the danger marking only on the last door that guards the high voltage equipment. Based on the Working Group's consensus, and without alternative language to consider, FRA is adopting the proposed language in the final rule without change. If needed, FRA believes that the explanation of the intent of the requirement that is contained in this preamble will add clarity to the rule text.

Section 229.114 Steam Generator Inspections and Tests

FRA is adding this section in order to consolidate the steam generator requirements contained in various sections of part 229 into a single section. Current requirements related to steam generators could be found in §§ 229.23, 229.25, and 229.27. Consolidating the requirements into one section makes them easier to find for the regulated community, and helps simplify and clarify each of the sections that currently include a requirement related to steam generators. The requirements contained in this section are not intended to change the substance of any of the existing requirements.

Section 229.119 Cabs, Floors, and Passageways

In paragraph (d), FRA is raising the minimum allowable temperature in an occupied locomotive cab from 50 degrees to 60 degrees. Each occupied locomotive cab would be required to maintain a minimum temperature of 60 degrees Fahrenheit when the locomotive is in use. FRA recognizes that it takes some time for the cab to heat up when the locomotive is first turned on, and that some crew members may prefer to work in slightly cooler temperatures and temporarily turn off the heater. Thus, this requirement will only be applicable in situations where the locomotive has had sufficient time to warm-up and where the crew has not adjusted that temperature to a personal setting.

In paragraph (e), FRA is clarifying the existing requirement related to the continuous barrier on an open-end platform by adding a hyphen between words ''open'' and ''end.'' In the old part 230, issued in 1968, paragraph 230.229 (g) addressing the required continuous barrier, contains the wording ''Safe and suitable means shall be provided for passage between units with open-end platforms.'' The hyphen makes clear that the requirement is referring to locomotive platforms that are open at the end, and not locomotive platforms that are open to the sky. In 1980, when the Locomotive Safety Standards were revised, the hyphen was inadvertently removed without explanation, and without intention to change the meaning of the existing requirement. FRA believes that reinserting the hyphen clarifies the requirement without changing it.

In paragraphs (g) and (h), FRA is establishing requirements related to air conditioning units inside of locomotive cabs. Paragraph (g) will require all new locomotives to be equipped with an air conditioning unit. The requirement will only apply to locomotives ordered after the effective date of the rule and to any locomotive placed in service after the effective date of the final rule. Paragraph (h) will require air conditioning units on such locomotives to be maintained during the periodic inspection that is required by § 229.23. FRA expects the maintenance to be sufficient to sustain or restore proper functionality of the air conditioning unit, meeting or exceeding the manufacturer's minimum operating specifications. FRA believes that requiring the railroads to maintain their air conditioning units in a manner that meets or exceeds the manufacturer's minimum operating specifications should result in the sufficient maintenance of the units. FRA will monitor air conditioning maintenance performed by railroads to ensure that it is being properly and adequately performed. If FRA determines that the prescribed level of maintenance is insufficient to ensure the proper functioning of the air conditioning units, FRA will consider taking regulatory action to address the issue in a future rulemaking.

FRA understands that railroad's often replace defective air conditioning units, rather than make repairs. If a railroad elects to replace its air conditioning unit during the periodic inspection, the replacement will be considered appropriate maintenance.

In paragraph (i), FRA is requiring new locomotives to be equipped with a securement device that will secure each locomotive cab from the inside. The locomotive cab is secured when the door cannot be opened from the outside by an unauthorized person, unless broken by force. A dead-bolt type arrangement can satisfy this requirement, but FRA expects that other designs may also satisfy this requirement. The requirement will apply only to locomotives ordered after the effective date of the rule and to any locomotive placed in service 6 months after the effective date of the final rule to allow railroads a reasonable amount of time to comply. However, FRA does expect all new locomotives, as of the implementation date of paragraph § 229.119(i), to fully comply with the new requirements.

Section 229.123 Pilots, Snowplows, End Plates

FRA is clarifying paragraph (a) of this section. Based on experience applying the regulation, FRA recognizes that a reasonable, but improper, reading of the existing language could lead to the incorrect impression that a pilot or snowplow is not required to extend across both rails. To prevent this misunderstanding and to clarify the existing requirement, the phrase ''pilot, snowplow or end plate that extends across both rails'' is substituted for ''end plate which extends across both rails, a pilot, or a snowplow.'' FRA believes this language makes clear that any of the

above mentioned items must extend across both rails.

Due to the height of retarders in hump yards, it is not uncommon for the pilot, snowplow, or endplate to strike the retarder during ordinary hump yard operations. To accommodate the retarders and prevent unnecessary damage, FRA has issued waivers to permit more clearance (the amount of vertical space between the bottom of the pilot, snowplow, or endplate and the top of the rail) in hump yards, if certain conditions are met. FRA is adding paragraph (b) to this section to obviate the need for individual waivers by incorporating these conditions into the revised regulation. The conditions that were included in the waivers are reflected in paragraphs (b)(1) through (5).

The clearance requirement is intended to ensure that obstructions are cleared from in front of the locomotive and to prevent the locomotive from climbing and derailing. In FRA's experience, hump yards contain few obstructions that present this potential risk. The protections provided by a pilot, snowplow, or endplate are most desirable at grade crossings where the requirement would remain without change. This section also establishes various requirements to ensure that the train crew is notified of the increased amount of clearance and to prevent the improper use of the locomotive. Locomotives with additional clearance are required to be stenciled at two locations; the train crew must be notified of any restrictions being placed on the locomotive; and, the amount of clearance must be noted on the Form FRA 6180–49a that is maintained in the cab of the locomotive.

AAR submitted comments stating that FRA should not require the increased amount of clearance to be noted on the Form FRA 6180–49a that is maintained in the cab of the locomotive. AAR believes that stenciling the increased amount of clearance on both ends of the locomotive will provide sufficient notice of the clearance height. FRA continues to believe that noting the increased amount of clearance on the Form FRA 6180–49a that is maintained in the cab of the locomotive will benefit safety. The Form FRA 6180–49a provides a routinely used, centralized location for the railroad to record important information about the locomotive. As a result, the information is made easily accessible to train crew members and to FRA inspectors inside the locomotive cab. The stenciling will provide additional notification to train crew members and FRA inspectors who are on the ground during the movement of the locomotive.

Section 229.125 Headlights and Auxiliary Lights

To incorporate an existing waiver, this section permits a locomotive to remain in the lead position until the next calendar day inspection after an en route failure of one incandescent PAR 56, 74 Volt, 350 Watt lamp, if certain safety conditions are satisfied. FRA is also extending the existing auxiliary intensity requirements at 7.5 degrees and 20 degrees to the headlight to clarify the criteria by which equivalence of new design head-light lamps will be evaluated to achieve the same safety benefit.

When one of two lamps in a headlight utilizing PAR–56, 350-watt, 74 volt lamps is inoperative, the center beam illumination for that headlight often drops below 200,000 candela due to manufacturing tolerances. FRA issued a waiver that allowed a locomotive equipped with these lamps to continue in service as a lead unit until the next calendar day inspection, when one of the two lamps becomes inoperative. Alternatively, when locomotives are handled under the general movement for repair provision of § 229.9, they are required to be repaired or switched to a trailing position at the next forward location where either could be accomplished. Paragraph (a)(2)(i) of this section, incorporates the waiver into the regulation. Conditions listed in paragraphs (a)(2)(i)(A), (B), and (C) ensure that neither locomotive conspicuity at grade crossings, nor the illumination of the right of way will be compromised.

Section 229.133 Interim Locomotive Conspicuity Measures—Auxiliary External Lights

To update the regulations related to locomotive conspicuity, FRA is removing the ditch light and crossing light requirements contained in § 229.133 that have been superseded by similar requirements in § 229.125. Section 229.133 currently contains interim locomotive conspicuity measures that were incorporated into the regulations in 1993 while the final provisions related to locomotive auxiliary lights were being developed. See 58 FR 6899; 60 FR 44457; and 61 FR 8881. The requirements related to ditch lights and crossing lights in § 229.133 were later superseded by similar requirements in § 229.125, published in 1996, and revised in 2003 and 2004. See 68 FR 49713; and 69 FR 12532. In 1996, locomotives equipped with ditch lights or crossing lights that were in compliance with the requirements of § 229.133 were temporarily deemed to be in compliance with § 229.125 (*i.e.,* grandfathered into the new regulation). However, that provision expired on March 6, 2000. As a result, ditch lights and crossing lights that comply with § 229.133 have not satisfied the requirements of § 229.125 for more than 10 years. No substantive changes to the auxiliary external light requirements were proposed in this section.

Section 229.140 Alerters

This section requires locomotives that operate over 25 mph to be equipped with an alerter and requires the alerters to perform certain functions. Today, a majority of locomotives are equipped with alerters. As an appurtenance to the locomotive, the alerters have been required to function as intended, if installed in the locomotive cab. The requirements contained in this final rule will increase the number of locomotives equipped with an alerter, and provide specific standards to ensure that the alerters are used and maintained in a manner that increases safety.

EMD and AAR submitted comments related to paragraph (a) stating that the implementation period for this section should be 1 year, rather than the 90 days that FRA proposed in the NPRM. FRA agrees that it is reasonable to provide up to 1 year for the railroads to comply, because the manufacturers need sufficient time to complete work on existing orders that were made before the rule became effective and would not comply with the rule. Accordingly, FRA is establishing an implementation period of 1 year in paragraph (a)(1).

During Working Group discussions, all parties agreed that an alerter would be considered non-compliant if it failed to reset in response to at least three of the commands listed in paragraphs (b)(1) through (6) of this section, in addition to the manual reset. It is important that locomotives equipped with an alerter adhere to minimum performance standards to ensure that the alerter serves its intended safety function. Utilizing several different reset options for the warning timing cycle increases the effectiveness of the alerter, as it will require differentiated cognitive actions by the operator. This will help prevent the operator from repeating the same reset many times as a reflex, without having full awareness of the action.

BLET and UTU submitted comments stating that alerter requirements for locomotives that operate at speeds less than 25 MPH would improve safety. FRA believes that tailoring the alerter

standard to a minimum operational speed will permit operational flexibility while maintaining safety. Many freight railroads only operate over small territories. They generally move freight equipment between two industries or interchange traffic with other, larger railroads. For these operations, the advantages of and the ability to move at higher speeds are non-existent. Moreover, movements at these lower speeds greatly reduce the risk of injury to the public and damage to equipment. For these reasons, there is a reduced safety need for requiring alerters on locomotives conducting these shorter, low speed movements. In addition, as an appurtenance to the locomotive, an alerter must operate as intended when present on a locomotive. Section 20701 of Title 49 of the United States Code prohibits the use of a locomotive unless the entire locomotive and its appurtenances are in proper condition and safe to operate in the service to which they are placed. Therefore, if a locomotive that operates at speeds less than 25 MPH is equipped with an alerter, the alerter will be required to function. Under this authority, FRA has issued many violations against railroads for operating locomotives equipped with a non-functioning alerter.

Paragraph (f) will ensure that the locomotive alerter on the controlling locomotive is always tested prior to being used as the controlling locomotive. The test is required during the trip that the locomotive is used as a controlling locomotive. This requirement allows the crew to know the alerter functions as intended each time a locomotive becomes the controlling locomotive.

B. Part 229 Subpart E—Locomotive Electronics

Comments on the proposed part 229 subpart E were received from the AAR, GE, MTA, and CATRON/CHRQ. AAR noted that the requirements of § 229.20 would more comprehensively satisfy the discussion of electronic record keeping in § 229.313(e). FRA agrees, and has revised § 229.213(e) to reference the requirements of § 229.20. FRA has further modified § 229.20 in this final rule to clarify the issue of record accessibility raised by MTA raised in conjunction with § 229.313(e) that was proposed in the NPRM.

AAR also noted that the locomotive electronics section imposes very technical obligations on railroads and that railroads will not possess the technical expertise to carry out these obligations but would have to rely on the suppliers of the equipment FRA believes that AAR and the railroads are being much too modest regarding their technical capabilities, and points to the AAR's own ''Manual of Recommended Standards and Practices'' as an example of the outstanding technical capabilities of the railroads. FRA does appreciate that there may be areas where the railroads' expertise may not fully align with that of their suppliers, and has modified the language in various portions subpart E to reflect this reality.

Both GE and MTA commented that the definition of ''product'' as proposed in the regulatory text of § 229.305 was overly broad, and might be subject to misinterpretation as it could be interpreted to cover locomotive functionality not directly required for the operation of the locomotive, such as prime mover fuel injection, ventilation louver, and fan control. While FRA believes that the intent not to include such functionality is clear in the preamble to the NPRM and the preamble to this final rule, FRA has modified the definition of ''product'' to more narrowly focus on the locomotive functionality which is covered by this part. The final rule definition of ''product'' in § 229.305 clarifies that a product, for the purposes of this subpart, is related to train movement functions and interfaces between man and machine, and it specifically excludes signal and train control functions. The preamble language has also been modified to further clarify applicability.

GE, in its comments to the NPRM, requested additional guidance related to the meaning of the terms ''interfaced,'' ''comingled,'' ''integrated,'' ''loosely coupled,'' and ''primary train control systems'' as used in part 229. FRA has added additional clarification in the preamble to this final rule these terms that are consistent with the RSAC working group discussions as well as Part 236 Subpart I. Specifically, FRA has:

1. Changed § 229.301(b) to delete the term ''interfaces'' and modified the preamble discussion accordingly.

2. Modified the definition of ''new or next generation locomotive control systems'' to include systems under development identified to FRA within six months of date of publication of the final rule, and implemented within 42 months after the date of publication of the final rule.

3. Modified the definition of ''product'' contained in § 229.305, as discussed earlier.

4. Provided a clearer definition of what is meant by ''comingle.'' Comingle is now defined in terms of coupling and cohesion, with new definitions for tightly coupled, loosely coupled, and cohesion added to § 229.305

In its comments, GE recommended the addition of ANSI/GEIA–STD–0010 as a recognized standard in terms of providing appropriate risk analysis processes for incorporation into verification and validation standards in proposed Appendix F. FRA agrees and has added ANSI/GEIA STD 0010 to the list of appropriate risk analysis procedures. CATRON/HCRQ also noted in their comments that ANSI/HFS 100–1988 referenced in Appendix F has been superseded by ANSI 100–2007 and that ANSI 100–2007 accommodates additional new technology (LCD and luminescent displays). FRA agrees and has changed the reference to identify ANSI/HFS 100–2007. CATRON/HCRQ also noted that ''Railway Applications Specification and Demonstration of Reliability Availability, Maintainability and Safety (RAMS); Safety (RAMS) (ii) EN50128 (May 2001), Railway Applications: Software for Railway Control and Protection Systems'' has been adopted by the IEC as ''Railway Applications Specification and Demonstration of Reliability Availability, Maintainability and Safety (RAMS) IEC 62279:2002 (May 2001), Railway Applications: Software for Railway Control and Protection Systems;'' FRA agrees and has retained the applicable CENLEC numbers and added the appropriate IEC numbers where applicable.

CATRON/HCRQ also made a large number of other recommendations regarding the wording of the language in the preamble, the rule text, and Appendix F to add clarity and accuracy. Generally, FRA agreed with the proposed changes, and they have been incorporated in the final rule.

FRA, however, does not agree with some of the recommendations made by CATRON/HCRQ in their comments. CATRON/HCRQ recommended removing the requirement for conducting sensitivity analysis, stating the ''* * * [s]ensitivity analysis places an undue burden on suppliers. It is costly to perform in terms of the software tool and the effort required. It does not comply with the Executive Order of January 18, 2011 which targets Improving Regulation and Regulatory Review.'' FRA believes that the sensitivity analysis is necessary to determine which elements/factors have the greatest impact on the safety of a system if assumptions are incorrect. Sensitivity analysis answers the question. ''[I]f these variables deviate from expectations, what will the effect be (on the business, model, system, or whatever is being analyzed)?'' In more

general terms, uncertainty and sensitivity analysis investigate the robustness of a design. Due to the importance of understanding the potential impact on system safety if design assumptions are incorrect, FRA declines to change the requirement for conducting a sensitivity analysis. Without conducting such an analysis, FRA believes that it would be difficult to assert with any degree of confidence that a presumed risk metric and risk mitigation is appropriate. FRA believes that the use of a sensitivity analysis is consistent with Section 5 of E.O. 13563, issued on January 18, 2011, which requires that ''each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions.'' The revised section-by-section analysis for Subpart E reflecting the received comments follows:

Section 229.301 Purpose and Scope

The purpose of this subpart is to promote the safe design, operation, and maintenance of safety-critical electronic locomotive control systems, subsystems, and components. Safety-critical electronic systems identified in proposed paragraph (a) would include, but would not be limited to: directional control, graduated throttle or speed control, graduated locomotive independent brake application and release, train brake application and release, emergency air brake application and release, fuel shut-off and fire suppression, alerters, wheel slip/slide applications, audible and visual warnings, remote control locomotive systems, remote control transmitters, pacing systems, and speed control systems.

In paragraph (b), FRA emphasizes that when a new or proposed locomotive control system function interfaces or comingles with a safety critical train control system covered by 49 CFR 236 Subpart H or I, the locomotive control system functionality would be required to be addressed in the train control systems Product Safety Plan or the Positive Train Control Safety Plan, as appropriate. FRA recognizes that advances in technology may further eliminate the traditional distinctions between locomotive control and train control functionalities. Indeed, technology advances may provide for opportunities for increased or improved functionalities in train control systems that run concurrent with locomotive control. Train control and locomotive control, however, remain two fundamentally different operations with different objectives. FRA does not intend to restrict the adoption of new locomotive control functions and technologies by imposing regulations on locomotive control systems intended to address safety issues associated with train control.

Section 229.303 Applicability

A safety analysis would be required for new electronic equipment that is deployed for locomotives. However, FRA does not intend to impose retroactive safety analysis requirements for existing equipment. FRA recognizes that railroads and vendors may have already invested large sums of time, effort, and money in the development of new products that were envisioned prior to this proposed rule. Accordingly, the requirements of this subpart are not retroactive and do not apply to existing equipment that is currently in use, nor does it apply to new products that are actively under development. For that reason, FRA provides a grace period in paragraphs (a) and (b) to allow the completion of existing new developments. This provides sufficient time for railroads and vendors to realize profits on their investment in new technologies made prior to the adoption of this rule. Any system that has not been placed in use by the end of the grace period would be required to comply with the safety analysis requirements. Vendors are required to identify these projects to FRA within 6 months after the effective date of this rule. FRA believes this will avoid misunderstandings concerning which systems receive the grace period. FRA will consider any systems not identified to FRA within the 6-month window to be a new product start that would require a safety analysis.

In paragraph (c), FRA makes clear that the exemption is limited in scope. Products that result in degradation of safety or a material increase in safety-critical functionality are not exempt. Products with slightly different specifications that are used to allow the gradual enhancement of the product's capabilities do not require a full safety analysis as specified in Appendix F (or equivalent), but do require a formal verification and validation to the extent that the changes involve safety-critical functions.

Section 229.305 Definitions

Generally, this section standardizes similar definitions between 49 CFR part 236 subpart H and I, and this part. Although 49 CFR part 236 subpart H and I addresses train control systems, and this subpart addresses locomotive control systems, both reflect the adoption of a risk-based engineering design and review process. The definition section, however, does introduce several new definitions applicable to locomotive control systems.

''Loosely coupled'' means an attribute of systems, specifically referring to an approach to designing interfaces across systems, subsystems, or components to reduce the interdependencies between them—in particular, reducing the risk that changes within one system, subsystem, or component will create unanticipated changes within other system, subsystem, or component systems. Loosely coupled systems reduce this risk by enforcing standards for behavior at the interfaces of between systems, subsystems, or components while providing a great deal of freedom to modify activity within the systems, subsystems, or components. What happens within any one system, subsystem, or component matters little to the other systems, subsystems, or components as long as each system, subsystem, or component meets the specifications for deliverables at the interface of the systems, subsystems, or components. This is the opposite of ''tightly coupled''.

''New or next-generation locomotive control system'' refers to locomotive control products using technologies or combinations of technologies not in use on the effective date of this regulation, products that are under development as of October 9, 2012, and are placed in service prior to October 9, 2015, or without established histories of safe practice. Traditional, non-microprocessor systems, as well as microprocessor and software based locomotive control systems, are currently in use. These systems have used existing technologies, existing architectures, or combinations of these to implement their functionality. Development of a safety analysis to accomplish the requirements of this part would require reverse engineering these products. Reverse engineering a product is both time consuming and expensive. Requiring the performance of a safety analysis on existing products would present a large economic burden on both the railroads and the original equipment manufacturers (OEM). The economic burden would likely be significantly less for new combinations of technology and architectures that either implement existing functionality, or implement new functionality. These types of systems lack a proven service history and the safety analysis would be accomplished in the normal course of system design to mitigate the lack of a proven service history. The fundamental differences make it necessary to clearly

distinguish between the two classes of locomotive control systems products.

''Product'' means any safety critical locomotive control system processor-based system, subsystem, or component whose functions are directly related to safe movement and stopping of the train as well as the associated man-machine interfaces, regardless of the location of the control system, subsystem, or component. It specifically excludes safety critical processor based signal and train control systems. The definition identifies the covered systems that would require a safety analysis. Generally, locomotive manufacturers consider their product to be the entire locomotive. This includes systems and subsystems. In this situation, the manufacturers' extensive knowledge of the product allows them to conduct a safety analysis on the safety critical elements, including locomotive control systems. Similarly, major suppliers to locomotive manufacturers are also familiar with their own products. They too can clearly identify the safety critical elements and conduct the safety analysis accordingly. However, the same is not necessarily true for suppliers without extensive railroad domain knowledge. These suppliers may not understand that their product requires a safety analysis, or may lack experience to recognize that the subsystems or components of the product are subject to the safety analysis of this part. Accordingly, the definition of ''product'' indentifies the covered systems requiring a safety analysis. The definition of ''product'' also clarifies the location of the functionality. As advanced technologies like a remote control locomotive demonstrates the system, subsystem, or components responsible for the safe movement and stopping of the train need not be physically located on the locomotive.

The definition of ''Safety Analysis'' refers to a formal set of documentation that describes in detail all of the safety aspects of the product, including but not limited to procedures for its development, installation, implementation, operation, maintenance, repair, inspection, testing, and modification, as well as analyses supporting its safety claims. A Safety Analysis (SA) is similar to the Product Safety Plan (PSP) required by 49 CFR part 236 subpart H or the Positive Train Control Safety Plan (PTCSP) required by 49 CFR part 236 subpart I for signal and train control systems. There is, however, a fundamental difference between the PSP or PTCSP safety analysis, and the SA contained in this subpart. The products covered by a PSP and PTCSP require formal FRA approval prior to the product being placed in use, and products covered by a SA do not. This difference is rooted in fundamental differences between functionality of signal and train control and locomotive control. Although developers of an SA and a PSP or PTCSP may merge functions to operate together on a common platform, different safety analyses would be required. In order to ensure that there is no confusion between the safety analyses required by 49 CFR part 236 subparts H or I, and the safety analysis required in this subpart, a different definition is provided for the SA in this part.

The definition of ''Safety-critical,'' as applied to a function, a system, or any portion thereof, means an aspect of the locomotive electronic control system that requires correct performance to provide for the safety of personnel, equipment, environment, or any combination of the three; or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist. This definition is substantially similar to that found in 49 CFR part 236 Subparts H and I. FRA recognizes that functionality differs between locomotive control systems and signal and train control systems, and further recognizes that the failure modes, the probabilities of failure, and the specific consequences of a failure differ. Despite the differences between locomotive control systems and signal and train control systems, the result of a safety critical failure is the same, creation of a hazardous condition that could affect the safety of the personnel, equipment, or the environment. The same is also true for systems designed to prevent adverse hazards in locomotive control systems, signal and train control systems, or both. The failure of these types of systems would either create a new hazard, or allow a system intended to prevent a hazard to occur, regardless of domain.

''Tightly coupled'' is an attribute of systems, referring to an approach to designing interfaces across systems, subsystems, or components to maximize the interdependencies between them—in particular, increasing the risk that changes within one system, subsystem, or component will create unanticipated changes within other system, subsystem, or component. Tightly coupled systems offer the potential for improved operational efficiencies compared to loosely coupled systems because of reduced message and parameter creation, transmission, translation and interpretation overhead and sharing of critical systems, subsystems, and components. However tightly coupled systems tend to exhibit the following characteristics, which are often seen as disadvantages:

1. A change in one system, subsystem, or component usually forces a ripple effect of changes in other systems, subsystems, or components
2. Assembly of system, subsystem, or component might require more effort and/or time due to the increased inter-system, subsystem, or component dependencies.
3. A particular system, subsystem, or component might be harder to reuse and/or test because dependent system, subsystem, or component must be included.

Cohesion is a measure of how strongly-related or focused are the responsibilities of a system, subsystem, or component. There are a number of different degrees of cohesion, of which the most desirable are communicational, sequential cohesion, and functional cohesion. Communicational cohesion is when system, subsystem, or components are grouped because they operate on the same data. Sequential cohesion is when parts of a system, subsystem, or component are grouped because the output from one system, subsystem, or component is the input to another part. It is analogous to an assembly line. Functional cohesion is when systems, subsystems, or components are grouped because they all contribute to a single well-defined task. While functional cohesion is considered the most desirable type of cohesion for a system, subsystem, or component, it may not be achievable. There are cases where communicational cohesion is the highest level of cohesion that can be attained under the circumstances. Low cohesion implies that a system, subsystem, or component performs tasks which are not very related to each other and hence can create problems as the system, subsystem, or component becomes large.

Comingle can be, therefore, expressed in terms the nature of the coupling and cohesion between the relevant systems, subsystems, or components. Comingle refers to the act of creating systems, subsystems, or components where the systems, subsystems, or components are tightly coupled and where the resulting systems, subsystems, or components exhibit a low degree of cohesion.

Section 229.307 Safety Analysis

The SA serves as the principal safety documentation for a safety-critical locomotive control system product. Engineering best practice today

recognizes that elimination of all risk is impossible. It recognizes that the traditional design philosophy that eliminates all risk (risk avoidance) adversely affects a product's cost and performance. Consequently, designers have adopted a philosophy of risk management. Under this philosophy, designers consider both the consequences of a failure and the probability of a failure. Designers then select the appropriate risk mitigation technique. The risk mitigation philosophy reduces cost and improves performance compared to risk avoidance.

Fundamental to the execution of the risk management philosophy is the development and documentation of a SA that closely examines the relationship between consequences of a failure, probability of occurrence, failure modes, and their mitigation strategies. Paragraph (a) of this section clearly recognizes this, and would address this need by requiring the development of the SA documentation. It also recognizes that some developers of SAs may have little experience in risk-based design. Appendix F offers one approach. There are a number of equally effective or better approaches. FRA encourages railroads and OEMs to select an approach best suited to their business model. FRA would consider as acceptable any approach that would be equal to, or more effective than, the one outlined in Appendix F.

Paragraph (b) along with paragraph (a) of this section, further establish a regulatory mandate for risk management design. Railroads that elect to allow a locomotive control system to be placed in use on its property are required to ensure that an appropriate SA is completed first.

Generally, only a single SA would be required for a product. Therefore, FRA would recognize as acceptable any appropriate SA done under the auspices of one railroad, or a consortium of railroads. FRA also recognizes that railroads may lack the necessary product familiarity or technical expertise to prepare the SA. FRA anticipates that vendors will accomplish the bulk of preparing the SA in the course of the product development.

FRA also recognizes that product vendors may develop a product prior to its procurement by a railroad. In this situation, FRA would provide review and comment as requested by the vendor. This review by FRA would not represent an endorsement of the product. FRA expects that the vendor would work with a railroad, or a consortium of railroads, for final review and approval of the SA. FRA also wishes to make clear that the SA would only be required for new or next generation locomotive control systems, as defined in § 229.305, or for substantive changes to an existing product. The latter would include: The addition or deletion of safety critical functionality to the product; significant paradigm shifts in the underlying systems' architecture or implementation technologies; or, significant departures from widely accepted and service proven industry best past practices. The half-life of microprocessor-based hardware is relatively short, and the associated software is subject to change as technical issues are discovered with existing functionality. FRA anticipates that there will be maintenance-related changes of software, as well as replacement of functionally identical hardware components as exiting hardware undergoes repair or reaches the end of its useful service life. These changes, which potentially may be extensive, do not change the safety critical functionality, the underlying implementation paradigm shift, or mark a significant departure from current industry practice. FRA emphasizes that these non-safety critical products would not require a SA.

The railroads and vendors have generally demonstrated, with a high degree of confidence, that existing systems can safely operate. In response to potential liability issues, railroads have shown they carefully examine the safety of a product prior to placing it in use. FRA fully expects that the railroads would continue to apply the same due diligence to new or next generation systems as they review the SA for these more complex products. Paragraph (b) is intended to limit FRA's review of the SAs. This, of course, would not restrict FRA review where it appears that due diligence has not been exercised, there are indications of fraud or malfeasance, or the underlying technology or architecture represent significant departures from existing practice.

In paragraph (b), FRA requires that the SA establish with a high degree of confidence that safety-critical functions of the product will operate in a fail-safe manner in the operating environment in which it will be used. FRA anticipates that the railroad and vendor community would exercise due diligence in the design and review process prior to placing the product in use. Due diligence would typically be demonstrated by the completion, review and internal approval of the SA. The railroad will be required to determine that this standard has been met, prior to a product change, or placing a new or next generation product in use.

Paragraph (b) also requires that the railroads identify appropriate procedures to immediately repair safety-critical functions when they fail. If the procedures are not followed, it would result in a violation for failing to comply with the SA.

Section 229.309 Safety Critical Changes and Failures

Safety critical microprocessors, like any electronics available today, are subject to significant change. It is necessary for railroads to ensure that safe system operations continue in the event of planned changes to the software or hardware maintenance of hardware and software configurations. Failure to maintain hardware and software configurations increases the probability that unintended consequences will occur during system operation. These unintended consequences do not necessarily reveal themselves on initial installation and operation, but may occur much later.

Not all railroads may experience the same software or hardware faults. The SA developer's software and hardware development, configuration management, and fault tracking play an important role in ensuring system safety. Without an effective configuration management and fault reporting system, it is difficult, if not impossible to evaluate the associated risks. The number of failures experienced by one railroad may not exceed the number of failures identified in the SA, but the aggregate from multiple railroads may. The vendor is best positioned to aggregate identified faults, and is best able to determine that the design and failure assumptions exceed those predicted by the safety analysis. An ongoing relationship between a railroad and its vendor is, therefore, essential to ensure that problems encountered by the railroad are promptly reported to the vendor for correction, and that problems encountered and reported by other railroads to the vendor are shared with other railroads. Furthermore, changes to the system developed by the vendor must be promptly provided to all railroads in order to eliminate the reported hazard. A formal, contractual relationship would provide the best vehicle for ensuring this relationship. This section clearly identifies the responsibility of railroads, and car owners, to establish such a relationship for both reporting hazards.

In order to accomplish their responsibilities, FRA expects that each railroad would have a configuration tracking system that will allow for the identification and reporting of hardware

and software issues, as well as promptly implementing changes to the safety critical systems provided by the vendor, regardless of the original reporting source of the problem. This section requires railroads to identify, and create such a system if they have not already done so.

Paragraph (b) requires immediate notification to a railroad of real or potential safety hazards identified by the private car suppliers and private car owners. This allows affected railroads to take appropriate actions to ensure the safety of rail operations.

In paragraph (c), the private car owner's configuration/revision control measures should be accepted by the railroad that would be using the car and implementing the system. The private car owner may have placed safety critical equipment on his car that is unfamiliar to the railroad using that car, and the necessary contractual relationship that would be required in paragraph (a)(3) of this section may not exist because the equipment in question is not part of the railroad's inventory. The private car owners are expected to communicate these issues with the host railroads. This requirement is intended to ensure that the safety-functional and safety-critical hazard mitigation processes are not compromised by unknown changes to software or hardware. Reporting responsibilities, as well as the configuration management, and tracking responsibilities also extend to private car owners.

Section 229.311 Review of SAs

In paragraph (a), FRA requires railroads to notify FRA before covered locomotive electronic products are placed in use. As discussed above, FRA anticipates that review of the SA and amendments would be the exception, rather than the normal practice. However, FRA believes it is appropriate to have the opportunity to review products and product changes to ensure safety. FRA requires that it have the opportunity to have products and product changes identified to it, and the opportunity to elect a review. FRA also realizes that development of these products represents a significant financial investment, and that the railroad would like to utilize the products as soon as possible in order to recover its investment.

Paragraph (b) reflects the expectation that FRA will decide whether to review an SA within 60 days after receipt of the requested information. Based on the information provided to FRA, the Associate Administrator for Safety will evaluate the need and scope of any review. Within 60 days of receipt of the notification required in paragraph (a), FRA will either decline to review or request to review. If FRA has not notified the railroad of its intent to review or audit the SA within the 60 day period, the railroad may assume that FRA does not intend to review or audit, and place the product in use. FRA reserves the right to conduct a review at a later date. Examples of causes for a review or audit prior to placing the product in use would include: Products with unique architectural concepts; products that use design or safety assurance concepts considered outside existing accepted practices; and, products that appear to comingle the locomotive control function with a safety-critical train control processing function. FRA may convene technical consultations, as necessary, to discuss issues related to the design and planned development of the product. Causes for an audit of the SA after a product is placed in service would include, but are not limited to, such circumstances as a credible allegation of error or fraud, SA assumptions determined to be invalid as a result of in-service experience, one or more unsafe events calling into question the safety analysis, or changes to the product.

If FRA elects not to review a product's SA, railroads would be able to put the product immediately in use after notification that FRA elects not to review. In the event that FRA would elect to review, FRA would attempt to complete the review within 120 days. FRA's ability to complete the review within 120 days will depend upon various factors, such as the complexity of the new product or product change, its deviation from current practice, the functionality, the architecture, the extent of interfaces with other systems, and the number of technical consultations required. Products reviewed by FRA under these circumstances may not be placed in use until FRA's review is complete.

Section 229.313 Product Testing Results and Records

This section requires that records of product testing conducted in accordance with this subpart be maintained. To effectively evaluate the degree to which the SA reflects real, as opposed to predicted performance, it is necessary to keep accurate records of performance for the product. In addition to collecting these records, it is also essential for regular comparison of the real performance results with the predicted performance. Thus, in this section, FRA requires such records to be maintained. Where the real performance, as measured by the collected data, exceeds the predicted performance of the SA, FRA requires no action. If the real performance is worse than the predicted performance, this section requires that the railroad take immediate action to improve performance to satisfy the predicted standard. Prompt and effective action would be required to bring the non-compliant system into compliance.

FRA encourages, but does not require a railroad to proactively evaluate their systems, and take corrective action prior to the system becoming non-compliant with the predicted performance standard. If an unpredicted hazard would occur, the system would be required to be immediately evaluated, and the appropriate corrective action would need to be taken. FRA would not expect a railroad to defer any corrective action.

This section establishes a requirement for a railroad to keep detailed records to evaluate the system. However, the railroad may elect to have the system supplier keep these records. There would be many advantages to the later approach, primarily that the vendor would receive an aggregate of the technical issues, making them better positioned to analyze the system performance. Although a railroad may delegate recordkeeping, the railroad would retain the responsibility for keeping records of performance on their property. The railroads would be responsible for ensuring the safe operation of systems on their property, and would be required to have access to the performance data if they are to carry out their responsibilities under this proposed section.

This section also requires detailed handling requirements for required records. Paragraph (a) requires specific content in the record. FRA will accept paper records or electronic records. Electronic recordkeeping is encouraged, as it reduces storage costs, simplifies collection of information, and allows data mining of the collected information. However, to ensure that the electronic records provide all required information, approval by the Associate Administrator for Safety is required.

Signatures on paper records are required to uniquely identify the person certifying the information contained in the record in such a manner that would enable detection of a forgery. Paragraph (a) ensures that an electronic signature could be attributable to single individual as reliably as paper records. It will be possible to meet the storage requirement in several different ways. Physical paper records will be expected to be kept at the physical location of the supervising official. Electronic records

will be permitted to be either stored locally, or remotely. FRA has no preference as long as the records are promptly accessible for FRA review.

Paragraph (b) specifies the required retention period for the records. FRA recognizes that retaining records involves a cost to railroads, and appreciates their desire to minimize both the number, and the required retention period. To this end, FRA has identified two different categories of records, and proposes differing retention periods for each. The first category involves records associated with installation or modification of a system and would contain data required for evaluating the product's performance and compliance to the safety case conditions throughout the life of the product. FRA will consider the life of the product to begin when the product is first placed in use and end with the permanent withdrawal of the product from service. In the event of permanent transfer of the product to another railroad, the receiving railroad would become responsible for maintaining the records. This responsibility will continue until the product is completely withdrawn from rail service. The second category of records addresses periodic testing and will have a retention period of at least one year, or the periodicity of the subsequent test, whichever is greater. Results obtained by subsequent tests will supersede the earlier test. The earlier test results will be moot for evaluating the current condition.

Regrettably, in some cases, the use of electronic records may not meet the minimum standards required by FRA. Consequently, FRA establishes procedural requirements related to withdrawing authorization to use electronic records in paragraph (c). If FRA finds it necessary to withdraw an authorization, FRA will explain the reason in writing.

Section 229.315 Operation Maintenance Manual

This section requires that each railroad have a manual covering the requirements for the installation, periodic maintenance and testing, modification, and repair of its safety critical locomotive control systems. This manual can be kept in paper or electronic form. It is recommended that electronic copies of the manual be maintained in the same manner as other electronic records kept for this part and that it be included in the railroad's configuration management plan (with the master copy and dated amendments carefully maintained so that the status of instructions to the field as of any given date can be readily determined).

Paragraph (a) requires that the manual be available to both persons required to perform such tasks and to FRA. Paragraph (b) requires that plans necessary for proper maintenance and testing of products be correct, legible, and available where such systems are deployed or maintained. The paragraph also requires that the manual identify the current version of software installed, revisions, and revision dates. Paragraph (c) requires that the manual identify the hardware, software, and firmware revisions in accordance with the configuration management requirement. Paragraph (d) requires the identification, replacement, handling, and repair of safety critical components in accordance with the configuration management requirements. Finally, paragraph (e) requires the manual be ready for use prior to deployment of the product, and that it be available for FRA review.

Section 229.317 Training and Qualification Program

This section provides specific parameters for training railroad employees and contractor employees to ensure they have the necessary knowledge and skills to complete their duties related to safety-critical products. Paragraph (a) requires the training to be formally conducted and documented based on educational best practices. Paragraphs (b) and (c) require the employer to identify employees that will be performing inspection, testing, maintenance, repairing, dispatching, and operating tasks related to the safety critical locomotive systems, and develop a written task analysis for the performance of duties. The employer is required to identify additional knowledge and skills above those required for basic job performance necessary to perform each task. Work situations often present unexpected challenges, and employees who understand the context within which the job is to be done would be better able to respond with actions that preserve safety. Further, the specific requirements of the job would be better understood, and requirements that are better understood are more likely to be adhered to. Well-informed employees would be less likely to conduct ad hoc trouble shooting; and therefore, should be of greater value in assisting with trouble shooting.

AAR submitted comments stating that it seems unnecessary to publish training requirements that specifically address locomotive electronics, and claiming that requiring a formal task analysis is overly burdensome. Training for personnel that works with locomotive electronics is technical and specialized. As such, FRA continues to believe that the training requirements for locomotive electronics should be addressed specifically in §§ 229.17 and 229.19. FRA also believes that a formal task analysis as part of training is vital to preparing personnel to operate locomotive electronics safely. AAR failed to explain why requiring a formal task analysis will be overly burdensome and they failed to suggest any alternative training. Accordingly, in this final rule, FRA retains the proposed training requirements.

Paragraph (d) requires the employer to develop a training curriculum that includes either classroom, hands-on, or other formally-structured training designed to impart the knowledge and skills necessary to perform each task.

Paragraph (e) adds a requirement that all persons subject to training requirements and their direct supervisors must successfully complete the training curriculum and pass an examination for the tasks for which they are responsible. Generally, giving appropriate training to each of these employees prior to task assignment will be required. The exception would be when an employee, who has not received the appropriate training, is conducting the task under the direct, on-site supervision of a qualified person.

Paragraph (f) requires periodic refresher training. This periodic training must include classroom, hands-on, computer-based training, or other formally structured training. The intent is for personnel to maintain the knowledge and skills required to perform their assigned task safely.

Paragraph (g) adds a requirement to compare and evaluate the effectiveness of training. The evaluation would first determine whether the training program materials and curriculum are imparting the specific skills, knowledge, and abilities to accomplish the stated goals of the training program; and second, determine whether the stated goals of the training program reflect the correct, and current, products and operations.

Paragraph (h) requires the railroad to maintain records that designate qualified persons. Records retention is required until recording new qualifications, or for at least one year after such person(s) leave applicable service. The records are required to be available for FRA inspection and copying.

Section 229.319 Operating Personnel Training

This section contains minimum training requirements for locomotive engineers and other operating personnel who interact with safety critical locomotive control systems. ''Other operating personnel'' refers to onboard train and engine crew members (*i.e.,* conductors, brakemen, and assistant engineers).

Paragraph (a) requires training program to cover familiarization with the onboard equipment and the functioning of that equipment as part of, and its relationship to, other onboard systems under that person's control. The training program must cover all notifications by the system (*i.e.,* onboard displays) and actions or responses to such notifications required by onboard personnel. The training is also required to address how each action or response ensures proper operation of the system and safe operation of the train.

During system operations emergent conditions could arise which would affect the safe operation of the system. This section also requires operating personnel to be informed as soon as practical after discovery of the condition, and any special actions required for safe train operations.

For certified locomotive engineers and conductors, paragraph (b) requires that the training requirements of this section be integrated into the training requirements of parts 240 and 242. Although this requirement only addresses engineers, in the event of certification of other operating personnel, the expectation is that these requirements would be included in their training requirements.

Appendix F—Recommended Practices for Design and Safety Analysis

Appendix F provides an optional set of criteria for performing risk management design of locomotive control systems. FRA recognizes that not all safety risks associated with human error can be eliminated by design, no matter how well trained and skilled the designers, implementers, and operators. The intention of the appendix is to provide one set of safety guidelines distilled from proven design considerations. There are numerous other approaches to risk management-based design. The basic principles of this appendix capture the lessons learned from the research, design, and implementation of similar technology in other modes of transportation and other industries. The overriding goal of this appendix is to minimize the potential for design-induced error by ensuring that systems are suitable for operators, and their tasks and environment.

FRA believes that new locomotive systems will be in service for a long period. Over time, there will be modifications from the original design. FRA is concerned that subsequent modifications to a product might not conform to the product's original design philosophy. The original designers of products could likely be unavailable after several years of operation of the product. FRA believes mitigating this is most successful by fully explaining and documenting the original design decisions and their rationale. Further, FRA feels that assumption of long product life cycles during the design and analysis phase will force product designers and users to consider long-term effects of operation. Such a criterion would not be applicable if, for instance, the railroad limited the product's term of proposed use.

Translation of these guidelines into processes helps ensure the safe performance of the product and minimizes failures that would have the potential to affect the safety of railroad operations. The identification of fault paths are essential to establishing failure modes and appropriate mitigations. Failing to identify a fault path can have the effect of making a system seem safer on paper than it actually is. When an unidentified fault path is discovered in service which leads to a previously unidentified safety-relevant hazard, the threshold in the safety analysis is automatically exceeded, and both the designer and the railroad must take mitigating measures. The frequency of such discoveries relates to the quality of the safety analysis efforts. Safety analyses of poor quality are more likely to lead to in-service discovery of unidentified fault paths. Some of those paths might lead to potential serious consequences, while others might have less serious consequences.

Given technology, cost, and other constraints, there are limitations regarding the level of safety obtainable. FRA recognizes this. However, FRA also believes that there are well-established and proven design and analysis techniques that can successfully mitigate these design restrictions. The use of proven safety considerations and concepts is necessary for the development of products. Only by forcing conscious decisions by the designer on risk mitigation techniques adopted, and justifying those choices (and their decision that a mitigation technique is not applicable) does the designer fully consider the implications of those choices. FRA notes that in normal operation, the product design should preclude human errors that cause a safety hazard. In addition to documenting design decisions, describing system requirements within the context of the concept of operations further mitigates against the loss of individual designers. In summary, the recommended approach ensures retention of a body of corporate knowledge regarding the product, and influences on the safety of the design. It also promotes full disclosure of safety risks to minimize or eliminate elements of risk where practical.

C. Amendments to Part 238

Section 238.105 Train Electronic Hardware and Software Safety

This section incorporates existing waivers and addresses certain operational realities. Since the implementation of the Passenger Equipment Safety Standards, FRA has granted two waivers from the requirements of § 238.105(d) (FRA–2004–19396 and FRA–2008–0139). The first waiver is for 26 EMU bi-level passenger cars operated by Northeastern Illinois Regional Commuter Railroad Corporation (METRA). The second waiver is for 14 new EMU bi-level passenger cars to be operated by Northern Indiana Commuter Transportation District. There are over 1,000 EMU passenger cars (M–7) being operated by Long Island Railroad & Metro-North Commuter Railroad (MNCW) for the past five years that FRA has discovered will need a waiver to be in compliance with § 238.105(d). The MNCW has placed an order for additional 300 plus options, EMU passenger cars (M–8) that will also need a waiver from the requirements of existing § 238.105(d).

The portion of the requirements that these cars' brake systems cannot satisfy is the requirement for a full service brake in the event of hardware/software failure of the brake system or access to direct manual control of the primary braking system, both service and emergency braking. The braking system on these cars does not have the full service function but does default to emergency brake application in the event of hardware/software failure of the brake system, and the operator has the ability to apply the brake system at an emergency rate from the conductor's valve located in the cab. A slight change to the language in § 238.105, that will permit a service or emergency braking, rather than requiring the capability to execute both a service and emergency brake, will alleviate the need for these waivers and would not reduce the braking rate of the equipment or the

stop distances. Accordingly, the language in § 238.105(d)(1)(ii) in this final rule has been modified to permit either a ''service or emergency braking.''

Section 238.309 Periodic Brake Equipment Maintenance

For convenience and clarity, FRA is consolidating locomotive air brake maintenance for conventional locomotives into part 229. Currently, because conventional locomotives are used in passenger service, certain air brake maintenance requirements are included in the Passenger Equipment Safety Standards contained in this section. Placing all of the requirements for conventional locomotives in part 229 will make the standards easier to follow and avoid confusion.

The brake maintenance requirements that are included in this final rule in part 229 extend the intervals at which required brake maintenance is performed for several types of brake systems for non-conventional locomotives. The length of the intervals reflects the results of studies and performance evaluations related to a series of waivers starting in 1981 and continuing to present day. Overall, the type of brake maintenance required for passenger equipment will remain the same.

VII. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Orders 12866 and 13563, and DOT policies and procedures (44 *FR* 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory impact analysis addressing the economic impact of this final rule. Document inspection and copying facilities are available at Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of cost and benefit streams expected from the adoption of this final rule. This analysis includes qualitative discussions and quantitative measurements of costs and benefits in this rulemaking. The primary costs or burdens in this final rule are from the alerter and revised minimum (*i.e.,* cold weather) cab temperature requirements. There is also a cost associated with certain daily inspections required when periodic inspections are conducted less frequently. Although the final rule includes requirements for new locomotives to have air conditioning units and cab securement there are no additional costs for these requirements since they are current industry practice. Safety benefits will accrue from fewer train accidents. Cost savings will result from fewer waivers and waiver renewals, a reduction in downtime for locomotives due to the changes to headlight and brake requirements, and an increased interval between periodic inspection of certain micro-processor based locomotives. This last benefit consists of cost savings from a reduction of employee time for the periodic inspections and saving from reduced locomotive down-time. For the twenty year period the estimated quantified costs have a Present Value (PV) 7% of $27.7 million. For this period the estimated quantified benefits have a PV, 7% of $385 million.

B. Regulatory Flexibility Act and Executive Order 13272

FRA developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

As discussed earlier, FRA has initiated this rulemaking in its efforts to update and reevaluate current regulations. Therefore, FRA is revising the Locomotive Safety Standards to update, consolidate and clarify existing rules, incorporate existing industry and engineering best practices, and incorporate former waivers into the regulation. FRA believes this final rule will modernize and improve its safety regulatory program related to locomotives. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by this final rule, none will be significantly impacted. FRA invited all interested parties to submit data and information regarding the potential economic impact that will result from the adoption of the final rule.

1. Description of Regulated Entities and Impacts

The ''universe'' of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. For this rulemaking, the types of small entities that are potentially affected by this rulemaking are: (a) small railroads and (b) governmental jurisdictions of small communities.

''Small entity'' is defined in 5 U.S.C. 601 as having the same meaning as ''small business concern'' under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) includes nonprofit enterprises that are independently owned and operated, and are not dominant in their field of operations within the definition of ''small entities.'' Additionally, 5 U.S.C. 601(5) defines ''small entities'' as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates ''size standards'' for small entities. It provides that the largest for-profit railroad business firm may be (and still classify as a ''small entity'') 1,500 employees for ''line-haul operating'' railroads, and 500 employees for ''shortline operating'' railroads.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. Governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000 are also considered small entities under FRA's policy. FRA is using this definition for this rulemaking.

2. Small Entities

a. Railroads

There are approximately 702 [1] small railroads meeting the definition of ''small entity'' as described above. FRA estimates that all of these small entities could potentially be impacted by one or more of the requirements in this final rule. Note, however, that approximately fifty of these railroads are subsidiaries of large short line holding companies with the technical multidisciplinary expertise and resources comparable to larger railroads. It is important to note that many of the changes or additions in this rulemaking will not impact all or many small railroads. The nature of some of the changes will dictate that the impacts primarily fall on large railroads that purchase new and/or electronically advanced locomotives. Small railroads generally do not purchase new locomotives, they tend to buy used locomotives from larger railroads. Also, some of the final rule's requirements, i.e., requirements for alerters, cab door securement and air conditioning units, will be a burden to very few, if any, small railroads. The most burdensome requirement for small railroads will be the revisions to cab cold weather temperature requirements since older locomotives are less likely to meet the revised standards and small railroads tend to own older locomotives. However, even this burden not significant. FRA has estimated the total burden for the cold weather requirements is less than $900,000 (PV, 7%) over the 20 year analysis.

It is also important to note that this final rule only applies to non-steam locomotives. There are some small railroads that own one or more steam locomotives which these changes will not impact. There are a few small railroads that own all or almost all steam locomotives. Most of these entities are either museum railroads or tourist railroads. For these entities, this final rule's regulations will have no impact. FRA estimates that there are about five small railroads that only own steam locomotives.

b. Governmental Jurisdictions of Small Communities

Small entities that are classified as governmental jurisdictions will also be affected by the requirements in this rulemaking. As stated above, and defined by SBA, this term refers to governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. FRA does not expect this group of entities to be impacted. The final rule will apply to governmental jurisdictions or transit authorities that provide commuter rail service—none of which is small as defined above (*i.e.,* no entity serves a locality with a population less than 50,000). These entities also receive Federal transportation funds. Intercity rail service providers Amtrak and the Alaska Railroad Corporation will also be subject to this rule, but they are not small entities and likewise receive Federal transportation funds. While other railroads are subject to this final rule by the application of § 238.3, FRA is not aware of any railroad subject to this rule that is a small entity that will be impacted by this rule.

3. Economic Impacts on Small Entities (railroads)

This certification is not intended to be a stand-alone document. In order to get a better understanding of the total costs for the railroad industry, which forms the base for these estimates or more cost detail on any specific requirement, a review of FRA's RIA is recommended. FRA has placed a copy of the RIA in the docket for this rulemaking.

Based on information currently available, FRA estimates that the average small railroad will spend approximately $1,000 over 20 years to comply with this final rule. This is because most of the regulatory changes in the Locomotive Safety Standards final rule are oriented towards new and remanufactured locomotives. Most small railroads do not purchase new or remanufactured locomotives. Therefore, the impact for most, if not all small railroads will be minimal.

4. Significant Economic Impact Criteria

Previously, FRA sampled small railroads and found that revenue averaged approximately $4.7 million (not discounted) in 2006. One percent of average annual revenue per small railroad is $47,000. FRA estimates that the average small railroad will spend approximately $1,000 over twenty years to comply with the requirements in this final rule. Based on this, FRA concludes that the expected burden of this final rule will not have a significant impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

5. Substantial Number Criteria

This final rule will likely burden all small railroads that are not exempt from its scope or application. Therefore, as noted above this rule will impact a substantial number of small railroads.

6. Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads will be affected by this final rule, none of these entities will be significantly impacted.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.9—Movement of Non-Complying Locomotives.	44 Railroads	21,000 tags	1 minute	350 hours.
229.15—Remote Control Locomotives (RCL)—(New Requirements)				
—Tagging at Control Stand Throttle.	44 Railroads	3,000 tags	2 minutes	100 hours.
—Testing and Repair of Operational Control Unit (OCU) on RCL—Records.	44 Railroads	200 testing/repair records.	5 minutes	17 hours.

[1] For 2010 there were 754 total railroads reporting to the FRA. Total small railroads potentially impacted by this rulemaking would equal 754–26 (commuter railroads)—2 (intercity railroads)—7 (Class I railroads)—12 (Class II railroads)—5 (Steam railroads) = 702.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.17—Accident Reports	44 Railroads	1 report	15 minutes	.25 hour.
229.20—Electronic Recordkeeping				
—Electronic Record of Inspections and Maintenance and Automatic Notification to Railroad that Locomotive is Due for Inspection (New Requirement).	44 Railroads	21,000 notifications	1 second	6 hours.
229.21—Daily Inspection	754 Railroads	6,890,000 records	16 or 18 min.	1,911,780 hours.
—MU Locomotives: Written Reports.	754 Railroads	250 reports	13 minutes	54 hours.
Form FRA F 6180.49A Locomotive Inspection/Repair Record.	754 Railroads	4,000 forms	2 minutes	133 hours.
229.23/229.27/229.31—Periodic Inspection Annual. Biennial/Main Reservoir Tests—FRA F 6180.49A.	754 Railroads	9,500 insp./tests/forms	8 hours	76,000 hours.
229.23/229.27/229.29/229.31—Periodic Inspection/Annual Biennial Tests/Main Res. Tests—*Secondary Records* on Form FRA F 6180.49A.	754 Railroads	9,500 records	2 minutes	317 hours.
—List of Defects and Repairs on Each Locomotive and Copy to Employees Performing Insp. (New Requirement).	754 Railroads	4,000 lists + 4,000 copies.	2 minutes	266 hours.
—Document to Employees Performing Inspections of All Tests Since Last Periodic Inspection (New Requirement).	754 Railroads	9,500 documents	2 minutes	317 hours.
229.33—Out-of Use Credit	754 Railroads	500 notations	5 minutes	42 hours.
229.25(1)—Test: Every Periodic Insp.—Written Copies of Instruction.	754 Railroads	200 amendments	15 minutes	50 hours.
229.25(2)—Duty Verification Readout Rec.	754 Railroads	4,025 records	90 minutes	6,038 hours.
229.25(3)—Pre-Maintenance Test—Failures.	754 Railroads	700 notations	30 minutes	350 hours.
229.135(A.)—Removal From Service	754 Railroads	1,000 tags	1 minute	17 hours.
229.135(B.)—Preserving Accident Data.	754 Railroads	10,000 reports	15 minutes	2,500 hours.
229.27—Annual Tests	754 Railroads	700 test records	90 minutes	1,050 hours.
229.29—Air Brake System Maintenance and Testing (New Requirement).				
—Air Flow Meter Testing—Record.	754 Railroads	88,000 tests/records	15 seconds	367 hours.
229.46—Brakes General				
—Tagging Isolation Switch of Locomotive That May Only Be Used in Trailing Position (New Requirement).	754 Railroads	2,100 tags	2 minutes	70 hours.
229.85—Danger Markings on All Doors, Cover Plates, or Barriers.	754 Railroads	1,000 decals	1 minute	17 hours.
229.123—Pilots, Snowplows, End Plates—Markings—Stencilling (New Requirement).	754 Railroads	20 stencilling	2 minutes	1 hour.
—Notation on Form FRA F 6180.49A for Pilot, Snowplows, or End Plate Clearance Above Six Inches (New Requirement).	754 Railroads	20 notations	2 minutes	1 hour.
229.135—Event Recorders				
229.135(b)(5)—Equipment Requirements—Remanufactured Locomotives with *Certified* Crashworthy Memory Module.	754 Railroads	1,000 Certified Memory Modules.	2 hours	2,000 hours.
229.140—Alerters—Visual Indication to Locomotive Operator before Alarm Sounds on New Locomotives (New Requirement).	600 Locomotives	74,880,000 visual indications.	4 seconds	83,200 hours.
NEW REQUIREMENTS—SUBPART E—LOCOMOTIVE ELECTRONICS				

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.303—Requests to FRA for Approval of On-Track Testing of Products Outside a Test Facility.	754 Railroads	20 requests	8 hours	160 hours.
—Identification to FRA of Products Under Development.	754 Railroads/3 Manufacturers.	20 products	2 hours	40 hours.
229.307—Safety Analysis by RR of Each Product Developed.	754 Railroads	300 analyses	240 hours	72,000 hours.
229.309—Notification to FRA of Safety-Critical Change in Product.	754 Railroads	10 notification	16 hours	160 hours.
Report to Railroad by Product Suppliers/Private Equipment Owners of Previously Unidentified Hazards of a Product.	3 Manufacturers	10 reports	8 hours	80 hours.
229.311—Review of Safety Analyses (SA)				
—Notification to FRA of Railroad Intent to Place Product In Service.	754 Railroads	300 notifications	2 hours	600 hours.
—RR Documents That Demonstrate Product Meets Safety Requirements of the SA for the Life-Cycle of Product.	754 Railroads	300 documents	2 hours	600 hours.
—RR Database of All Safety Relevant Hazards Encountered with Product Placed in Service.	754 Railroads	300 databases	4 hours	1,200 hours.
—Written Reports to FRA If Frequency of Safety-Relevant Hazards Exceeds Threshold.	754 Railroads	10 reports	2 hours	20 hours.
—Final Reports to FRA on Countermeasures to Reduce Frequency of Safety-Relevant Hazard(s).	754 Railroads	10 reports	4 hours	40 hours.
229.313—Product Testing Results—Records.	754 Railroads	120,000 records	5 minutes	10,000 hours.
229.315—Operations and Maintenance Manual—All Product Documents.	754 Railroads	300 manuals	40 hours	12,000 hours.
—Configuration Management Control Plans.	754 Railroads	300 plans	8 hours	2,400 hours.
—Identification of Safety-Critical Components.	754 Railroads	60,000 components	5 minutes	5,000 hours.
229.317—Product Training and Qualifications Program.	754 Railroads	300 programs	40 hours	12,000 hours.
—Product Training of Individuals	754 Railroads	10,000 trained employees.	30 minutes	5,000 hours.
—Refresher Training	754 Railroads	1,000 trained employees	20 minutes	333 hours.
—RR Regular and Periodic Evaluation of Effectiveness of Training Program.	754 Railroads	300 evaluations	4 hours	1,200 hours.
—Records of Qualified Individuals.	754 Railroads	10,000 records	10 minutes	1,667 hours.
Appendix F—Guidance for Verification and Validation of Product—Third Party Assessment.	754 Railroads/3 Manufacturers.	1 assessment	4,000 hours	4,000 hours.
—Reviewer Final Report	754 Railroads/3 Manufacturers.	1 report	80 hours	80 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Office of Safety, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone, Office of Information Technology, at 202–493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal

Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

FRA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. This final rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended the majority of this final rule to FRA, has as permanent members, two organizations representing State and local interests: AASHTO and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this final rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or of any other representatives of State government. Consequently, FRA concludes that this proposed rule has no federalism implications, other than the preemption of state laws covering the subject matter of this final rule, which occurs by operation of law as discussed below.

This final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically, the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and recodified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act at 45 U.S.C. 22–34, repealed and recodified at 49 U.S.C. 20701–20703. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106. Moreover, the former LIA has been interpreted by the Supreme Court as preempting the field concerning locomotive safety. *See Kurns* v. *Railroad Friction Products Corp.,* 565 U.S. _____ (2012); *Kurns* v. *Railroad Friction Products Corp.,* 132 S.CT. 1262; and *Napier v. Atlantic Coast Line R.R.,* 272 U.S. 605 (1926).

E. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this final rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows: (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation are excluded.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. For the year 2010, this monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This final rule would not result in the expenditure of more than $140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

G. Privacy Act

Anyone is able to search the electronic form of any comment or petition received into any of FRA's dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, if submitted on behalf of an association, business, labor union, etc.). Please visit *http://www.regulations.gov/#!privacyNotice.* You may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects

49 CFR Part 229

Locomotive headlights, Locomotives, Railroad safety, Remote control locomotives.

49 CFR Part 238

Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends parts 229 and 238 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 229—[AMENDED]

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49.

■ 2. Section 229.5 is amended by adding in alphabetical order the following definitions to read as follows:

§ 229.5 Definitions.

* * * * *

Alerter means a device or system installed in the locomotive cab to promote continuous, active locomotive engineer attentiveness by monitoring select locomotive engineer-induced control activities. If fluctuation of a monitored locomotive engineer-induced control activity is not detected within a predetermined time, a sequence of audible and visual alarms is activated so as to progressively prompt a response by the locomotive engineer. Failure by the locomotive engineer to institute a change of state in a monitored control, or acknowledge the alerter alarm activity through a manual reset provision, results in a penalty brake application that brings the locomotive or train to a stop.

* * * * *

Assignment Address means a unique identifier of the RCL that insures that only the OCU's linked to a specific RCL can command that RCL.

* * * * *

Controlling locomotive means a locomotive from where the operator controls the traction and braking functions of the locomotive or locomotive consist, normally the lead locomotive.

* * * * *

Locomotive Control Unit (LCU) means a system onboard an RCL that communicates via a radio link which receives, processes, and confirms commands from the OCU, which directs the locomotive to execute them.

* * * * *

Operator Control Unit (OCU) means a mobile unit that communicates via a radio link the commands for movement (direction, speed, braking) or for operations (bell, horn, sand) to an RCL.

* * * * *

Qualified mechanical inspector means a person who has received instruction and training that includes ''hands-on'' experience (under appropriate supervision or apprenticeship) in one or more of the following functions: troubleshooting, inspection, testing, maintenance or repair of the specific locomotive equipment for which the person is assigned responsibility. This person shall also possess a current understanding of what is required to properly repair and maintain the locomotive equipment for which the person is assigned responsibility. Further, the qualified mechanical inspector shall be a person whose primary responsibility includes work generally consistent with the functions listed in this definition.

* * * * *

Remote Control Locomotive (RCL) means a remote control locomotive that, through use of a radio link can be operated by a person not physically within the confines of the locomotive cab. For purposes of this part, the term RCL does not refer to a locomotive or group of locomotives remotely controlled from the lead locomotive of a train, as in a distributed power arrangement.

Remote Control Operator (RCO) means a person who utilizes an OCU in connection with operations involving a RCL with or without cars.

Remote Control Pullback Protection means a function of a RCL that enforces speeds and stops in the direction of pulling movement.

* * * * *

■ 3. Section 229.7 is revised to read as follows:

§ 229.7 Prohibited acts and penalties.

(a) Federal Rail Safety Laws (49 U.S.C. 20701–20703) make it unlawful for any carrier to use or permit to be used on its line any locomotive unless the entire locomotive and its appurtenances—

(1) Are in proper condition and safe to operate in the service to which they are put, without unnecessary peril to life or limb; and

(2) Have been inspected and tested as required by this part.

(b) Any person (including but not limited to a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or of the Federal Rail Safety Laws or causes the violation of any such requirement is subject to a civil penalty of at least $650, but not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix B of this part contains a statement of agency civil penalty policy.

(c) Any person who knowingly and willfully falsifies a record or report required by this part is subject to criminal penalties under 49 U.S.C. 21311.

■ 4. Section 229.15 is added to read as follows:

§ 229.15 Remote Control Locomotives.

(a) *Design and operation.* (1) Each locomotive equipped with a locomotive control unit (LCU) shall respond only to the operator control units (OCUs) assigned to that receiver.

(2) If one or more OCUs are assigned to a LCU, the LCU shall respond only to the OCU that is in primary command. If a subsequent OCU is assigned to a LCU, the previous assignment will be automatically cancelled.

(3) If more than one OCU is assigned to a LCU, the secondary OCUs' man down feature, bell, horn, and emergency brake application functions shall remain active. The remote control system shall be designed so that if the signal from the OCU to the RCL is interrupted for a set period not to exceed five seconds, the remote control system shall cause:

(i) A full service application of the locomotive and train brakes; and

(ii) The elimination of locomotive tractive effort.

(4) Each OCU shall be designed to control only one RCL at a time. OCU's having the capability to control more than one RCL shall have a means to lock in one RCL ''assignment address'' to prevent simultaneous control over more than one locomotive.

(5) If an OCU is equipped with an ''on'' and ''off'' switch, when the switch is moved from the ''on'' to the ''off''

position, the remote control system shall cause:

(i) A full service application of the locomotive train brakes; and

(ii) The elimination of locomotive tractive effort.

(6) Each RCL shall have a distinct and unambiguous audible or visual warning device that indicates to nearby personnel that the locomotive is under active remote control operation.

(7) When the main reservoir pressure drops below 90 psi while the RCL is moving, the RCL shall initiate a full service application of the locomotive and train brakes, and eliminate locomotive tractive effort.

(8) When the air valves and the electrical selector switch on the RCL are moved from manual to remote control mode or from remote control to manual mode, an emergency application of the locomotive and train brakes shall be initiated.

(9) Operating control handles located in the RCL cab shall be removed, pinned in place, protected electronically, or otherwise rendered inoperable as necessary to prevent movement caused by the RCL's cab controls while the RCL is being operated by remote control.

(10) The RCL system (both the OCU and LCU), shall be designed to perform a self diagnostic test of the electronic components of the system. The system shall be designed to immediately effect a full service application of the locomotive and train brakes and the elimination of locomotive tractive effort in the event a failure is detected.

(11) Each RCL shall be tagged at the locomotive control stand throttle indicating the locomotive is being used in a remote control mode. The tag shall be removed when the locomotive is placed back in manual mode.

(12) Each OCU shall have the following controls and switches and shall be capable of performing the following functions:

(i) Directional control;

(ii) Throttle or speed control;

(iii) Locomotive independent air brake application and release;

(iv) Automatic train air brake application and release control;

(v) Audible warning device control (horn);

(vi) Audible bell control, if equipped;

(vii) Sand control (unless automatic);

(viii) Bi-directional headlight control;

(ix) Emergency air brake application switch;

(x) Generator field switch or equivalent to eliminate tractive effort to the locomotive;

(xi) Audio/visual indication of wheel slip, only if an audio/visual indication is not provided by the RCL;

(xii) Audio indication of movement of the RCL; and

(xiv) Require at least two separate actions by the RCO to begin movement of the RCL.

(13) Each OCU shall be equipped with the following features:

(i) A harness with a breakaway safety feature;

(ii) An operator alertness device that requires manual resetting or its equivalent. The alertness device shall incorporate a timing sequence not to exceed 60 seconds. Failure to reset the switch within the timing sequence shall cause a service application of the locomotive and train brakes, and the elimination of locomotive tractive effort; and,

(iii) A tilt feature that, when tilted to a predetermined angle, shall cause:

(A) An emergency application of the locomotive and train brakes, and the elimination of locomotive tractive effort; and

(B) If the OCU is equipped with a tilt bypass system that permits the tilt protection feature to be temporarily disabled, this bypass feature shall deactivate within 60 seconds on the primary OCU and within 60 seconds for all secondary OCUs, unless reactivated by the RCO.

(14) Each OCU shall be equipped with one of the following control systems:

(i) An automatic speed control system with a maximum 15 mph speed limiter; or

(ii) A graduated throttle and brake. A graduated throttle and brake control system built after September 6, 2012, shall be equipped with a speed limiter to a maximum of 15 mph.

(15) RCL systems built after September 6, 2012, shall be equipped to automatically notify the railroad in the event the RCO becomes incapacitated or OCU tilt feature is activated.

(16) RCL systems built prior to September 6, 2012, not equipped with automatic notification of operator incapacitated feature may not be utilized in one-person operation. (b) *Inspection, testing, and repair.*

(1) Each time an OCU is linked to a RCL, and at the start of each shift, a railroad shall test:

(i) The air brakes and the OCU's safety features, including the tilt switch and alerter device; and

(ii) The man down/tilt feature automatic notification.

(2) An OCU shall not continue in use with any defective safety feature identified in paragraph (b)(1) of this section.

(3) A defective OCU shall be tracked under its own identification number assigned by the railroad. Records of repairs shall be maintained by the railroad and made available to FRA upon request.

(4) Each time an RCL is placed in service and at the start of each shift locomotives that utilize a positive train stop system shall perform a conditioning run over tracks that the positive train stop system is being utilized on to ensure that the system functions as intended.

■ 5. Section 229.19 is revised to read as follows:

§ 229.19 Prior waivers.

Waivers from any requirement of this part, issued prior to June 8, 2012, shall terminate on the date specified in the letter granting the waiver. If no date is specified, then the waiver shall automatically terminate on June 8, 2017.

■ 6. Section 229.20 is added to read as follows:

§ 229.20 Electronic recordkeeping.

(a) For purposes of compliance with the recordkeeping requirements of this part, except for the daily inspection record maintained on the locomotive required by § 229.21, the cab copy of Form FRA F 6180–49–A required by § 229.23, the fragmented air brake maintenance record required by § 229.27, and records required under § 229.9, a railroad may create, maintain, and transfer any of the records required by this part through electronic transmission, storage, and retrieval provided that all of the requirements contained in this section are met.

(b) *Design requirements.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following design requirements:

(1) The electronic record system shall be designed such that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic system shall ensure that each record cannot be modified, or replaced, once the record is transmitted;

(3) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall uniquely identify the person making the amendment;

(4) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(5) Policies and procedures shall be in place to prevent persons from altering electronic records, or otherwise interfering with the electronic system.

(c) *Operational requirements.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following operating requirements:

(1) The electronic storage of any record required by this part shall be initiated by the person performing the activity to which the record pertains within 24 hours following the completion of the activity; and

(2) For each locomotive for which records of inspection or maintenance required by this part are maintained electronically, the electronic record system shall automatically notify the railroad each time the locomotive is due for an inspection, or maintenance that the electronic system is tracking. The automatic notification tracking requirement does not apply to daily inspections.

(d) *Accessibility and availability requirements.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this part shall meet the following access and availability requirements:

(1) Except as provided in § 229.313(c)(2), the carrier shall provide FRA with all electronic records maintained for compliance with this part for any specific locomotives at any mechanical department terminal upon request;

(2) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this part, shall be provided to FRA for inspection and copying upon request *http://web2.westlaw.com/find/default.wl?DB=1000547&DocName=49CFRS213%2E305&FindType=L&AP=&mt=Westlaw&fn=_top&sv=Split&vr=2.0&rs=.* Paper copies shall be provided to FRA no later than 15 days from the date the request is made; and,

(3) Inspection records required by this part shall be available to persons who performed the inspection and to persons performing subsequent inspections on the same locomotive.

■ 7. Section 229.23 is revised to read as follows:

§ 229.23 Periodic inspection: general.

(a) Each locomotive shall be inspected at each periodic inspection to determine whether it complies with this part. Except as provided in § 229.9, all non-complying conditions shall be repaired before the locomotive is used. Except as provided in § 229.33 and paragraph (b) of this section, the interval between any two periodic inspections may not exceed 92 days. Periodic inspections shall only be made where adequate facilities are available. At each periodic inspection, a locomotive shall be positioned so that a person may safely inspect the entire underneath portion of the locomotive.

(b) For each locomotive equipped with advanced microprocessor-based on-board electronic condition monitoring controls:

(1) The interval between periodic inspections shall not exceed 184 days; and

(2) At least once each 31 days, the daily inspection required by § 229.21, shall be performed by a qualified mechanical inspector as defined in § 229.5. A record of the inspection that contains the name of the person performing the inspection and the date that it was performed shall be maintained in the locomotive cab until the next periodic inspection is performed.

(c) Each new locomotive shall receive an initial periodic inspection before it is used.

(d) At the initial periodic inspection, the date and place of the last tests performed that are the equivalent of the tests required by §§ 229.27, 229.29, and 229.31 shall be entered on Form FRA F 6180–49A. These dates shall determine when the tests first become due under §§ 229.27, 229.29, and 229.31. Out of use credit may be carried over from Form FRA F 6180–49 and entered on Form FRA F 6180–49A.

(e) Each periodic inspection shall be recorded on Form FRA F 6180–49A. The form shall be signed by the person conducting the inspection and certified by that person's supervisor that the work was done. The form shall be displayed under a transparent cover in a conspicuous place in the cab of each locomotive. A railroad maintaining and transferring records as provided for in § 229.20 shall print the name of the person who performed the inspections, repairs, or certified work on the Form FRA F 6180–49A that is displayed in the cab of each locomotive.

(f) At the first periodic inspection in each calendar year, the carrier shall remove from each locomotive Form FRA F 6180–49A covering the previous calendar year. If a locomotive does not receive its first periodic inspection in a calendar year before April 2, or July 3 if it's a locomotive equipped with advanced microprocessor-based on-board electronic condition monitoring controls, because it is out of use, the form shall be promptly replaced. The Form FRA F 6180–49A covering the preceding year for each locomotive, in or out of use, shall be signed by the railroad official responsible for the locomotive and filed as required in § 229.23(f). The date and place of the last periodic inspection and the date and place of the last tests performed under §§ 229.27, 229.29, and 229.31 shall be transferred to the replacement Form FRA F 6180–49A.

(g) The railroad mechanical officer who is in charge of a locomotive shall maintain in his office a secondary record of the information reported on Form FRA F 6180–49A. The secondary record shall be retained until Form FRA F 6180–49A has been removed from the locomotive and filed in the railroad office of the mechanical officer in charge of the locomotive. If the Form FRA F 6180–49A removed from the locomotive is not clearly legible, the secondary record shall be retained until the Form FRA F 6180–49A for the succeeding year is filed. The Form F 6180–49A removed from a locomotive shall be retained until the Form FRA F 6180–49A for the succeeding year is filed.

(h) The railroad shall maintain, and provide employees performing inspections under this section with, a list of the defects and repairs made on each locomotive over the last ninety-two days;

(i) The railroad shall provide employees performing inspections under this section with a document containing all tests conducted since the last periodic inspection, and procedures needed to perform the inspection.

■ 8. Section 229.25 is amended by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 229.25 Tests: Every periodic inspection.

* * * * *

(d) *Event recorder.* A microprocessor-based self-monitoring event recorder, if installed, is exempt from periodic inspection under paragraphs (d)(1) through (5) of this section and shall be inspected annually as required by § 229.27(c). Other types of event recorders, if installed, shall be inspected, maintained, and tested in accordance with instructions of the manufacturer, supplier, or owner thereof and in accordance with the following criteria:

(1) A written or electronic copy of the instructions in use shall be kept at the point where the work is performed and a hard-copy version, written in the English language, shall be made available upon request to FRA.

(2) The event recorder shall be tested before any maintenance work is performed on it. At a minimum, the

event recorder test shall include cycling, as practicable, all required recording elements and determining the full range of each element by reading out recorded data.

(3) If the pre-maintenance test reveals that the device is not recording all the specified data and that all recordings are within the designed recording elements, this fact shall be noted, and maintenance and testing shall be performed as necessary until a subsequent test is successful.

(4) When a successful test is accomplished, a copy of the data-verification results shall be maintained in any medium with the maintenance records for the locomotive until the next one is filed.

(5) A railroad's event recorder periodic maintenance shall be considered effective if 90 percent of the recorders on locomotives inbound for periodic inspection in any given calendar month are still fully functional; maintenance practices and test intervals shall be adjusted as necessary to yield effective periodic maintenance.

(e) *Remote control locomotive.* Remote control locomotive system components that interface with the mechanical devices of the locomotive shall be tested including, but not limited to, air pressure monitoring devices, pressure switches, and speed sensors.

(f) *Alerters.* The alerter shall be tested, and all automatic timing resets shall function as intended.

■ 9. Section 229.27 is revised to read as follows:

§ 229.27 Annual tests.

(a) All testing under this section shall be performed at intervals that do not exceed 368 calendar days.

(b) Load meters that indicate current (amperage) being applied to traction motors shall be tested. Each device used by the engineer to aid in the control or braking of the train or locomotive that provides an indication of air pressure electronically shall be tested by comparison with a test gauge or self-test designed for this purpose. An error greater than five percent or greater than three pounds per square inch shall be corrected. The date and place of the test shall be recorded on Form FRA F 6180–49A, and the person conducting the test and that person's supervisor shall sign the form.

(c) A microprocessor-based event recorder with a self-monitoring feature equipped to verify that all data elements required by this part are recorded, requires further maintenance and testing only if either of the following conditions exist:

(1) The self-monitoring feature displays an indication of a failure. If a failure is displayed, further maintenance and testing must be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be available at the location where the locomotive is maintained until a record of a subsequent successful test is filed; or,

(2) A download of the event recorder, taken within the preceding 30 days and reviewed for the previous 48 hours of locomotive operation, reveals a failure to record a regularly recurring data element or reveals that any required data element is not representative of the actual operations of the locomotive during this time period. If the review is not successful, further maintenance and testing shall be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be kept at the location where the locomotive is maintained until a record of a subsequent successful test is filed. The download shall be taken from information stored in the certified crashworthy crash hardened event recorder memory module if the locomotive is so equipped.

■ 10. Section 229.29 is revised to read as follows:

§ 229.29 Air brake system calibration, maintenance, and testing.

(a) A locomotive's air brake system shall receive the calibration, maintenance, and testing as prescribed in this section. The level of maintenance and testing and the intervals for receiving such maintenance and testing of locomotives with various types of air brake systems shall be conducted in accordance with paragraphs (d) through (f) of this section. Records of the maintenance and testing required in this section shall be maintained in accordance with paragraph (g) of this section.

(b) Except for DMU or MU locomotives covered under § 238.309 of this chapter, the air flow method (AFM) indicator shall be calibrated in accordance with § 232.205(c)(1)(iii) at intervals not to exceed 92 days, and records shall be maintained as prescribed paragraph (g)(1) of this section.

(c) Except for DMU or MU locomotives covered under § 238.309 of this chapter, the extent of air brake system maintenance and testing that is required on a locomotive shall be in accordance with the following levels:

(1) *Level one:* Locomotives shall have the filtering devices or dirt collectors located in the main reservoir supply line to the air brake system cleaned, repaired, or replaced.

(2) *Level two:* Locomotives shall have the following components cleaned, repaired, and tested: brake cylinder relay valve portions; main reservoir safety valves; brake pipe vent valve portions; and, feed and reducing valve portions in the air brake system (including related dirt collectors and filters).

(3) *Level three:* Locomotives shall have the components identified in this paragraph removed from the locomotive and disassembled, cleaned and lubricated (if necessary), and tested. In addition, all parts of such components that can deteriorate within the inspection interval as defined in paragraphs (d) through (f) of this section shall be replaced and tested. The components include: all pneumatic components of the locomotive equipment's brake system that contain moving parts, and are sealed against air leaks; all valves and valve portions; electric-pneumatic master controllers in the air brake system; and all air brake related filters and dirt collectors.

(d) Except for MU locomotives covered under § 238.309 of this chapter, all locomotives shall receive level one air brake maintenance and testing as described in this section at intervals that do not exceed 368 days.

(e) Locomotives equipped with an air brake system not specifically identified in paragraphs (f)(1) through (3) of this section shall receive level two air brake maintenance and testing as described in this section at intervals that do not exceed 368 days and level three air brake maintenance and testing at intervals that do not exceed 736 days.

(f) Level two and level three air brake maintenance and testing shall be performed on each locomotive identified in this paragraph at the following intervals:

(1) At intervals that do not exceed 1,104 days for a locomotive equipped with a 26–L or equivalent brake system;

(2) At intervals that do not exceed 1,472 days for locomotives equipped with an air dryer and a 26–L or equivalent brake system and for locomotives not equipped with an air compressor and that are semi-permanently coupled and dedicated to locomotives with an air dryer; or

(3) At intervals that do not exceed 1,840 days for locomotives equipped

with CCB–1, CCB–2, CCB–26, EPIC 1 (formerly EPIC 3102), EPIC 3102D2, EPIC 2, KB–HS1, or Fastbrake brake systems.

(g) Records of the air brake system maintenance and testing required by this section shall be generated and maintained in accordance with the following:

(1) The date of AFM indicator calibration shall be recorded and certified in the remarks section of Form F6180–49A.

(2) The date and place of the cleaning, repairing and testing required by this section shall be recorded on Form FRA F 6180–49A, and the work shall be certified. A record of the parts of the air brake system that are cleaned, repaired, and tested shall be kept in the railroad's files or in the cab of the locomotive.

(3) At its option, a railroad may fragment the work required by this section. In that event, a separate record shall be maintained under a transparent cover in the cab. The air record shall include: the locomotive number; a list of the air brake components; and the date and place of the inspection and testing of each component. The signature of the person performing the work and the signature of that person's supervisor shall be included for each component. A duplicate record shall be maintained in the railroad's files.

■ 11. Section 229.46 is revised to read as follows:

§ 229.46 Brakes: general.

(a) Before each trip, the railroad shall know the following:

(1) The locomotive brakes and devices for regulating pressures, including but not limited to the automatic and independent brake control systems, operate as intended; and

(2) The water and oil have been drained from the air brake system of all locomotives in the consist.

(b) A locomotive with an inoperative or ineffective automatic or independent brake control system will be considered to be operating as intended for purposes of paragraph (a) of this section, if all of the following conditions are met:

(1) The locomotive is in a trailing position and is not the controlling locomotive in a distributed power train consist;

(2) The railroad has previously determined, in conjunction with the locomotive and/or airbrake manufacturer, that placing such a locomotive in trailing position adequately isolates the non-functional valves so as to allow safe operation of the brake systems from the controlling locomotive;

(3) If deactivation of the circuit breaker for the air brake system is required, it shall be specified in the railroad's operating rules;

(4) A tag shall immediately be placed on the isolation switch of the locomotive giving the date and location and stating that the unit may only be used in a trailing position and may not be used as a lead or controlling locomotive;

(5) The tag required in paragraph (b)(4) of this section remains attached to the isolation switch of the locomotive until repairs are made; and

(6) The inoperative or ineffective brake control system is repaired prior to or at the next periodic inspection.

■ 12. Section 229.61 is revised to read as follows:

§ 229.61 Draft system.

(a) A coupler may not have any of the following conditions:

(1) A distance between the guard arm and the knuckle nose of more than 5 5/16 inches on D&E couplers.

(2) A crack or break in the side wall or pin bearing bosses outside of the shaded areas shown in Figure 1 or in the pulling face of the knuckle.

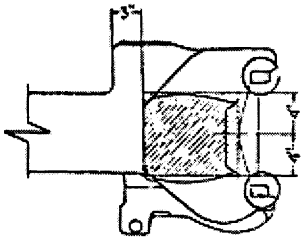

Figure 1

(3) A coupler assembly without anti-creep protection.

(4) Free slack in the coupler or drawbar not absorbed by friction devices or draft gears that exceeds one-half inches.

(5) A broken or cracked coupler carrier.

(6) A broken or cracked yoke.

(7) A broken draft gear.

(b) A device shall be provided under the lower end of all drawbar pins and articulated connection pins to prevent the pin from falling out of place in case of breakage.

■ 13. Section 229.85 is revised to read as follows:

§ 229.85 High voltage markings: doors, cover plates, or barriers.

All doors, cover plates, or barriers providing direct access to high voltage equipment shall be marked ''Danger-High Voltage'' or with the word ''Danger'' and the normal voltage carried by the parts so protected.

■ 14. Section 229.114 is added to read as follows:

§ 229.114 Steam generator inspections and tests.

(a) *Periodic steam generator inspection.* Except as provided in § 229.33, each steam generator shall be inspected and tested in accordance with paragraph (d) of this section at intervals not to exceed 92 days, unless the steam generator is isolated in accordance with paragraph (b) of this section. All non-complying conditions shall be repaired or the steam generator shall be isolated as prescribed in paragraph (b) of this section before the locomotive is used.

(b) *Isolation of a steam generator.* A steam generator will be considered isolated if the water suction pipe to the water pump and the leads to the main switch (steam generator switch) are disconnected, and the train line shut-off-valve is wired closed or a blind gasket is applied. Before an isolated steam generator is returned to use, it shall be inspected and tested pursuant to paragraph (d) of this section.

(c) *Forms.* Each periodic steam generator inspection and test shall be recorded on Form FRA F 6180–49A required by paragraph § 229.23. When Form FRA F 6180–49A for the locomotive is replaced, data for the steam generator inspections shall be transferred to the new Form FRA F6180–49A.

(d) *Tests and requirements.* Each periodic steam generator inspection and test shall include the following tests and requirements:

(1) All electrical devices and visible insulation shall be inspected.

(2) All automatic controls, alarms, and protective devices shall be inspected and tested.

(3) Steam pressure gauges shall be tested by comparison with a dead-weight tester or a test gauge designed for this purpose. The siphons to the steam gauges shall be removed and their connections examined to determine that they are open.

(4) Safety valves shall be set and tested under steam after the steam pressure gauge is tested.

(e) *Annual steam generator tests.* Each steam generator that is not isolated in accordance with paragraph (b) of this section, shall be subjected to a hydrostatic pressure at least 25 percent above the working pressure and the visual return water-flow indicator shall be removed and inspected. The testing under this paragraph shall be performed at intervals that do not exceed 368 calendar days.

■ 15. Section 229.119 is amended by revising paragraphs (d) and (e) and

adding paragraphs (g) through (i) to read as follows:

§ 229.119 Cabs, floors, and passageways.

* * * * *

(d) Any occupied locomotive cab shall be provided with proper ventilation and with a heating arrangement that maintains a temperature of at least 60 degrees Fahrenheit 6 inches above the center of each seat in the cab compartment.

(e) Similar locomotives with open-end platforms coupled in multiple control and used in road service shall have a means of safe passage between them; no passageway is required through the nose of car body locomotives. There shall be a continuous barrier across the full width of the end of a locomotive or a continuous barrier between locomotives.

* * * * *

(g) Each locomotive or remanufactured locomotive placed in service for the first time on or after June 8, 2012, shall be equipped with an air conditioning unit in the locomotive cab compartment.

(h) Each air conditioning unit in the locomotive cab on a locomotive identified in paragraph (g) of this section shall be inspected and maintained to ensure that it operates properly and meets or exceeds the manufacturer's minimum operating specifications during the periodic inspection required for the locomotive pursuant to § 229.23 of this part.

(i) Each locomotive or remanufactured locomotive ordered on or after June 8, 2012, or placed in service for the first time on or after December 10, 2012, shall be equipped with a securement device on each exterior locomotive cab door that is capable of securing the door from inside of the cab.

■ 16. Section 229.123 is revised to read as follows:

§ 229.123 Pilots, snowplows, end plates.

(a) Each lead locomotive shall be equipped with a pilot, snowplow, or end plate that extends across both rails. The minimum clearance above the rail of the pilot, snowplow or end plate shall be 3 inches. Except as provided in paragraph (b) of this section, the maximum clearance shall be 6 inches. When the locomotive is equipped with a combination of the equipment listed in this paragraph, each extending across both rails, only the lowest piece of that equipment must satisfy clearance requirements of this section.

(b) To provide clearance for passing over retarders, locomotives utilized in hump yard or switching service at hump yard locations may have pilot, snowplow, or end plate maximum height of 9 inches.

(1) Each locomotive equipped with a pilot, snowplow, or end plate with clearance above 6 inches shall be prominently stenciled at each end of the locomotive with the words ''9-inch Maximum End Plate Height, Yard or Trail Service Only.''

(2) When operated in switching service in a leading position, locomotives with a pilot, snowplow, or end plate clearance above 6 inches shall be limited to 10 miles per hour over grade crossings.

(3) Train crews shall be notified in writing of the restrictions on the locomotive, by label or stencil in the cab, or by written operating instruction given to the crew and maintained in the cab of the locomotive.

(4) Pilot, snowplow, or end plate clearance above 6 inches shall be noted in the remarks section of Form FRA 6180–49a.

(5) Locomotives with a pilot, snowplow, or end plate clearance above 6 inches shall not be placed in the lead position when being moved under section § 229.9.

17. Section 229.125 is amended by revising paragraphs (a) and (d)(2) and (3) to read as follows:

§ 229.125 Headlights and auxiliary lights.

(a) Each lead locomotive used in road service shall illuminate its headlight while the locomotive is in use. When illuminated, the headlight shall produce a peak intensity of at least 200,000 candela and produce at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. If a locomotive or locomotive consist in road service is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also have on its rear a headlight that meets the intensity requirements above. Each headlight shall be aimed to illuminate a person at least 800 feet ahead and in front of the headlight. For purposes of this section, a headlight shall be comprised of either one or two lamps.

(1) If a locomotive is equipped with a single-lamp headlight, the single lamp shall produce a peak intensity of at least 200,000 candela and shall produce at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. The following operative lamps meet the standard set forth in this paragraph: a single incandescent PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 350-watt, 75-volt lamp, or a single lamp meeting the intensity requirements given above.

(2) If a locomotive is equipped with a dual-lamp headlight, a peak intensity of at least 200,000 candela and at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks shall be produced by the headlight based either on a single lamp capable of individually producing the required peak intensity or on the candela produced by the headlight with both lamps illuminated. If both lamps are needed to produce the required peak intensity, then both lamps in the headlight shall be operational. The following operative lamps meet the standard set forth in this paragraph (a)(2): A single incandescent PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 200-watt, 30-volt lamp; a single halogen PAR–56, 350-watt, 75-volt lamp; two incandescent PAR–56, 350-watt, 75-volt lamps; or lamp(s) meeting the intensity requirements given above.

(i) A locomotive equipped with the two incandescent PAR–56, 350-watt, 75 volt lamps which has an en route failure of one lamp in the headlight fixture, may continue in service as a lead locomotive until its next daily inspection required by § 229.21 only if:

(A) Auxiliary lights burn steadily;

(B) Auxiliary lights are aimed horizontally parallel to the longitudinal centerline of the locomotive or aimed to cross no less than 400 feet in front of the locomotive.

(C) Second headlight lamp and both auxiliary lights continue to operate.

(ii) [Reserved].

* * * * *

(d) * * *

(2) Each auxiliary light shall produce a peak intensity of at least 200,000 candela or shall produce at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. Any of the following operative lamps meet the standard set forth in this paragraph: an incandescent PAR–56, 200-watt, 30-volt lamp; a halogen PAR–56, 200-watt, 30-volt lamp; a halogen PAR–56, 350-watt, 75-volt lamp; an incandescent PAR–56, 350-watt, 75-volt lamp; or a single lamp having equivalent intensities at the specified angles.

(3) The auxiliary lights shall be aimed horizontally within 15 degrees of the

longitudinal centerline of the locomotive.

* * * * *

■ 18. Section 229.133 is amended by revising paragraphs (b)(1) and (2) and (c)(1) and (2) to read as follows:

§ 229.133 Interim locomotive conspicuity measures—auxiliary external lights.

* * * * *

(b) * * *

(1) *Strobe lights.* (i) Strobe lights shall consist of two white stroboscopic lights, each with ''effective intensity,'' as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights (November 1964), of at least 500 candela.

(ii) The flash rate of strobe lights shall be at least 40 flashes per minute and at most 180 flashes per minute.

(iii) Strobe lights shall be placed at the front of the locomotive, at least 48 inches apart, and at least 36 inches above the top of the rail.

(2) *Oscillating light.* (i) An oscillating light shall consist of:

(A) One steadily burning white light producing at least 200,000 candela in a moving beam that depicts a circle or a horizontal figure ''8'' to the front, about the longitudinal centerline of the locomotive; or

(B) Two or more white lights producing at least 200,000 candela each, at one location on the front of the locomotive, that flash alternately with beams within five degrees horizontally to either side of the longitudinal centerline of the locomotive.

(ii) An oscillating light may incorporate a device that automatically extinguishes the white light if display of a light of another color is required to protect the safety of railroad operations.

* * * * *

(c)(1) Any lead locomotive equipped with oscillating lights as described in paragraph (b)(2) of this section that were ordered for installation on that locomotive prior to January 1, 1996, is considered in compliance with § 229.125(d)(1) through (3).

(2) Any lead locomotive equipped with strobe lights as described in paragraph (b)(1) and operated at speeds no greater than 40 miles per hour, is considered in compliance with § 229.125(d)(1) through (3) until the locomotive is retired or rebuilt, whichever comes first.

* * * * *

■ 19. Section 229.140 is added to read as follows:

§ 229.140 Alerters.

(a) Except for locomotives covered by part 238 of this chapter, each of the following locomotives shall be equipped with a functioning alerter as described in paragraphs (b) through (d) of this section:

(1) A locomotive that is placed in service for the first time on or after June 10, 2013, when used as a controlling locomotive and operated at speeds in excess of 25 mph.

(2) All controlling locomotives operated at speeds in excess of 25 mph on or after January 1, 2017.

(b) The alerter on locomotives subject to paragraph (a) of this section shall be equipped with a manual reset and the alerter warning timing cycle shall automatically reset as the result of any of the following operations, and at least three of the following automatic resets shall be functional at any given time:

(1) Movement of the throttle handle;

(2) Movement of the dynamic brake control handle;

(3) Movement of the operator's horn activation handle;

(4) Movement of the operator's bell activation switch;

(5) Movement of the automatic brake valve handle; or

(6) Bailing the independent brake by depressing the independent brake valve handle.

(c) All alerters shall provide an audio alarm upon expiration of the timing cycle interval. An alerter on a locomotive that is placed in service for the first time on or after June 10, 2013, shall display a visual indication to the operator at least five seconds prior to an audio alarm. The visual indication on an alerter so equipped shall be visible to the operator from their normal position in the cab.

(d) Alerter warning timing cycle interval shall be within 10 seconds of the calculated setting utilizing the formula (timing cycle specified in seconds = 2400 ÷ track speed specified in miles per hour).

(e) Any locomotive that is equipped with an alerter shall have the alerter functioning and operating as intended when the locomotive is used as a controlling locomotive.

(f) A controlling locomotive equipped with an alerter shall be tested prior to departure from each initial terminal, or prior to being coupled as the lead locomotive in a locomotive consist by allowing the warning timing cycle to expire that results in an application of the locomotive brakes at a penalty rate.

■ 20. Part 229 is amended by adding subpart E to read as follows:

Subpart E—Locomotive Electronics

Sec.

229.301 Purpose and scope.
229.303 Applicability.
229.305 Definitions.
229.307 Safety analysis.
229.309 Safety-critical changes and failures.
229.311 Review of SAs.
229.313 Product testing results and records.
229.315 Operations and maintenance manual.
229.317 Training and qualification program.
229.319 Operating Personnel Training.

Subpart E—Locomotive Electronics

§ 229.301 Purpose and scope.

(a) The purpose of this subpart is to promote the safe design, operation, and maintenance of safety-critical, as defined in § 229.305, electronic locomotive control systems, subsystems, and components.

(b) Locomotive control systems or their functions that comingle with safety critical processor based signal and train control systems are regulated under part 236 subparts H and I of this chapter.

§ 229.303 Applicability.

(a) The requirements of this subpart apply to all safety-critical electronic locomotive control systems, subsystems, and components (i.e., ''products'' as defined in § 229.305), except for the following:

(1) Products that are in service prior to June 8, 2012.

(2) Products that are under development as of October 9, 2012, and are placed in service prior to October 9, 2017.

(3) Products that comingle locomotive control systems with safety critical processor based signal and train control systems;

(4) Products that are used during on-track testing within a test facility; and

(5) Products that are used during on-track testing outside a test facility, if approved by FRA. To obtain FRA approval of on-track testing outside of a test facility, a railroad shall submit a request to FRA that provides:

(i) Adequate information regarding the function and history of the product that it intends to use;

(ii) The proposed tests;

(iii) The date, time and location of the tests; and

(iv) The potential safety consequences that will result from operating the product for purposes of testing.

(b) Railroads and vendors shall identify all products that are under development to FRA by October 9, 2012.

(c) The exceptions provided in paragraph (a) of this section do not apply to products or product changes that result in degradation of safety, or a material increase in safety-critical functionality.

§ 229.305 Definitions.

As used in this subpart—

Cohesion is a measure of how strongly-related or focused the responsibilities of a system, subsystem, or component are.

Comingle refers to the act of creating systems, subsystems, or components where the systems, subsystems, or components are tightly coupled and with low cohesion.

Component means an electronic element, device, or appliance (including hardware or software) that is part of a system or subsystem.

Configuration management control plan means a plan designed to ensure that the proper and intended product configuration, including the electronic hardware components and software version, is documented and maintained through the life-cycle of the products in use.

Executive software means software common to all installations of a given electronic product. It generally is used to schedule the execution of the site-specific application programs, run timers, read inputs, drive outputs, perform self-diagnostics, access and check memory, and monitor the execution of the application software to detect unsolicited changes in outputs.

Initialization refers to the startup process when it is determined that a product has all required data input and the product is prepared to function as intended.

Loosely coupled means an attribute of systems, referring to an approach to designing interfaces across systems, subsystems, or components to reduce the interdependencies between them—in particular, reducing the risk that changes within one system, subsystem, or component will create unanticipated changes within other system, subsystem, or component.

Materials handling refers to explicit instructions for handling safety-critical components established to comply with procedures specified by the railroad.

New or next-generation locomotive control system means a locomotive control system using technologies or combinations of technologies that are not in use in revenue service, products that are under development as of October 9, 2012, are placed into service prior to October 9, 2015, or products without established histories of safe practice.

Product means any safety critical electronic locomotive control system, subsystem, or component, not including safety critical processor based signal and train control systems, whose functions are directly related to safe movement and stopping of the train as well as the associated man-machine interfaces irrespective of the location of the control system, subsystem, or component.

Revision control means a chain of custody regimen designed to positively identify safety-critical components and spare equipment availability, including repair/replacement tracking.

Safety Analysis refers to a formal set of documentation which describes in detail all of the safety aspects of the product, including but not limited to procedures for its development, installation, implementation, operation, maintenance, repair, inspection, testing, and modification, as well as analyses supporting its safety claims.

Safety-critical, as applied to a function, a system, or any portion thereof, means the correct performance of which is essential to safety of personnel or equipment, or both; or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist.

Subsystem means a defined portion of a system.

System refers to any electronic locomotive control system and includes all subsystems and components thereof, as the context requires.

Test facility means a track that is not part of the general railroad system of transportation and is being used exclusively for the purpose of testing equipment and has all of its public grade crossings protected.

Tightly Coupled means an attribute of systems, referring to an approach to designing interfaces across systems, subsystems, or components to maximize the interdependencies between them. In particular, increasing the risk that changes within one system, subsystem, or component will create unanticipated changes within other system, subsystem, or component.

§ 229.307 Safety analysis.

(a) A railroad shall develop a Safety Analysis (SA) for each product subject to this subpart prior to the initial use of such product on their railroad.

(b) The SA shall:

(1) establish and document the minimum requirements that will govern the development and implementation of all products subject to this subpart, and be based on good engineering practice and should be consistent with the guidance contained in Appendix F of this part in order to establish that a product's safety-critical functions will operate with a high degree of confidence in a fail-safe manner;

(2) Include procedures for immediate repair of safety-critical functions; and

(3) Be made available to FRA upon request.

(c) Each railroad shall comply with the SA requirements and procedures related to the development, implementation, and repair of a product subject to this subpart.

§ 229.309 Safety-critical changes and failures.

(a) Whenever a planned safety-critical design change is made to a product that is in use by a railroad and subject to this subpart, the railroad shall:

(1) Notify FRA's Associate Administrator for Safety of the design changes made by the product supplier;

(2) Ensure that the SA is updated as required;

(3) Conduct all safety-critical changes in a manner that allows the change to be audited;

(4) Specify all contractual arrangements with suppliers and private equipment owners for notification of any and all electronic safety-critical changes as well as safety-critical failures in the suppliers and private equipment owners' system, subsystem, or components, and the reasons for that change or failure from the suppliers or equipment owners, whether or not the railroad has experienced a failure of that safety critical system, sub-system, or component;

(5) Specify the railroad's procedures for action upon receipt of notification of a safety-critical change or failure of an electronic system, sub-system, or component, and until the upgrade or revision has been installed; and

(6) Identify all configuration/revision control measures designed to ensure that safety-functional requirements and safety-critical hazard mitigation processes are not compromised as a result of any such change, and that any such change can be audited.

(b) Product suppliers and private equipment owners shall report any safety-critical changes and previously unidentified hazards to each railroad using the product or equipment.

(c) Private equipment owners shall establish configuration/revision control measures for control of safety-critical changes and identification of previously unidentified hazards.

§ 229.311 Review of SAs.

(a) Prior to the initial planned use of a product subject to this subpart, a railroad shall inform the Associate Administrator for Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 of the intent to place this product

in service. The notification shall provide a description of the product, and identify the location where the complete SA documentation described in § 229.307, the testing records contained in § 229.313, and the training and qualification program described in § 229.319 is maintained.

(b) FRA may review or audit the SA within 60 days of receipt of the notification or anytime after the product is placed in use. If FRA has not notified the railroad of its intent to review or audit the SA within the 60-day period, the railroad may assume that FRA does not intend to review or audit, and place the product in use. FRA reserves the right, however, to conduct a review or audit at a later date.

(c) A railroad shall maintain and make available to FRA upon request all railroad or vendor documentation used to demonstrate that the product meets the safety requirements of the SA for the life-cycle of the product.

(d) After a product is placed in service, the railroad shall maintain a database of all safety-relevant hazards encountered with the product. The database shall include all hazards identified in the SA and those that had not been previously identified in the SA. If the frequency of the safety-relevant hazards exceeds the threshold set forth in the SA, then the railroad shall:

(1) Report the inconsistency by mail, facsimile, email, or hand delivery to the Director, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590, within 15 days of discovery;

(2) Take immediate countermeasures to reduce the frequency of the safety-relevant hazard(s) below the threshold set forth in the SA; and

(3) Provide a final report to FRA's Director, Office of Safety Assurance and Compliance, on the results of the analysis and countermeasures taken to reduce the frequency of the safety-relevant hazard(s) below the calculated probability of failure threshold set forth in the SA when the problem is resolved. For hazards not identified in the SA the threshold shall be exceeded at one occurrence.

§ 229.313 Product testing results and records.

(a) Results of product testing conducted by a railroad as required by this subpart shall be recorded on preprinted forms provided by the railroad, or stored electronically. Electronic recordkeeping or automated tracking systems, subject to the provisions contained in paragraph (e) of this section, may be utilized to store and maintain any testing or training record required by this subpart. Results of product testing conducted by a vendor or private equipment owner in support of a SA shall be provided to the railroad as part of the SA.

(b) The testing records shall contain all of the following:

(1) The name of the railroad;

(2) The location and date that the test was conducted;

(3) The equipment tested;

(4) The results of tests;

(5) The repairs or replacement of equipment;

(6) Any preventative adjustments made; and

(7) The condition in which the equipment is left.

(c) Each record shall be:

(1) Signed by the employee conducting the test, or electronically coded, or identified by the automated test equipment number;

(2) Filed in the office of a supervisory official having jurisdiction, unless otherwise noted; and

(3) Available for inspection and copying by FRA.

(d) The results of the testing conducted in accordance with this subpart shall be retained as follows:

(1) The results of tests that pertain to installation or modification of a product shall be retained for the life-cycle of the product tested and may be kept in any office designated by the railroad;

(2) The results of periodic tests required for the maintenance or repair of the product tested shall be retained until the next record is filed and in no case less than one year; and

(3) The results of all other tests and training shall be retained until the next record is filed and in no case less than one year.

(e) Electronic or automated tracking systems used to meet the requirements contained in paragraph (a) of this section shall be capable of being reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's authority to utilize an electronic or automated tracking system in lieu of preprinted forms if FRA finds that the electronic or automated tracking system is not properly secured, is inaccessible to FRA, or railroad employees requiring access to discharge their assigned duties, or fails to adequately track and monitor the equipment. The Associate Administrator for Safety will provide the affected railroad with a written statement of the basis for the decision prohibiting or revoking the railroad from utilizing an electronic or automated tracking system.

§ 229.315 Operations and maintenance manual.

(a) The railroad shall maintain all documents pertaining to the installation, maintenance, repair, modification, inspection, and testing of a product subject to this part in one Operations and Maintenance Manual (OMM).

(1) The OMM shall be legible and shall be readily available to persons who conduct the installation, maintenance, repair, modification, inspection, and testing, and for inspection by FRA.

(2) At a minimum, the OMM shall contain all product vendor operation and maintenance guidance.

(b) The OMM shall contain the plans and detailed information necessary for the proper maintenance, repair, inspection, and testing of products subject to this subpart. The plans shall identify all software versions, revisions, and revision dates.

(c) Hardware, software, and firmware revisions shall be documented in the OMM according to the railroad's configuration management control plan.

(d) Safety-critical components, including spare products, shall be positively identified, handled, replaced, and repaired in accordance with the procedures specified in the railroad's configuration management control plan.

(e) A railroad shall determine that the requirements of this section have been met prior to placing a product subject to this subpart in use on their property.

§ 229.317 Training and qualification program.

(a) A railroad shall establish and implement training and qualification program for products subject to this subpart prior to the product being placed in use. These programs shall meet the requirements set forth in this section and in § 229.319.

(b) The program shall provide training for the individuals identified in this paragraph to ensure that they possess the necessary knowledge and skills to effectively complete their duties related to the product. These include:

(1) Individuals whose duties include installing, maintaining, repairing, modifying, inspecting, and testing safety-critical elements of the product;

(2) Individuals who operate trains or serve as a train or engine crew member subject to instruction and testing under part 217 of this chapter;

(3) Roadway and maintenance-of-way workers whose duties require them to know and understand how the product affects their safety and how to avoid interfering with its proper functioning; and

(4) Direct supervisors of the individuals identified in paragraphs (b)(1) through (3) of this section.

(c) When developing the training and qualification program required in this section, a railroad shall conduct a formal task analysis. The task analysis shall:

(1) Identify the specific goals of the program for each target population (craft, experience level, scope of work, etc.), task(s), and desired success rate;

(2) Identify the installation, maintenance, repair, modification, inspection, testing, and operating tasks that will be performed on the railroad's products, including but not limited to the development of failure scenarios and the actions expected under such scenarios;

(3) Develop written procedures for the performance of the tasks identified; and

(4) Identify any additional knowledge, skills, and abilities above those required for basic job performance necessary to perform each task.

(d) Based on the task analysis, a railroad shall develop a training curriculum that includes formally structured training designed to impart the knowledge, skills, and abilities identified as necessary to perform each task.

(e) All individuals identified in paragraph (b) of this section shall successfully complete a training curriculum and pass an examination that covers the product and appropriate rules and tasks for which they are responsible (however, such persons may perform such tasks under the direct onsite supervision of a qualified person prior to completing such training and passing the examination).

(f) A railroad shall conduct periodic refresher training at intervals to be formally specified in the program, except with respect to basic skills for which proficiency is known to remain high as a result of frequent repetition of the task.

(g) A railroad shall conduct regular and periodic evaluations of the effectiveness of the training program, verifying the adequacy of the training material and its validity with respect to the railroad's products and operations.

(h) A railroad shall maintain records that designate individuals who are qualified under this section until new designations are recorded or for at least one year after such persons leave applicable service. These records shall be maintained in a designated location and be available for inspection and replication by FRA.

§ 229.319 Operating Personnel Training.

(a) The training required under § 229.317 for any locomotive engineer or other person who participates in the operation of a train using an onboard electronic locomotive control system shall address all of the following elements and shall be specified in the training program.

(1) Familiarization with the electronic control system equipment onboard the locomotive and the functioning of that equipment as part of the system and in relation to other onboard systems under that person's control;

(2) Any actions required of the operating personnel to enable or enter data into the system and the role of that function in the safe operation of the train;

(3) Sequencing of interventions by the system, including notification, enforcement, penalty initiation and post penalty application procedures as applicable;

(4) Railroad operating rules applicable to control systems, including provisions for movement and protection of any unequipped trains, or trains with failed or cut-out controls;

(5) Means to detect deviations from proper functioning of onboard electronic control system equipment and instructions explaining the proper response to be taken regarding control of the train and notification of designated railroad personnel; and

(6) Information needed to prevent unintentional interference with the proper functioning of onboard electronic control equipment.

(b) The training required under this subpart for a locomotive engineer and conductor, together with required records, shall be integrated into the program of training required by parts 240 and 242 of this chapter.

■ 21. Appendix B is amended by:

■ a. Adding an entry under subpart A for 229.15;

■ b. Revising the entries under subpart B for 229.23 and 229.25 and under subpart C for 229.105;

■ c. Adding an entry under subpart C for 229.114;

■ d. Adding in the entry under subpart C for 229.119 entries for paragraphs (g), (h), and (i);

■ e. Adding an entry under subpart C for 229.140;

■ f. Moving the entry for 229.141 into numerical order under subpart C; and

■ g. Adding an entry for subpart E.

The additions and revisions read as follows:

Appendix B to Part 229—Schedule of Civil Penalties [1]

Section	Violation	Willful violation
Subpart A—General		
* * * * *	*	*
229.15 Remote control locomotives	2,500	5,000
* * * * *	*	*
Subpart B—Inspection and tests		
* * * * *	*	*
229.23 Periodic inspection General:		
(a)(1) Inspection overdue	2,500	5,000
(a)(2) Inspection performed improperly or at a location where the underneath portion cannot be safely inspected	2,500	5,000
(b)(1) Inspection overdue	2,500	5,000
(b)(2) Inspection overdue	2,500	5,000
(c) Inspection overdue	2,500	5,000
(e):		
(1) Form missing	1,000	2,000
(2) Form not properly displayed	1,000	2,000
(3) Form improperly executed	1,000	2,000
(f) Replace Form FRA F 6180.49A by April 2 or July 3		
(g) Secondary record of the information reported Form FRA F 6180.49A	1,000	2,000

Section	Violation	Willful violation
* * * * * * *		
229.25 Tests: every periodic inspection:		
(a) through (d)(4) and (e) and (f) Tests	2,500	5,000
(d)(5) Ineffective maintenance	8,000	16,000
* * * * * * *		
229.105 Steam generator number	1,000	1,500
* * * * * * *		
229.114 Steam generator inspections and tests	2,500	5,000
* * * * * * *		
229.119 Cabs, floors, and passageways:		
* * * * * * *		
(g) Failure to equip	2,500	5,000
(h) Failure to maintain	2,500	5,000
(i) Failure to equip	2,500	5,000
* * * * * * *		
229.140 Alerters	2,500	5,000
* * * * * * *		
Subpart E—Locomotive Electronics		
229.307 Safety analysis:		
(a) Failure to establish and maintain a safety analysis	5,000	10,000
(b) Failure to provide safety analysis upon request	2,500	5,000
(c) Failure to comply with safety analysis	5,000–10,000	15,000
229.309 Safety-critical changes and failure:		
(a)(1) Failure to notify FRA	1,000	2,000
(a)(2) Failure to update safety analysis	3,500	7,000
(a)(4) Failure to notify manufacturer	10,000	15,000
(b) Failure to notify railroad	10,000	15,000
(c) Failure to establish and maintain program	3,500	7,000
229.311 Review of SAs:		
(a) Failure to notify FRA	1,000	2,000
(b) Failure to report	1,000	2,000
(c) Failure to correct safety hazards	5,000–10,000	15,000
(d) Failure to final report	1,000	2,000
229.313 Product testing results and records:		
(a) Failure to maintain records and database	5,000	10,000
(b) Incomplete testing records	3,500	7,000
(c) Improper signature	3,500	7,000
229.315 Operations and maintenance manual:		
(a) Failure to implement and maintain manual	5,000	10,000
(c) Failure to document revisions	5,000	10,000
(d) Failure to follow plan	5,000–10,000	15,000
229.317 Training and qualification program:		
(a) Failure to establish and implement program	5,000	10,000
(b) Failure to conduct training	2,500	5,000
(g) Failure to evaluate program	2,500	5,000
(h) Failure to maintain records	1,500	3,000
229.319 Operating personnel training	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single locomotive that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $16,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under subpart B of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive. Moreover, the Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Failure to observe any condition for movement set forth in § 229.9 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the locomotive at the time of movement. Failure to comply with § 229.19 will result in the lapse of any affected waiver.

■ 22. Part 229 is amended by adding Appendix F to read as follows:

Appendix F to Part 229—Recommended Practices for Design and Safety Analysis

The purpose of this appendix is to provide recommended criteria for design and safety analysis that will maximize the safety of electronic locomotive control systems and mitigate potential negative safety effects. It seeks to promote full disclosure of potential safety risks to facilitate minimizing or eliminating elements of risk where practicable. It discuses critical elements of good engineering practice that the designer should consider when developing safety critical electronic locomotive control systems

to accomplish this objective. The criteria and processes specified this appendix is intended to minimize the probability of failure to an acceptable level within the limitations of the available engineering science, cost, and other constraints. Railroads procuring safety critical electronic locomotive controls are encouraged to ensure that their vendor addresses each of the elements of this appendix in the design of the product being procured. FRA uses the criteria and processes set forth in this appendix (or other technically equivalent criteria and processes that may be recommended by industry) when evaluating analyses, assumptions, and conclusions provided in the SA documents.

Definitions

In addition to the definitions contained in § 229.305, the following definitions are applicable to this Appendix:

Hazard means an existing or potential condition that can result in an accident.

High degree of confidence, as applied to the highest level of aggregation, means there exists credible safety analysis supporting the conclusion that the risks associated with the product have been adequately mitigated.

Human factors refers to a body of knowledge about human limitations, human abilities, and other human characteristics, such as behavior and motivation, that shall be considered in product design.

Human-machine interface (HMI) means the interrelated set of controls and displays that allows humans to interact with the machine.

Risk means the expected probability of occurrence for an individual accident event (probability) multiplied by the severity of the expected consequences associated with the accident (severity).

Risk assessment means the process of determining, either quantitatively or qualitatively, the measure of risk associated with use of the product under all intended operating conditions.

System Safety Precedence means the order of precedence in which methods used to eliminate or control identified hazards within a system are implemented.

Validation means the process of determining whether a product's design requirements fulfill its intended design objectives during its development and life-cycle. The goal of the validation process is to determine ''whether the correct product was built.''

Verification means the process of determining whether the results of a given phase of the development cycle fulfill the validated requirements established at the start of that phase. The goal of the verification process is to determine ''whether the product was built correctly.''

Safety Assessments—Recommended Contents

The safety-critical assessment of each product should include all of its interconnected subsystems and components and, where applicable, the interaction between such subsystems. FRA recommends that such assessments contain the following:

(a) A complete description of the product, including a list of all product components and their physical relationship in the subsystem or system;

(b) A description of the railroad operation or categories of operations on which the product is designed to be used;

(c) An operational concepts document, including a complete description of the product functionality and information flows; as well as identifying which functions are intended to enhance or preserve safety and the manner in which the product architecture implements these functions;

(d) A safety requirements document, including a list with complete descriptions of all functions, which the product performs to enhance or preserve safety, and that describes the manner in which product architecture satisfies safety requirements;

(e) A hazard log consisting of a comprehensive description of all safety relevant hazards addressed during the life cycle of the product, including maximum threshold limits for each hazard (for unidentified hazards, the threshold shall be exceeded at one occurrence);

(f) A risk assessment and analysis.

(1) The risk metric for the proposed product should describe with a high degree of confidence the accumulated risk of a locomotive control system that operates over the intended product life. Each risk metric for the proposed product should be expressed with an upper bound, as estimated with a sensitivity analysis, and the risk value selected is demonstrated to have a high degree of confidence.

(2) Each risk calculation should consider the totality of the locomotive control system and its method of operation. The failure modes of each subsystem or component, or both, should be determined for the integrated hardware/software (where applicable) as a function of the Mean Time to Hazardous Events (MTTHE), failure restoration rates, and the integrated hardware/software coverage of all processor based subsystems or components, or both. Train operating and movement rules, along with components that are layered in order to enhance safety-critical behavior, should also be considered.

(3) An MTTHE value should be calculated for each subsystem or component, or both, indicating the safety-critical behavior of the integrated hardware/software subsystem or component, or both. The human factor impact should be included in the assessment, whenever applicable, to provide an integrated MTTHE value. The MTTHE calculation should consider the rates of failures caused by permanent, transient, and intermittent faults accounting for the fault coverage of the integrated hardware/software subsystem or component, phased-interval maintenance, and restoration of the detected failures.

(4) The analysis should clearly document:

(i) Any assumptions regarding the reliability or availability of mechanical, electric, or electronic components. Such assumptions include MTTF projections, as well as Mean Time To Repair (MTTR) projections, unless the risk assessment specifically explains why these assumptions are not relevant. The analysis should document these assumptions in such a form as to permit later comparisons with in-service experience (e.g., a spreadsheet). The analysis should also document any assumptions regarding human performance. The documentation should be in a form that facilitates later comparisons with in-service experience.

(ii) Any assumptions regarding software defects. These assumptions should be in a form which permits the railroad to project the likelihood of detecting an in-service software defect and later comparisons with in-service experience.

(iii) All of the identified safety-critical fault paths leading to a mishap as predicted by the SA. The documentation should be in a form that facilitates later comparisons with in-service faults.

(4) MTTHE compliance verification and validation should be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety critical performance testing performed on the subsystem or component. The compliance process shall be demonstrated to be compliant and consistent with the MTTHE metric and demonstrated to have a high degree of confidence.

(5) The safety-critical behavior of all non-processor based components, which are part of a processor-based system or subsystem, should be quantified with an MTTHE metric. The MTTHE assessment methodology should consider failures caused by permanent, transient, and intermittent faults, phase interval maintenance and restoration of failures and the effect of fault coverage of each non-processor-based subsystem or component. The MTTHE compliance verification and validation should be based on the assessment of the design for verification and validation process, historical performance data, analytical methods and experimental safety critical performance testing performed on the subsystem or component. The non-processor based quantification compliance should also be demonstrated to have a high degree of confidence.

(g) A hazard mitigation analysis, including a complete and comprehensive description of all hazards to be addressed in the system design and development, mitigation techniques used, and system safety precedence followed;

(h) A complete description of the safety assessment and verification and validation processes applied to the product and the results of these processes;

(i) A complete description of the safety assurance concepts used in the product design, including an explanation of the design principles and assumptions; the designer should address each of the following safety considerations when designing and demonstrating the safety of products covered by this part. In the event that any of these principles are not followed, the analysis should describe both the reason(s) for departure and the alternative(s) utilized to mitigate or eliminate the hazards associated with the design principle not followed.

(1) *Normal operation.* The system (including all hardware and software) should demonstrate safe operation with no hardware failures under normal anticipated operating conditions with proper inputs and within the

expected range of environmental conditions. All safety-critical functions should be performed properly under these normal conditions. Absence of specific operator actions or procedures will not prevent the system from operating safely. Hazards categorized as unacceptable should be eliminated by design. Best effort should also be made by the designer to eliminate hazards that are undesirable. Those undesirable hazards that cannot be eliminated must be mitigated to an acceptable level.

(2) *Systematic failure.* It should be shown how the product is designed to mitigate or eliminate unsafe systematic failures—those conditions which can be attributed to human error that could occur at various stages throughout product development. This includes unsafe errors in the software due to human error in the software specification, design or coding phase, or both; human errors that could impact hardware design; unsafe conditions that could occur because of an improperly designed human-machine interface; installation and maintenance errors; and errors associated with making modifications.

(3) *Random failure.* The product should be shown to operate safely under conditions of random hardware failure. This includes single as well as multiple hardware failures, particularly in instances where one or more failures could occur, remain undetected (latent) and react in combination with a subsequent failure at a later time to cause an unsafe operating situation. In instances involving a latent failure, a subsequent failure is similar to there being a single failure. In the event of a transient failure, and if so designed, the system should restart itself if it is safe to do so. Frequency of attempted restarts should be considered in the hazard analysis. There should be no single point failures in the product that can result in hazards categorized as unacceptable or undesirable. Occurrence of credible single point failures that can result in hazards shall be detected and the product shall be detected and the product should achieve a known state that eliminates the possibility of false activation of any physical appliance. If one non-self-revealing failure combined with a second failure can cause a hazard that is categorized as unacceptable or undesirable, then the second failure should be detected and the product must achieve a known safe state that eliminates the possibility of false activation.

(4) *Common Mode failure.* Another concern of multiple failures involves common mode failure in which two or more subsystems or components intended to compensate one another to perform the same function all fail by the same mode and result in unsafe conditions. This is of particular concern in instances in which two or more elements (hardware or software, or both) are used in combination to ensure safety. If a common mode failure exists, then any analysis cannot rely on the assumption that failures are independent. Examples include: the use of redundancy in which two or more elements perform a given function in parallel and when one (hardware or software) element checks/monitors another element (of hardware or software) to help ensure its safe operation. Common mode failure relates to independence, which shall be ensured in these instances. When dealing with the effects of hardware failure, the designer should address the effects of the failure not only on other hardware, but also on the execution of the software, since hardware failures can greatly affect how the software operates.

(5) *External influences.* The product should operate safely when subjected to different external influences, including:

(i) Electrical influences such as power supply anomalies/transients, abnormal/improper input conditions (e.g., outside of normal range inputs relative to amplitude and frequency, unusual combinations of inputs) including those related to a human operator, and others such as electromagnetic interference or electrostatic discharges, or both;

(ii) Mechanical influences such as vibration and shock; and climatic conditions such as temperature and humidity.

(6) *Modifications.* Safety must be ensured following modifications to the hardware or software, or both. All or some of the concerns previously identified may be applicable depending upon the nature and extent of the modifications.

(7) *Software.* Software faults should not cause hazards categorized as unacceptable or undesirable.

(8) *Closed Loop Principle.* The product design should require positive action to be taken in a prescribed manner to either begin product operation or continue product operation.

(j) A human factors analysis, including a complete description of all human-machine interfaces, a complete description of all functions performed by humans in connection with the product to enhance or preserve safety, and an analysis of the physical ergonomics of the product on the operators and the safe operation of the system;

(k) A complete description of the specific training of railroad and contractor employees and supervisors necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, testing, and modification of the product;

(l) A complete description of the specific procedures and test equipment necessary to ensure the safe and proper installation, implementation, operation, maintenance, repair, inspection, test, and modification of the product. These procedures, including calibration requirements, should be consistent with or explain deviations from the equipment manufacturer's recommendations;

(m) A complete description of the necessary security measures for the product over its life-cycle;

(n) A complete description of each warning to be placed in the Operations and Maintenance Manual and of all warning labels required to be placed on equipment as necessary to ensure safety;

(o) A complete description of all initial implementation testing procedures necessary to establish that safety-functional requirements are met and safety-critical hazards are appropriately mitigated;

(p) A complete description of all post-implementation testing (validation) and monitoring procedures, including the intervals necessary to establish that safety-functional requirements, safety-critical hazard mitigation processes, and safety-critical tolerances are not compromised over time, through use, or after maintenance (repair, replacement, adjustment) is performed; and

(q) A complete description of each record necessary to ensure the safety of the system that is associated with periodic maintenance, inspections, tests, repairs, replacements, adjustments, and the system's resulting conditions, including records of component failures resulting in safety relevant hazards;

(r) A complete description of any safety-critical assumptions regarding availability of the product, and a complete description of all backup methods of operation; and

(s) The configuration/revision control measures designed to ensure that safety-functional requirements and safety-critical hazard mitigation processes are not compromised as a result of any change. Changes classified as maintenance require validation.

Guidance Regarding the Application of Human Factors in the Design of Products

The product design should sufficiently incorporate human factors engineering that is appropriate to the complexity of the product; the gender, educational, mental, and physical capabilities of the intended operators and maintainers; the degree of required human interaction with the component; and the environment in which the product will be used. HMI design criteria minimize negative safety effects by causing designers to consider human factors in the development of HMIs. As used in this discussion, ''designer'' means anyone who specifies requirements for—or designs a system or subsystem, or both, for—a product subject to this part, and ''operator'' means any human who is intended to receive information from, provide information to, or perform repairs or maintenance on a safety critical locomotive control product subject to this part.

I. FRA recommends that system designers should:

(a) Design systems that anticipate possible user errors and include capabilities to catch errors before they propagate through the system;

(b) Conduct cognitive task analyses prior to designing the system to better understand the information processing requirements of operators when making critical decisions;

(c) Present information that accurately represents or predicts system states; and

(d) Ensure that electronics equipment radio frequency emissions are compliant with appropriate Federal Communications Commission (FCC) regulations. The FCC rules and regulations are codified in Title 47 of the Code of Federal Regulations (CFR). The following documentation is applicable to obtaining FCC Equipment Authorization:

(1) *OET Bulletin Number 61 (October, 1992 Supersedes May, 1987 issue) FCC Equipment Authorization Program for Radio Frequency Devices.* This document provides an overview of the equipment authorization

program to control radio interference from radio transmitters and certain other electronic products and how to obtain an equipment authorization.

(2) *OET Bulletin 63: (October 1993) Understanding The FCC Part 15 Regulations for Low Power, Non-Licensed Transmitters.* This document provides a basic understanding of the FCC regulations for low power, unlicensed transmitters, and includes answers to some commonly-asked questions. This edition of the bulletin does not contain information concerning personal communication services (PCS) transmitters operating under Part 15, Subpart D of the rules.

(3) *Title 47 Code of Federal Regulations Parts 0 to 19.* The FCC rules and regulations governing PCS transmitters may be found in 47 CFR, Parts 0 to 19.

(4) *OET Bulletin 62 (December 1993) Understanding The FCC Regulations for Computers and other Digital Devices.* This document has been prepared to provide a basic understanding of the FCC regulations for digital (computing) devices, and includes answers to some commonly-asked questions.

II. Human factors issues designers should consider with regard to the general functioning of a system include:

(a) *Reduced situational awareness and over-reliance.* HMI design shall give an operator active functions to perform, feedback on the results of the operator's actions, and information on the automatic functions of the system as well as its performance. The operator shall be ''in-the loop.'' Designers should consider at minimum the following methods of maintaining an active role for human operators:

(1) The system should require an operator to initiate action to operate the train and require an operator to remain ''in-the-loop'' for at least 30 minutes at a time;

(2) The system should provide timely feedback to an operator regarding the system's automated actions, the reasons for such actions, and the effects of the operator's manual actions on the system;

(3) The system should warn operators in advance when they require an operator to take action;

(4) HMI design should equalize an operator's workload; and

(5) HMI design should not distract from the operator's safety related duties.

(b) *Expectation of predictability and consistency in product behavior and communications.* HMI design should accommodate an operator's expectation of logical and consistent relationships between actions and results. Similar objects should behave consistently when an operator performs the same action upon them. End users have a limited memory and ability to process information. Therefore, HMI design should also minimize an operator's information processing load.

(1) To minimize information processing load, the designer should:

(i) Present integrated information that directly supports the variety and types of decisions that an operator makes;

(ii) Provide information in a format or representation that minimizes the time required to understand and act; and

(iii) Conduct utility tests of decision aids to establish clear benefits such as processing time saved or improved quality of decisions.

(2) To minimize short-term memory load, the designer should integrate data or information from multiple sources into a single format or representation (''chunking'') and design so that three or fewer ''chunks'' of information need to be remembered at any one time. To minimize long-term memory load, the designer should design to support recognition memory, design memory aids to minimize the amount of information that should be recalled from unaided memory when making critical decisions, and promote active processing of the information.

(3) When creating displays and controls, the designer shall consider user ergonomics and should:

(i) Locate displays as close as possible to the controls that affect them;

(ii) Locate displays and controls based on an operator's position;

(iii) Arrange controls to minimize the need for the operator to change position;

(iv) Arrange controls according to their expected order of use;

(v) Group similar controls together;

(vi) Design for high stimulus-response compatibility (geometric and conceptual);

(vii) Design safety-critical controls to require more than one positive action to activate (e.g., auto stick shift requires two movements to go into reverse);

(viii) Design controls to allow easy recovery from error; and

(ix) Design display and controls to reflect specific gender and physical limitations of the intended operators.

(4) Detailed locomotive ergonomics human machine interface guidance may be found in ''Human Factors Guidelines for Locomotive Cabs'' (FRA/ORD–98/03 or DOT–VNTSC–FRA–98–8).

(5) The designer should also address information management. To that end, HMI design should:

(i) Display information in a manner which emphasizes its relative importance;

(ii) Comply with the ANSI/HFS 100–2007, or more recent standard;

(iii) Utilize a display luminance that has a difference of at least 35cd/m2 between the foreground and background (the displays should be capable of a minimum contrast 3:1 with 7:1 preferred, and controls should be provided to adjust the brightness level and contrast level);

(iv) Display only the information necessary to the user;

(v) Where text is needed, use short, simple sentences or phrases with wording that an operator will understand and appropriate to the educational and cognitive capabilities of the intended operator;

(vi) Use complete words where possible; where abbreviations are necessary, choose a commonly accepted abbreviation or consistent method and select commonly used terms and words that the operator will understand;

(vii) Adopt a consistent format for all display screens by placing each design element in a consistent and specified location;

(viii) Display critical information in the center of the operator's field of view by placing items that need to be found quickly in the upper left hand corner and items which are not time-critical in the lower right hand corner of the field of view;

(ix) Group items that belong together;

(x) Design all visual displays to meet human performance criteria under monochrome conditions and add color only if it will help the user in performing a task, and use color coding as a redundant coding technique;

(xi) Limit the number of colors over a group of displays to no more than seven;

(xii) Design warnings to match the level of risk or danger with the alerting nature of the signal; and

(xiii) With respect to information entry, avoid full QWERTY keyboards for data entry.

(6) With respect to problem management, the HMI designer should ensure that the HMI design:

(i) enhances an operator's situation awareness;

(ii) supports response selection and scheduling; and

(iii) supports contingency planning.

(7) Designers should comply with FCC requirements for Maximum Permissible Exposure limits for field strength and power density for the transmitters operating at frequencies of 300 kHz to 100 GHz and specific absorption rate (SAR) limits for devices operating within close proximity to the body. The Commission's requirements are detailed in Parts 1 and 2 of the FCC's Rules and Regulations (47 CFR 1.1307(b), 1.1310, 2.1091, 2.1093). The FCC has a number of bulletins and supplements that offer guidelines and suggestions for evaluating compliance. These documents are not intended to establish mandatory procedures; other methods and procedures may be acceptable if based on sound engineering practice.

(i) OET Bulletin No. 65 (Edition 97–01, August 1997), ''Evaluating Compliance With FCC Guidelines For Human Exposure To Radio frequency Electromagnetic Fields'';

(ii) OET Bulletin No 65 Supplement A, (Edition 97–01, August 1997), OET Bulletin No 65 Supplement B (Edition 97–01, August 1997); and

(iii) OET Bulletin No 65 Supplement C (Edition 01–01, June 2001). This bulletin provides assistance in determining whether proposed or existing transmitting facilities, operations, or devices comply with limits for human exposure to radio frequency RF fields adopted by the FCC.

Guidance for Verification and Validation of Products

The goal of this assessment is to provide an evaluation of the product manufacturer's utilization of safety design practices during the product's development and testing phases, as required by the applicable railroad's requirements, the requirements of this part, and any other previously agreed-upon controlling documents or standards. The standards employed for verification or validation, or both, of products shall be sufficient to support achievement of the applicable requirements of this part.

(a) The latest version of the following standards have been recognized by FRA as

providing appropriate risk analysis processes for incorporation into verification and validation standards.

(1) U.S. Department of Defense Military Standard (MIL–STD) 882C, ''System Safety Program Requirements'' (January 19, 1993);

(2) The most recent CENLE/IEC Standards as follows:

(i) EN50126:/IEC 62278, Railway Applications: Communications, Signaling, and Processing Systems Specification and Demonstration of Reliability, Availability, Maintainability and Safety (RAMS);

(ii) EN50128/IEC 62279, Railway Applications: Communications, Signaling, and Processing Systems Software for Railway Control and Protection Systems;

(iii) EN50129, Railway Applications: Communications, Signaling, and Processing Systems-Safety Related Electronic Systems for Signaling; and

(iv) EN50155, Railway Applications: Electronic Equipment Used in Rolling Stock.

(3) ATCS Specification 140, Recommended Practices for Safety and Systems Assurance.

(4) ATCS Specification 130, Software Quality Assurance.

(5) Safety of High Speed Ground Transportation Systems. Analytical Methodology for Safety Validation of Computer Controlled Subsystems. Volume II: Development of a Safety Validation Methodology. Final Report September 1995. Author: Jonathan F. Luedeke, Battelle. DOT/FRA/ORD–95/10.2.

(6) IEC 61508 (International Electro-technical Commission), Functional Safety of Electrical/Electronic/Programmable/Electronic Safety (E/E/P/ES) Related Systems, Parts 1–7 as follows:

(i) IEC 61508–1 (1998–12) Part 1: General requirements and IEC 61508–1 Corr. (1999–05) Corrigendum 1–Part 1: General Requirements;

(ii) IEC 61508–2 (2000–05) Part 2: Requirements for electrical/electronic/programmable electronic safety-related systems;

(iii) IEC 61508–3 (1998–12) Part 3: Software requirements and IEC 61508–3 Corr.1(1999–04) Corrigendum 1–Part3: Software requirements;

(iv) IEC 61508–4 (1998–12) Part 4: Definitions and abbreviations and IEC 61508–4 Corr.1(1999–04) Corrigendum 1–Part 4: Definitions and abbreviations;

(v) IEC 61508–5 (1998–12) Part 5: Examples of methods for the determination of safety integrity levels and IEC 61508–5 Corr.1 (1999–04) Corrigendum 1 Part 5: Examples of methods for determination of safety integrity levels;

(vi) 1IEC 61508–6 (2000–04) Part 6: Guidelines on the applications of IEC 61508–2 and –3; and,

(vii) IEC 61508–7 (2000–03) Part 7: Overview of techniques and measures.

(7) ANSI/GEIA–STD–0010: Standard Best Practices for System Safety Program Development and Execution

(b) When using unpublished standards, including proprietary standards, the standards should be available for inspection and replication by the railroad and FRA and should be available for public examination.

(c) *Third party assessments.* The railroad, the supplier, or FRA may conclude it is necessary for a third party assessment of the system. A third party assessor should be ''independent''. An ''independent third party'' means a technically competent entity responsible to and compensated by the railroad (or an association on behalf of one or more railroads) that is independent of the supplier of the product. An entity that is owned or controlled by the supplier, that is under common ownership or control with the supplier, or that is otherwise involved in the development of the product would not be considered ''independent''.

(1) The reviewer should not engage in design efforts, in order to preserve the reviewer's independence and maintain the supplier's proprietary right to the product. The supplier should provide the reviewer access to any, and all, documentation that the reviewer requests and attendance at any design review or walk through that the reviewer determines as necessary to complete and accomplish the third party assessment. Representatives from FRA or the railroad might accompany the reviewer.

(2) Third party reviews can occur at a preliminary level, a functional level, or implementation level. At the preliminary level, the reviewer should evaluate with respect to safety and comment on the adequacy of the processes, which the supplier applies to the design, and development of the product. At a minimum, the reviewer should compare the supplier processes with industry best practices to determine if the vendor methodology is acceptable and employ any other such tests or comparisons if they have been agreed to previously with the railroad or FRA. Based on these analyses, the reviewer shall identify and document any significant safety vulnerabilities that are not adequately mitigated by the supplier's (or user's) processes. At the functional level, the reviewer evaluates the adequacy, and comprehensiveness, of the safety analysis, and any other documents pertinent to the product being assessed for completeness, correctness, and compliance with applicable standards. This includes, but is not limited to the Preliminary Hazard Analysis (PHA), the Hazard Log (HL), all Fault Tree Analyses (FTA), all Failure Mode and Effects Criticality Analysis (FMECA), and other hazard analyses. At the implementation level, the reviewer randomly selects various safety-critical software modules for audit to verify whether the system process and design requirements were followed. The number of modules audited shall be determined as a representative number sufficient to provide confidence that all un-audited modules were developed in similar manner as the audited module. During this phase the reviewer would also evaluate and comment on the adequacy of the plan for installation and test of the product for revenue service.

(d) *Reviewer Report.* Upon completion of an assessment, the reviewer prepares a final report of the assessment. The report should contain the following information:

(1) The reviewer's evaluation of the adequacy of the risk analysis, including the supplier's MTTHE and risk estimates for the product, and the supplier's confidence interval in these estimates;

(2) Product vulnerabilities which the reviewer felt were not adequately mitigated, including the method by which the railroad would assure product safety in the event of a hardware or software failure (i.e., how does the railroad or vendor assure that all potentially hazardous failure modes are identified?) and the method by which the railroad or vendor addresses comprehensiveness of the product design for the requirements of the operations it will govern (i.e., how does the railroad and/or vendor assure that all potentially hazardous operating circumstances are identified? Who records any deficiencies identified in the design process? Who tracks the correction of these deficiencies and confirms that they are corrected?);

(3) A clear statement of position for all parties involved for each product vulnerability cited by the reviewer;

(4) Identification of any documentation or information sought by the reviewer that was denied, incomplete, or inadequate;

(5) A listing of each design procedure or process which was not properly followed;

(6) Identification of the software verification and validation procedures for the product's safety-critical applications, and the reviewer's evaluation of the adequacy of these procedures;

(7) Methods employed by the product manufacturer to develop safety-critical software, such as use of structured language, code checks, modularity, or other similar generally acceptable techniques; and

(8) Methods by which the supplier or railroad addresses comprehensiveness of the product design which considers the safety elements.

PART 238 [AMENDED]

■ 23. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 24. Section 238.105 is amended by revising paragraph (d)(1) to read as follows:

§ 238.105 Train electronic hardware and software safety.

* * * * *

(d) * * *

(1) Hardware and software that controls or monitors a train's primary braking system shall either:

(i) Fail safely by initiating a full service or emergency brake application in the event of a hardware or software failure that could impair the ability of the engineer to apply or release the brakes; or

(ii) Provide the engineer access to direct manual control of the primary braking system (service or emergency braking).

* * * * *

■ 25. Section 238.309 is amended by revising paragraphs (b), (c), and (e) to read as follows:

§ 238.309 Periodic brake equipment maintenance.

* * * * *

(b) *DMU and MU locomotives.* The brake equipment and brake cylinders of each DMU or MU locomotive shall be cleaned, repaired, and tested, and the filtering devices or dirt collectors located in the main reservoir supply line to the air brake system cleaned, repaired, or replaced at intervals in accordance with the following schedule:

(1) Every 736 days if the DMU or MU locomotive is part of a fleet that is not 100 percent equipped with air dryers;

(2) Every 1,104 days if the DMU or MU locomotive is part of a fleet that is 100 percent equipped with air dryers and is equipped with PS–68, 26–C, 26–L, PS–90, CS–1, RT–2, RT–5A, GRB–1, CS–2, or 26–R brake systems. (This listing of brake system types is intended to subsume all brake systems using 26 type, ABD, or ABDW control valves and PS68, PS–90, 26B–1, 26C, 26CE, 26–B1, 30CDW, or 30ECDW engineer's brake valves.);

(3) Every 1,840 days if the DMU or MU locomotive is part of a fleet that is 100 percent equipped with air dryers and is equipped with KB–HL1, KB–HS1, or KBCT1; and,

(4) Every 736 days for all other DMU or MU locomotives.

(c) *Conventional locomotives.* The brake equipment of each conventional locomotive shall be cleaned, repaired, and tested in accordance with the schedule provided in § 229.29 of this chapter.

* * * * *

(e) *Cab cars.* The brake equipment of each cab car shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 1,840 days for locomotives equipped with CCB–1, CCB–2, CCB–26, EPIC 1 (formerly EPIC 3102), EPIC 3102D2, EPIC 2, KB–HS1, or Fastbrake brake systems.

(2) Every 1,476 days for that portion of the cab car brake system using brake valves that are identical to the passenger coach 26–C brake system;

(3) Every 1,104 days for that portion of the cab car brake system using brake valves that are identical to the locomotive 26–L brake system; and

(4) Every 736 days for all other types of cab car brake valves.

* * * * *

Issued in Washington, DC, on March 28, 2012.

Joseph C. Szabo,

Administrator.

[FR Doc. 2012–7995 Filed 4–6–12; 8:45 am]

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Part V

Department of Homeland Security

Coast Guard

33 CFR Parts 151, 155, 156 et al.

46 CFR Part 197

MARPOL Annex I Amendments; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 151, 155, 156, and 157

46 CFR Part 197

[Docket No. USCG–2010–0194]

RIN 1625–AB57

MARPOL Annex I Amendments

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (NPRM), we are proposing to update our regulations to harmonize U.S. regulations with international conventions regarding oil pollution and safety of life at sea. The Coast Guard proposes to amend our regulations covering Navigation and Navigable Waters to align with recent amendments to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, which were adopted by the Marine Environment Protection Committee during its 52nd, 54th, 56th, and 59th sessions. In addition, we are proposing to incorporate guidance from the Maritime Safety Committee, based on updates to the International Convention for the Safety of Life at Sea 1974, into our regulations covering shipping. Finally, we are seeking public comment on an alternative to add a requirement that some new U.S. non-oceangoing vessels be equipped with an oily bilge water storage tank.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before July 9, 2012 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 9, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0194 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D. of this NPRM, you must also send comments to the Office of Information and Regulatory Affairs, (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to *oira_submission@omb.eop.gov* (include the docket number and ''Attention: Desk Officer for Coast Guard, DHS'' in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

Viewing incorporation by reference material: You may inspect the material proposed for incorporation by reference at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1427. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Patrick J. Mannion, U.S. Coast Guard Office of Operating and Environmental Standards, (CG–5222); telephone 202–372–1439, email *Patrick.J.Mannion@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0194), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and

material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2010–0194'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2010–0194 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

APPS Act to Prevent Pollution from Ships
CFR Code of Federal Regulations
COC Certificate of Compliance
COI Collection of Information
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
§ Section symbol
ICR Information Collection Renewal
IMO International Maritime Organization
IOPP International Oil Pollution Prevention
ISO International Standards Organization
MARPOL 73/78 International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention
MSC Maritime Safety Committee
MSDS Material Safety Data Sheets
MEPC Marine Environment Protection Committee
NLS Noxious liquid substance
NPRM Notice of Proposed Rulemaking
OCIMF Oil Companies International Marine Forum
OCMI Officer in Charge, Marine Inspection
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PSC Port state control
SOLAS 1974 International Convention for the Safety of Life at Sea 1974
STS Ship-to-Ship transfer
U.S.C. United States Code

III. Background

Protection of the marine environment and maritime safety are two of the primary missions of the Coast Guard. Specific Coast Guard regulations are designed to minimize the amount of pollution produced by ships at sea and to protect mariners. Many of the pollution control regulations implement the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that Convention (MARPOL 73/78). Similarly, many mariner safety regulations incorporate provisions from the International Convention for the Safety of Life at Sea, as amended (SOLAS 1974), to which the U.S. is also a signatory nation.

A. MARPOL 73/78

MARPOL 73/78 is an international agreement prepared under the direction of the International Maritime Organization (IMO), a United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. MARPOL 73/78 is the main international convention covering prevention of pollution of the marine environment by ships from either operational or accidental causes. MARPOL 73/78 is a combination of two international agreements adopted in 1973 and 1978 and revised by subsequent amendments. The International Convention for the Prevention of Pollution from Ships, was adopted on November 2, 1973 (1973 Convention), and covered pollution by oil, chemicals, harmful substances in packaged form, sewage, and garbage. The Protocol of 1978, which amended the 1973 Convention, was adopted in February 1978, in response to a spate of tanker accidents that occurred in 1976 and 1977. MARPOL 73/78 entered into force on October 2, 1983. Annex I of MARPOL 73/78 (Annex I), Regulations for the Prevention of Pollution by Oil, contains provisions intended to minimize both operational and accidental oil pollution from vessels.

Annex I is implemented in U.S. law through the Act to Prevent Pollution from Ships (APPS) (Pub. L. 96–478, Oct. 21, 1980, 94 Stat. 2297), codified at 33 U.S.C. 1901 et seq. Under 33 U.S.C. 1902, 1903, and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has the authority to draft regulations to implement the MARPOL 73/78 and the amendments thereunder, with respect to U.S. vessels and foreign vessels within U.S. navigable waters or exclusive economic zone. The Coast Guard implements MARPOL 73/78 through regulations in 33 CFR parts 151, 155, 156, and 157.

Amendments to MARPOL 73/78 are made through the resolution drafting and adoption process within the Marine Environment Protection Committee (MEPC) of IMO. The United States takes part in revising and updating MARPOL 73/78 by sending delegates to MEPC, who are charged with negotiating with delegates of other signatory nations to support the U.S. position regarding pollution from ships.

Since the last revision of Coast Guard regulations implementing Annex I in 2001, (66 FR 55571), there have been numerous amendments to the international standards, meaning that the Coast Guard regulations in the CFR and the provisions of Annex I are not currently aligned. Annex I was revised by the following resolutions:

- MEPC.117(52) (October 15, 2004): This resolution revised all of Annex I and adopted new Annex I Regulations 22 and 23. Regulation 22 requires that every tanker of 5,000 deadweight tons or more, constructed on or after January 1, 2007, meet minimum standards of pump-room bottom protection, while Regulation 23 requires that every tanker delivered on or after January 1, 2010, must meet the standard for accidental

oil outflow performance. MEPC.117(52) became effective January 1, 2007.

• MEPC.141(54) (March 24, 2006): This resolution adopted Annex I Regulation 12A, which contains requirements for the protected location of oil fuel tanks and performance standards for accidental oil fuel outflow for all ships delivered on or after August 1, 2010. This resolution became effective August 1, 2007.

• MEPC.154(55) (October 13, 2006): In this resolution, the MEPC adopted the Southern South African Waters as a special area, which prohibits the discharge of bilge water and oil in the defined area. This resolution entered into force on March 4, 2008.

• MEPC.186(59) (July 17, 2009): This resolution adopted a new Chapter 8 (consisting of Regulations 40, 41, and 42) to Annex I to prevent pollution during transfer of oil cargo between oil tankers at sea. In addition, it added a requirement for a Ship-to-Ship transfer (STS) operations plan. This entered into force on January 1, 2011, and applies to STS Operations involving oil tankers of 150 gross tons and more.

• MEPC.187(59) (July 17, 2009): This resolution amended Annex I Regulations 1, 12, 13, 17, and 38 by altering definitions relating to oil residue, and by adding requirements that ships over 400 gross tons contain sludge tanks that meet certain enumerated requirements to Regulation 12. It also amended International Oil Pollution Prevention (IOPP) Certificate Forms A and B to include a section regarding the means for retention and disposal of oil residues, and added new recordkeeping requirements prescribing entries in the Oil Record Book for bunkering of fuel or bulk lubricating oil or any failure of oil filtering equipment. This resolution entered into force on January 1, 2011.

With this proposed rule, and as required by the APPS, we would align our regulations in 33 CFR parts 151, 155, 156, and 157 with international standards in Annex I regarding oil pollution from ships. By aligning the U.S. domestic regulations with international standards, compliant U.S. vessels would not be subject to Port State Control (PSC) enforcement measures while engaged in international trade.

On August 27, 2007, we published a notice (72 FR 49013), announcing our policy for resolving conflicts between our regulations and the Annex I amendments, which remain in effect until our regulations are aligned with the amendments to MARPOL 73/78. Our goal in this rulemaking is to align the regulations in the CFR with those in Annex I, and thus promote consistent and homogenous enforcement of Annex I through revisions to 33 CFR parts 151, 155, 156, and 157.

B. SOLAS 1974

In addition to revisions to MARPOL 73/78, we have not yet integrated some revisions to the SOLAS 1974 agreement into 46 CFR Part 197. The Coast Guard represents the United States as a signatory nation of SOLAS 1974, which specifies standards for the safe operation of ships at sea. Under 46 U.S.C. 3306, 46 U.S.C. 3703, and Department of Homeland Security Delegation No. 0170.1, the Coast Guard has authority to prescribe necessary rules and regulations to implement the provisions of SOLAS 1974. These sections include authority over the inspection of vessels and the carriage of liquid bulk dangerous cargoes. The Coast Guard implements SOLAS 1974, in part, through regulations in 46 CFR part 197.

Like MARPOL 73/78, SOLAS 1974 is amended by resolution of an IMO Committee, in this case the Maritime Safety Committee (MSC). In resolution MSC.150(77), the 77th Session of the MSC urged that beginning in June 2003, governments ensure the supply and carriage of Material Safety Data Sheets (MSDS) for Annex I cargoes and marine fuels. The 83rd session of MSC amended SOLAS 1974 by adding Regulation 5–1 to Chapter VI, stating that ''Ships carrying Annex I cargoes, as defined in Appendix I to Annex I of [MARPOL 73/78], and marine fuel oils shall be provided with a MSDS prior to the loading of such cargoes based on the recommendations developed by IMO.'' The 86th session of the MSC further amended the SOLAS 1974 into clear and concise language to ensure a common understanding and unambiguous implementation of SOLAS Regulation VI/5–1. SOLAS Regulation VI/5–1 entered into force internationally on July 1, 2009.

Because of these amendments, differences have developed between SOLAS 1974 and existing Coast Guard regulations. Our proposal resolves those differences in this rulemaking. Our goal is to adopt SOLAS Regulation VI/5–1 into U.S. law through 46 CFR part 197, which will allow enforcement of the provision in the U.S. as well as decrease exposure of U.S. vessels to PSC detention risk. Therefore, in this notice, we propose adding regulations to 46 CFR part 197 to conform with resolution MSC.286(86) (June 5, 2009). MSC.286 (86) adopts guidelines for the implementing SOLAS Regulation VI/5–1, specifically requiring the provision of MSDSs for Annex I type oils as cargo in bulk and oil fuels, replacing the earlier resolution on MSDSs (MSC.150(77) (June 2, 2003)).

IV. Discussion of Proposed Rule

In this notice of proposed rulemaking (NPRM), we are proposing to update our regulations in Titles 33 and 46 of the CFR to harmonize U.S. regulations with international conventions regarding oil pollution and safety of life at sea. The purpose of this rule is to fulfill the obligations of the United States to implement MARPOL 73/78 and SOLAS 1974 amendments for U.S. vessels and all vessels operating on the navigable waters of the United States to which those amendments apply. The proposed updates in 33 CFR parts 151, 155, 156, and 157 are intended to implement recent amendments to MARPOL 73/78 for U.S. vessels and all vessels operating on the navigable waters of the United States to which those amendments apply. Additionally, we are proposing to add a new subpart D to 46 CFR part 197 to require MSDSs for Annex I cargoes and marine fuels to align our regulations with SOLAS 1974.

By aligning the domestic regulations with international standards, compliant U.S. vessels would not be subject to PSC enforcement measures while engaged in international trade. In addition, the updated regulations would produce benefits in terms of offshore oil pollution prevention and mariner safety.

In the sections below, we discuss the proposed changes to the CFR, the relevant Annex I amendment(s) that prompted the change, and what we believe the effect of the proposed changes would be. Following this section is a table that summarizes each change.

A. Definitional Changes, 33 CFR 151.05

Based on MEPC.187(59), we are proposing to make definitional changes to 33 CFR 151.05 to align with the ''Definitions,'' of Annex I, Regulation 1. We are proposing to add definitions for ''oil residue (sludge),'' ''oil residue (sludge) tank,'' ''oily bilge water,'' and ''oily bilge water holding tank,'' and revise the definitions of ''oily mixture'' (including deletion of a redundant definition) and ''oil residue'' (which is a separate term from ''oil residue (sludge)'') in the definitions section in § 151.05. Adding the definitions from Annex I would improve the clarity of the regulations and help assure adherence to them.

B. Southern South African Waters, 33 CFR 151.13

Section 151.13 codifies MARPOL 73/78 ''special areas'' where, for recognized technical reasons associated with its oceanographic and ecological condition and the character of its traffic, special mandatory methods for the prevention of oil pollution are required. We are proposing to add ''the Southern South African waters'' to this section in accordance with MEPC.154(55), which added this new special area to Regulation 1.11 of Annex I.

C. Additional Entries in the Oil Record Book, 33 CFR 151.25

We are proposing to add three new Oil Record Book entry requirements, to record the bunkering of oil, any failures of oil filtering equipment, and failures of the oil discharge monitoring and control system. We are proposing these changes to conform to the provisions of Annex I Regulation 17 (17.2.5 and 17.5) and Regulation 36 (36.6), which require these entries in the Oil Record Book. The changes to Annex I were based on Annex III of MEPC.187(59), adopted on July 17, 2009.

Two of these changes would be in Section 151.25(d), which applies to all ships that are required to have an Oil Record Book. In 33 CFR 151.25(d)(5), we propose adding a requirement to make an entry for the bunkering of fuel or bulk lubricating oil. This additional entry would help to track the use and disposal of oil and oil residues. In 33 CFR 151.25(d)(6) we propose adding a requirement to make an entry for any failure of oil filtering equipment. The third change would be in 33 CFR 151.25(e), which applies only to oil tankers of 150 gross tons or more. We propose adding a requirement, as subparagraph (e)(11), to make an entry for any failure of the oil discharge monitoring and control system. These additional entries would capture equipment failures for all ships with an Oil Record Book.

D. Oil Fuel Tank Protection, 33 CFR 155.250

We are proposing to incorporate by reference Regulation 12A, ''Oil fuel tank protection,'' which details specific requirements for oil fuel tank protection. On March 24, 2006, MEPC adopted MEPC.141(54), which added Regulation 12A, to Annex I. Regulation 12A mandates that oil fuel tanks be protectively located, and expands performance standards for accidental oil fuel outflow in the event of a collision or grounding. In addition, Regulation 12A sets a maximum capacity limit of 2,500 cubic meters per oil fuel tank, limiting environmental damage should a tank rupture occur. Pursuant to Section 612 of the Coast Guard Authorization Act of 2010, Public Law 111–281, 121 Stat. 2905 (2010) (codified as amended at 46 U.S.C. 3306(2010)), Congress required that all new U.S. vessels meet the requirements of Regulation 12A.

To add these requirements to the CFR, we are proposing to add 33 CFR 155.250, ''Oil fuel tank protection,'' which would apply to each ship with an aggregate oil fuel capacity of 600 cubic meters or more, delivered on or after August 1, 2010. Proposed 33 CFR 155.250 references Regulation 12A, which would be incorporated by reference in 33 CFR 155.140.

E. Requirements for Oil Sludge Tanks and Oil Filtering Equipment and Exemption for High-Speed Craft, 33 CFR 155.360 and 370

The Coast Guard is proposing two changes that would modify Subpart B of part 155, ''Vessel Equipment.'' These proposed changes would incorporate changes made to Annex I, Chapter 3, Regulations 12 ''Tanks for oil residues (sludge),'' and 14 ''Requirements for Machinery Spaces of All Ships.'' Regulation 12 governs tanks for oil residues (sludge), and Regulation 14 governs oil filtering equipment.

We are proposing changes to the regulations in 33 CFR 155.360 and 155.370 designed to prevent the discharge of oil sludge into the marine environment, as well as to incorporate an exemption for high-speed craft contained in Annex I.

The first part of our proposed changes concerns oil sludge. Oil sludge, defined in 33 CFR 151.05, consists of residual waste products that can accumulate in the course of using or delivering oil. Currently, under 33 CFR 155.360 and 155.370, oceangoing vessels 400 gross tons or more are required to have oily water separating equipment and sludge tanks capable of retaining all oil residues (sludge) onboard. Additionally, they are not permitted to store oily water in their bilges.

To prevent discharge of this sludge into ocean waters, Regulation 12 (paragraph 1) of Annex I requires that all ships of 400 gross tons or more be fitted with a tank or tanks of adequate capacity to receive oil residues that cannot be dealt with otherwise in accordance with oil pollution regulations. Such tanks store the sludge until it can be disposed of safely.

To adopt the changes to Regulation 12, we are proposing revisions to both 33 CFR 155.360 and 155.370, which regulate oily mixture discharges on oceangoing vessels. In 33 CFR 155.360, the regulations apply to ships of 400 gross tons and above but less than 10,000 gross tons, excluding those that carry ballast water in their fuel tanks. In 33 CFR 155.370, the regulations apply to ships 10,000 gross tons or more, as well as to all ships over 400 gross tons that carry ballast water in their fuel tanks. Adding the requirement regarding sludge tanks to both sections matches the applicability in Regulation 12, as it applies to ''every ship of 400 gross tons and above.''

The proposed rule prohibits persons from operating a ship unless it is fitted with sludge tanks capable of storing the oil residues that cannot be dealt with through filtering. To provide specifications for sludge tanks we are proposing to adopt verbatim the language in Regulation 12, paragraph 2, and add it to 33 CFR 155.360 and 155.370, as paragraph (b)(3) of each section. These requirements would mandate that the sludge tanks be provided with a designated disposal pump and that they have no discharge connections to the bilge system, bilge water holding tanks, tank top, or oily water separators, although there is an exception for certain safeguarded drains.

In addition to the changes regarding oil sludge, we are also proposing to include an exemption for high-speed craft, which is contained in Regulation 14 of Annex I, as paragraph (a)(1) in sections 155.360 and 155.370. This exemption in the Annex I regulations, contained in Regulation 14.5.2 (as modified by Regulation 14.5.3), permits high-speed craft over 400 gross tons to operate without oil filtering equipment if they are fitted with a holding tank to store oily bilge water onboard and discharge it to reception facilities. We believe that the only vessels affected by this exemption are ferries. Therefore, we believe that the proposed changes to sections 155.360 and 155.370 of the CFR accurately reflect the Annex I regulations.

F. Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea, 33 CFR 156.400–156.420

We are proposing to add a new subpart D to 33 CFR part 156 to cover Ship to Ship (STS) transfer Operations between oil tankers at sea. This type of transfer is common in instances where a large tanker transfers oil to a smaller tanker that is able to offload to a port. Proposed subpart D, containing new §§ 156.400–156.420, aligns with Annex I Regulations 40, 41, and 42 (collectively, chapter 8), added by

MEPC resolution 186(59), which apply to oil tankers of 150 gross tons or more engaged in STS Operations conducted on or after April 1, 2012.

Regulations 41 and 42 impose two substantive requirements (Regulation 40 pertains to the applicability of the chapter). Regulation 41, ''General Rules on Safety and Environmental Protection,'' requires that oil tankers involved in STS Operations carry and follow an ''STS Operations Plan,'' based on the International Maritime Organization (IMO) Manual on Oil Pollution, Section 1: Prevention. Regulation 41 also requires that the person in charge of STS Operations be qualified to perform all relevant duties, and that records of STS Operations be retained on board for 3 years. Regulation 42, ''Notification,'' requires each tanker to provide 48-hour advance notification to the Flag State when planning STS Operations in the Flag State's territorial sea or exclusive economic zone. It also specifies required elements of that notification.

Because some STS Operations also could be classified as lightering operations, which are regulated under subpart B of 33 CFR 156, we are proposing to modify the applicability section (§ 156.200) and definition of Lightering or Lightering Operations (§ 156.205) of that subpart to explicitly exclude STS Operations. While STS Operations and lightering operations are similar, they are not identical.

1. Applicability of Subpart D, 33 CFR 156.400

The Coast Guard is proposing to base the applicability of subpart D on Regulation 40 of Annex I. Proposed subpart D would apply to certain oil tankers in U.S. territorial seas, as well as U.S. oil tankers that conduct STS Operations in ports or terminals under the jurisdiction of other parties to MARPOL 73/78. Specifically, it would apply to an oil tanker of 150 gross tons or above conducting STS Operations on or after April 1, 2012, and to the STS Operations if one of the oil tankers involved is 150 gross tons or above.

Regulation 40 specifies several exceptions, which are incorporated into proposed § 156.400. Proposed subpart D would not apply to oil transfer operations associated with fixed or floating platforms used for the offshore production and storage of oil, which we have addressed by specifying, in proposed § 156.400(a), that this subpart applies to the transfer of oil cargo between oil tankers at sea. Proposed paragraph (b) addresses the other exemptions specified in Regulation 40 by stating that subpart D also would not apply to bunkering operations where the oil transferred is to be used as fuel, to STS Operations for the purpose of securing the safety of a ship or saving life at sea, specific pollution incidents, and to STS Operations involving warships or governmental, noncommercial service.

2. Definitions, 33 CFR 156.405

The Coast Guard is proposing to add a definition section to subpart D defining ''oil tanker'' and ''STS Operations'' to ensure that these regulations are applied properly. This proposed section also contains definitions for ''Authorized Classification Society,'' ''Flag State,'' and ''marine environment,'' to eliminate any ambiguity that could arise.

3. Rules on Safety and Environmental Protection, 33 CFR 156.410

Regulation 41 of Annex I contains general rules on safety and environmental protection, which are being proposed in subpart D as § 156.410. These rules require that oil tankers carry an STS Operations Plan developed under best practice guidelines that comply with that plan. It also requires that the person in overall advisory control of the STS Operations be qualified to perform all relevant duties, and that owners or operators of vessels retain records of STS Operations for 3 years. The requirements of Regulation 41 are being proposed as paragraphs (a) through (h) of § 156.410. These regulations would help to ensure that best practices are followed with regard to the transfer of oil at sea, to mitigate the risk of oil pollution and to promote safety.

The Coast Guard is proposing additional requirements for those STS Operations that were formerly categorized as lightering operations. Some lightering operations, which are currently regulated under subpart B of part 156, would be classified as STS Operations under subpart D as a result of the changes in this proposal. Lightering operations are currently subject to more extensive regulation than that being proposed for STS Operations. To avoid confusion in overlapping cases, we are proposing to explicitly exclude STS Operations from the applicability section of subpart B, and regulating all STS Operations under subpart D, as discussed above in section IV.F.1. However, in order to preserve the existing regulatory requirements for those lightering operations that could also be classed as STS Operations, we have added these requirements to subpart D as well. These requirements are listed in § 156.410(i). The specific items listed, including requirements for Certificates of Inspection, Certificates of Compliance, or Tank Vessel Examination Letters, are derived from the current requirements in § 156.210, which governs lightering operations, and are necessary for liquid bulk cargo transfers.

4. Notification, 33 CFR 156.415

Regulation 42 of Annex I contains notification requirements for vessels engaging in STS Operations, which are being proposed in subpart D as § 156.415, along with additional notification procedures in force today that pertain to lightering operations. Regulation 42 requires that oil tankers engaging in STS Operations provide the relevant MARPOL 73/78 party with 48 hours advance notice of STS Operations. This includes information regarding the location, time, and duration of the STS Operations, oil type and quantity, identification of the STS Operations service provider, and confirmation that there is a compliant STS Operations Plan. Providing this information to the MARPOL 73/78 party helps to ensure that STS Operations are conducted safely and that a suitable safety measure is in place to mitigate environmental damage. The proposed regulatory text differs from Regulation 42 for oil tankers planning to conduct STS Operations in designated lightering areas, where a 24-hour advance notice of STS Operations to the nearest Captain of the Port (COTP) specified in the existing § 156.215 would be used instead of the 48-hour notice specified in Regulation 42. This is being done to recognize industry best practices and the safety record under the existing notification requirements for these specific areas.

The proposed regulatory text incorporating the notification provisions of Regulation 42 differs further from the text of Annex I, because it also contains some of the notification provisions from the lightering requirements in subpart B, such as the expected number of oil transfers, which are not included in the Annex I requirements. Among these additional proposed requirements is that owners or operators of a vessel that require a Certificate of Compliance (COC) inspection, or other special Coast Guard inspections, request the required inspections from the relevant COTP at least 72-hours prior to commencement of STS Operations. Receiving this information helps the Coast Guard better plan for STS Operations and schedule our inspection workload. We are proposing to add this as § 156.415(e). However, despite the additions, all of the requirements from

Regulation 42 have been incorporated into the proposed regulatory text.

5. Reporting of Incidents, 33 CFR 156.420

The Coast Guard is proposing to add § 156.420 to subpart D relating to the reporting of incidents. This section would ensure that the relevant COTP would be notified of incidents promptly so they may respond to them quickly. This section is not based on Annex I, but we believe that these provisions should be applied to STS Operations to ensure safety and the most effective Coast Guard response to any incident. They are derived from similar requirements found in § 156.220, but now would apply to the STS Operations as well.

G. Requirements for Sea Chest Permanently Connected to Cargo Lines, 33 CFR 157.08 and 157.11

The Coast Guard is also proposing requirements for oil tankers of 150 gross tons or more that have a sea chest permanently connected to the cargo pipeline system. A sea chest is a compartment located on a vessel's shell plating, below the waterline, through which seawater is drawn in. The seawater may be used for cooling or ballast purposes. These requirements were added to Annex I through MEPC.117(52), and are located in Regulation 30, paragraph 7. To integrate them into the CFR, we are proposing to add the sea chest requirements as subsection (h) of § 157.11. Additionally, we are proposing a conforming change to § 157.08, the applicability section, by adding a subsection (o) to accommodate vessels delivered on or after January 1, 2010.

This proposal would require that the sea chest be equipped with both a sea chest valve and an inboard isolation valve. It would apply to oil tankers of 150 gross tons or more delivered on or after January 1, 2010. We are proposing to add these requirements to help ensure that oil cargo does not backflow into the sea chest, and thus into the surrounding water. Additionally, the sea chest would need to be capable of isolation from the cargo pipeline system during the transfer or transport of cargo by a positive means that is installed in the pipeline system to prevent, under all circumstances, the section of pipeline between the sea chest valve and the inboard valve from being filled with oil cargo.

H. Pump-Room Bottom Protection, 33 CFR 157.14

We are proposing to incorporate Regulation 22, ''Pump-room bottom protection,'' (added to Annex I by resolution MEPC.117(52) (October 15, 2004)) into our regulations by adding § 157.14. Regulation 22 provides additional protection to the pump room by requiring double bottoms to prevent flooding in the event of an incident. This is necessary to ensure the continual functionality of the ballast and cargo pumping systems. Regulation 22 also contains an exemption from the double bottom requirement if flooding of the pump-room would not render the ballast or cargo pumping system inoperative.

The proposed regulation, which would apply to oil tankers of 5,000 deadweight tons (a measure of the vessel's cargo capacity) or more constructed on or after January 1, 2007, would establish a requirement from Regulation 22 that pump-rooms be protected with a double bottom if the flooding of the pump-room would render the ballast or cargo pumping system inoperative. It would also establish minimum requirements for the depth of the double bottom. Section 157.14 would adopt the Annex I requirements directly by incorporating Regulation 22 by reference.

I. Accidental Oil Outflow Performance, 33 CFR 157.20

We also are proposing to adopt the oil outflow performance from Annex I, Regulation 23, ''Accidental oil outflow performance.'' This regulation, which applies to oil tankers delivered on or after January 1, 2010, establishes design requirements to protect against oil pollution in the event of a collision or grounding. For vessels delivered in 2010 or later, it replaces older requirements regulating hypothetical outflow of oil, contained in Regulation 25, and limiting cargo tank arrangement and size, contained in Regulation 26. Regulations 25 and 26 continue to apply to vessels delivered before 2010. The new regulation provides detailed design and performance specifications for oil tankers of all sizes. Section 157.20 would adopt the Annex I requirements directly by incorporating Regulation 23 by reference.

J. Limitation of Older Regulations to Tankers Delivered After January 2010, 33 CFR 157.19

We also are proposing an amendment to § 157.19 that would limit the requirements of Annex I, Regulation 25, ''Hypothetical outflow of oil,'' and Regulation 26, ''Limitations of size and arrangement of cargo tanks,'' to oil tankers delivered before January 1, 2010. These requirements, currently found in § 157.19, do not apply to new tankers, which would comply with accidental oil outflow performance in proposed section § 157.20, described above. The proposed amendments reflect paragraph 6 of Regulation 25 and paragraph 7 of Regulation 26, which states these regulations apply to oil tankers built before 2010.

K. Implementation of SOLAS 1974 Requirements for Material Safety Data Sheets (MSDS)

In this rulemaking, the Coast Guard is also proposing to implement SOLAS 1974 amendments regarding MSDS for Annex I cargoes and oil fuels for U.S. vessels and all vessels operating on the navigable waters of the U.S. to which those SOLAS 1974 amendments apply. By aligning the U.S. regulations with international standards, compliant U.S. vessels would encounter fewer difficulties while engaged in international trade.

MSDSs serve an important purpose in ensuring mariner safety, as they focus on the hazards of working with oil products and other hazardous cargos in an occupational setting. They are intended to provide workers and emergency personnel with procedures for handling or working with these substances in a safe manner, and include information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

The Coast Guard is proposing to incorporate the MSDS regulations as a new subpart D of 46 CFR part 197, as §§ 197.801 through 197.820. This subpart would apply to all vessels to which SOLAS 1974 applies, carrying the liquids listed in the Annex I List of Oils, either as bulk cargo or as fuel. It would also adopt the tables from the MSC.286(86) (June 5, 2009) as Appendices A and B to subpart D.

L. Standards Incorporated by Reference

Finally, the Coast Guard is proposing several updates of standards incorporated by reference or otherwise discussed in the proposed regulations. We are proposing to add Regulation 12A of Annex I to the incorporation by reference paragraph in 33 CFR 155.140, to accommodate the proposed revision of § 155.250. We are proposing to amend § 156.111 by updating the versions of the STS Transfer Guide and the Guide to Helicopter/Ship Operations, referenced in 33 CFR 156.330(b) and (c) respectively, as well as §§ 156.410(c)(2) and (f), to use the most recent versions of those standards, and we are proposing to add the Manual on Oil

Pollution, Section I: Pollution, to § 156.111, a document that is also referenced in § 156.410. Third, we propose adding Regulations 22 and 23 of Annex I to the incorporation by reference paragraph in § 157.02, to conform to the proposed revisions of §§ 157.14 and 157.20, respectively. Fourth, we propose adding the International Standards Organization (ISO) to the list of entities referenced in 46 CFR 197.205, as an ISO standard is listed in the proposed Appendix B to subpart D of that part. Fifth, we propose adding the IMO to the list of entities referenced in § 197.205, as an IMO standard is listed in Subpart D of that part. Finally, we propose adding Appendix 1 of Annex I to an incorporation by reference paragraph in § 197.810.

TABLE 1

CFR Cite	Amendment sources	Subject
33 CFR 151.05	Annex I Regulations 1, 12, 13, 17 and 38 MEPC.187(59).	New definitions for oil residue (sludge), requirements for oil residue (sludge) tanks.
33 CFR 151.13(a)	Annex I Regulation 1.11.10 MEPC.154(55).	Special Area ''Southern South African waters.''
33 CFR 151.25	Annex I Regulation 17.2.5 MEPC.187(59).	Oil Record Book: new entries for bunkering of fuel or bulk lube oil.
33 CFR 155.140	Update incorporation by reference	Updates incorporated standards to reflect proposed changes to the text.
33 CFR 155.250	Annex I Regulation 12A MEPC.141(54)	Oil fuel tank protection.
33 CFR 155.360, 33 CFR 155.370	Annex I Regulation 12 MEPC.187(59); Annex I Regulation 14, MEPC.117(52).	Requirements for Oil Sludge Tanks, Exemptions for High-Speed Craft.
33 CFR 156.111	Update incorporation by reference	Updates incorporated standards to reflect proposed changes to the text.
33 CFR 156.200	Annex I Regulations 40, 41, 42 MEPC.186(59).	Removal of STS Operations from subpart B Applicability.
33 CFR 156.205	Annex I Regulations 40, 41, 42 MEPC.186(59).	Definitional change of Lightering or Lightering Operations to remove STS Operations.
33 CFR 156.330	Update to most modern standards	Updates regulatory text to reference current versions of the STS Transfer Guide and Helicopter/Ship Operations guide.
33 CFR 156 Subpart D; 156.400, 405, 410, 415, 420.	Annex I Regulations 40, 41, 42 MEPC.186(59).	Prevention of pollution during lightering operations and transfer of oil cargo between oil tankers at sea.
33 CFR 157.02	Update incorporation by reference	Updates incorporated standards to reflect proposed changes to the text.
33 CFR 157.08 and 157.11	Annex I Regulation 30.7 MEPC.117(52)	Requirements for sea chest permanently connected to cargo lines.
New 33 CFR 157.14	Annex I Regulation 22 MEPC.117(52)	Pump-room bottom protection.
33 CFR 157.19	Annex I Regulation 25.6 MEPC.117(52)	Older regulations of hypothetical outflow of oil limited to tankers delivered before 2010.
33 CFR 157.19	Annex I Regulation 26.7 MEPC.117(52)	Older regulations of size and arrangement of cargo tanks limited to tankers delivered before 2010.
New 33 CFR 157.20	Annex I Regulation 23 MEPC.117(52)	New requirements for accidental oil outflow performance for tankers delivered in 2010 or later.
46 CFR 197.205	Update standards availability	Provide information for ISO standards referenced in Appendix B to Subpart D.
46 CFR 197 Subpart D; 197.801, 810, 820.	MSC.286(86)	Material Safety Data Sheets.

V. Other Alternatives Considered

As stated in the III. Background section of the preamble, the protection of the marine environment and maritime safety are two of the primary missions of the Coast Guard. As an initiative in furthering our primary missions, the Coast Guard is considering requiring new U.S. non-oceangoing vessels to be equipped with tanks to prevent oily bilge water discharges.

Unlike the provisions in this notice, any future proposal regarding holding tanks for oily bilge water discharges would be pursuant to the Coast Guard's authority to issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels (33 U.S.C. 1321(j)(1)(C)). This alternative would apply to U.S. non-oceangoing ships 400 tons or greater delivered 3 years after the implementation of a final rule.

The Coast Guard seeks additional data and other information related to this provision. Although the Coast Guard welcomes all public comments related to these potential requirements, the Coast Guard specifically invites comments on the discussion below, and responses to the following questions:

- The Coast Guard requests information on any additional sources of information on the number, size, composition, and resulting damage to the environment of oily bilge water discharges from U.S. non-oceangoing vessels.
- The Coast Guard has identified requiring holding tanks as a means for reducing the discharge of oily bilge water to the environment. The Coast Guard requests information on the cost of holding tanks for new vessels and existing U.S. non-oceangoing vessels.
- The Coast Guard solicits any additional comments on the potential requirements to control oily bilge water discharge from U.S. non-oceangoing vessels, including alternatives that may provide a cost-effective approach for reducing oily bilge water discharge.

To submit a comment on the changes proposed in this section, use one of the methods specified under **ADDRESSES**.

The Coast Guard offers the following discussion regarding the requirement for non-oceangoing ships 400 gross tons or

greater to install oily bilge water retention tanks.

The alternative considered to require a holding tank for oily mixtures would be similar to requirements for certain oceangoing vessels (over 400 gross tons) subject to MARPOL 73/78 that remain at or near facilities where oily mixtures can be discharged. U.S. non-oceangoing vessels of this same size category (over 400 gross tons) have similar operational characteristics as those covered under MARPOL 73/78.

The purpose of such a requirement would be to reduce maritime oil pollution by preventing the discharge of oily bilge water into the marine environment. During the operations of a vessel, oily bilge water accumulates in the lowest part of a vessel from a variety of sources including engines, piping, and other mechanical and operational sources found throughout the machinery spaces of vessels. Oily bilge water is a mixture of water, oily fluids, lubricants, cleaning fluids and other similar wastes.

While U.S. non-oceangoing ships are not required to have oil filtering equipment, § 155.330 prohibits persons from operating these ships in the navigable waters in the U.S. unless the ship can retain all oily mixtures onboard and discharge them to a reception facility. Under § 155.330(b), those ships may currently retain those oily mixtures in the ship's bilges. However, the Coast Guard believes that retaining these mixtures in the ship's bilges has contributed to the risk of oil pollution from inadvertent discharge of substantial quantities of oil into the marine environment. Even small amounts of oil pollution (including oily bilge water discharge) have the potential to seriously damage the terrestrial and aquatic environments. The Coast Guard believes that the risk of oil pollution from inadvertent discharges of oily bilge water from ships would be reduced by requiring ships to have a holding tank with a volume adequate to hold all of a ship's oily bilge water, thereby discouraging ships from holding oily bilge water in their bilges.

This alternative is similar to the requirements in Annex I that provide the option of using holding tanks to reduce the risk of oil pollution. As an Annex I measure, the Coast Guard believes that oily bilge water holding tanks would be effective at combating the risk of oil pollution and that the design of this equipment is well known to the maritime community. While Annex I requires that most oceangoing vessels be fitted with oil filtering equipment (see Regulation 14.1), Annex I allows vessels that remain close to discharge facilities, such as stationary vessels or ferries, to store oily bilge water in special holding tanks (see Regulation 14.3, Regulation 14.5.3.1). Holding tanks provide a less expensive means to mitigate inadvertent discharges of oily water than oil filtering equipment. Nonetheless, they would function well as these vessels, unlike oceangoing vessels, would consistently operate in close proximity to a discharge facility.

We believe that the application of these types of holding tanks to U.S. non-oceangoing vessels would prevent oily bilge water discharges in the most efficient cost-effective manner, for the reasons stated above. Unlike oceangoing ships, non-oceangoing ships operate relatively close to shore and can discharge oily bilge water from the holding tanks to reception facilities. Therefore, they can take advantage of the use of oily bilge water storage tanks, which do not require maintenance and are much less expensive to install and operate.

In order to minimize the cost to comply with this alternative, we are considering a proposal in which the effective date for this alternative would be three years after the publication of a final rule and limit the requirement to new vessels. This would provide a notice period similar to those granted by the MARPOL 73/78 and SOLAS 1974 amendments, which are typically published several years before the provisions are effective. The three year delayed implementation period would help to reduce the costs to ship owners and operators by allowing them to integrate these holding tanks into ship designs.

The Coast Guard welcomes public comments on this information and questions presented above in relation to installing oily bilge water retention tanks on new, non-oceangoing ships 400 gross tons or greater. As noted, after considering this additional information, the Coast Guard would later request public comment on specific regulatory text if it seeks to implement such requirements.

VI. Incorporation by Reference

Material proposed for incorporation by reference appears in 33 CFR 155.140, 156.111, 157.02, and 46 CFR 197.810. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in 33 CFR 155.140, 156.111, 157.02, and 46 CFR 197.810.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

VII. Regulatory Analyses

We developed this proposed 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.

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

This rulemaking is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. This preliminary assessment (''Regulatory Analysis'') is available in the docket where indicated in section A of this preamble. We consider all estimates and analysis in this Regulatory Analysis (RA) to be draft and subject to change in consideration of public comments. A summary of the draft Regulatory Analysis follows:

The proposed rule contains provisions to codify the 2004, 2006 and 2009 Amendments to Annex I in the Code of Federal Regulations (CFR) and to require vessels to carry a Material Safety Data Sheet (MSDS) for each Annex I cargo and ship fuel carried in bulk. These provisions are designed to harmonize U.S. regulations with international standards.

Table 1 in the *Discussion of Proposed Rule section* of the preamble provides a summary of the proposed changes to the CFR referencing the applicable Annex I Amendments and the subject of the proposed changes. Detailed descriptions of the proposed CFR changes are described in Section IV Discussion of Proposed Rule of this preamble. A summary of the regulatory analysis is shown in Table 2.

TABLE 2—SUMMARY OF THE REGULATORY ANALYSIS

Category	Summary (harmonization)
Total Affected Population *	~4,029 current and future U.S. flag ships with 1,768 U.S. current owners or operators.
Costs (7% discount rate)	$1.8 mil (annualized) $18.2 mil (10-year)
Unquantified Benefits	Compliance with internationally enforced standards where non-compliance could result in Port State Control interventions and detentions or delays. General reduction of the risk of oil discharges in the marine environment. 33 CFR 151.25 improves the availability of information on certain processes and equipment. 33 CFR 151.360–370 prevents the direct discharge of oily sludge residue and indirect discharge through oily bilge water. 33 CFR 151.400–420 helps to ensure STS Operations are conducted safely and that an apparatus is in place to mitigate environmental damage.

* The total affected population shown in this table refers to the sum of the affected population for each individual requirement. An individual ship may be subject to multiple requirements. If there is no overlap of requirements, the affected population would be a maximum of 4,029 new and existing ships. If there is overlap of requirements, the total affected population could be less.

1. The Affected Population

The individual provisions of the proposed rule affect different populations of U.S. flag ships. A summary of the affected population is shown in Table 3.

TABLE 3—AFFECTED POPULATIONS U.S. FLAG SHIPS

Provision	Population affected	Current affected population	New ships delivered during the 10-year period of analysis	Total number of ships
Additional Oil Record Book entry requirements.	All inspected ships bunkering fuel or lubricating oil.	1,672	273	1,945
Valve separating the sludge tank drains from the bilge system.	Oceangoing Ships 400 gross tons and over	1,044	225	1,269
Preparation of STS Operations Plans and STS Reporting.	Tankers and Tank ships	512	303	815

Source: USCG MISLE database.

2. Costs

The primary cost estimate of the proposed rule is displayed in Table 4 and results in a total cost of $23.2 million (undiscounted) for the ten year period of analysis. This cost estimate was prepared assuming no ships currently comply with any of the provisions of the proposed rule because there are no data on the degree of current compliance. The Coast Guard believes that there is current compliance with many of the provisions and is aware that this assumption may overstate the actual cost of the proposed rule. In present value terms, the total cost estimate is $20.8 million using a 3-percent discount rate and $18.2 million using a 7-percent discount rate. Annualized costs are $2.1 million per year at 3 percent and $1.8 million per year at 7 percent.

TABLE 4—COSTS SUMMARY BY YEAR ($ MILLIONS) TO U.S. FLAG SHIPS

	Undiscounted	Discounted	
		7 percent	3 percent
Year 1	$10.2	$9.6	$9.9
Year 2	1.2	1.1	1.2
Year 3	1.3	1.1	1.2
Year 4	1.4	1.0	1.2
Year 5	1.4	1.0	1.2
Year 6	1.4	1.0	1.2
Year 7	1.5	0.9	1.2
Year 8	1.6	0.9	1.2
Year 9	1.6	0.9	1.2
Year 10	1.7	0.8	1.2
Total	23.3	18.2	20.8
Annualized		1.8	2.1

Costs by provision using a 7-percent discount rate are shown in Table 5.

TABLE 5—COSTS SUMMARY OF INDIVIDUAL PROVISIONS AT 7-PERCENT DISCOUNT (MILLIONS OF $) TO U.S. FLAG SHIPS

Provision	Total cost million $ (at 7% discounted)	Percentage of total cost (using 7% discounted costs)
Additional Oil Record Book entry requirements	$5.9	32.24
Valve separating the sludge tank drains from the bilge system	6.7	36.61
Preparation of STS Operations Plans and STS Reporting	5.7	31.15
Total	18.2	100.0

Note: numbers may not add due to rounding.
Source: USCG Office of Operating and Environmental Standards.

The provisions of this rulemaking are estimated to cost $18.2 million, annualized at a 7-percent discount rate. Please refer to Appendices B through E in the Regulatory Analysis for the annual costs. Costs are broken out by section and by population.

Table 6 displays the unit costs per vessel.

TABLE 6—UNIT COSTS (UNDISCOUNTED) FOR U.S. FLAG SHIPS

Provision	Cost per affected ship non-recurring costs	Cost per affected ship recurring costs
Additional Oil Record Book entry requirements [1]	.....	$396
Valve separating the sludge tank drains from the bilge system [2]	$6,140	.....
Preparation of STS Operations Plans and STS Reporting [3]	$5,880	$230

Source: USCG Office of Operating and Environmental Standards.

Table 6 outlines the per vessel costs for the provisions.The provisions include both non-recurring and recurring costs.

3. Benefits

The benefits of the proposed rule include harmonization and compliance with internationally enforced standards and the reduction of risks of oil pollution, as well as improved mariner safety.

Functional benefits of each provision of the proposed rule are shown in Table 7.

TABLE 7—FUNCTIONAL BENEFITS

Provision	Beneficial impact on oil spill risk reduction
33 CFR 151.25—This provision would establish new record keeping requirements for the Oil Record Book: a requirement to make an entry for the bunkering of fuel or bulk lubricating oil; a requirement to make an entry for any failure of oil filtering equipment; and a requirement to make an entry for any failure of the oil discharge monitoring and control system.	This provision will reduce the risk of oil spills by improving the availability of information on certain processes and equipment. For example, the additional entry for the bunkering of fuel or bulk lubricating oil would help to track the use and disposal of oil and oil residues. The other two additional entries would capture equipment failures for all ships with an Oil Record Book.
33 CFR 155.360–370—This provision requires that these ships have a separate designated pump for the oil residue tank (sludge tank) and that this sludge disposal system (pump and tank) must be segregated from the bilge system except for manually operated drains with visual monitoring of settled water that lead to an oily bilge water tank or a bilge well. Any nonconformity would require a ship in this group to purchase and install appropriate equipment.	This provision will reduce the risk of oil spills by insuring segregation of oily sludge residue from the bilge system. These measures prevent the direct discharge of oily sludge residue and the indirect discharge through oily bilge water.

[1] This is the incremental cost of the additional record book entries for both current and new ships above the costs currently required.

[2] Valve costs vary between $5,400 per ship for ships between 400GT and 10,000 GT and $8,700 per ship for ships over 10,000 GT. The $6,140 represents a weighted average based on current and future ships in each volume class.

[3] The two non-recurring costs per ship are: the preparation of the STS plan of approximately $5,023 per ship and the initial training cost of $857 which together total $5,880.

TABLE 7—FUNCTIONAL BENEFITS—Continued

Provision	Beneficial impact on oil spill risk reduction
33 CFR 156.400–420—This provision requires that oil tankers transferring oil cargoes between ships at sea (Ship-to-Ship (STS) transfers of oil) have an STS Operations Plan meeting specific IMO standards.	This provision will reduce the risk of oil spills by requiring that oil tankers engaging in STS Operations provide the relevant MARPOL 73/78 party with 48 hours notice of STS Operations. This includes information regarding the location, time, and duration of the STS Operations, oil type and quantity, identification of the STS Operations service provider, and confirmation that there is a compliant STS Operations Plan. Providing this information helps to ensure that STS Operations are conducted safely and that an apparatus is in place to mitigate environmental damage.

The purpose of the proposed rule is to harmonize Coast Guard regulations with new provisions of MARPOL 73/78 and SOLAS 1974 to which the United States is a signatory. Compliance with these Conventions is, in itself, a benefit to all ships on international routes because the failure to comply with these international standards for pollution prevention and safety would subject the non-compliant ship to PSCs. Coast Guard incorporation of these provisions is also a requirement of U.S. law, the Act to Prevent Pollution from Ships (APPS) 33 U.S.C. 1901–1915 (2002), which implements and codifies the MARPOL agreements into U.S. law.

Port State Controls may include detention of a ship in a foreign port until the identified deficiencies are rectified. Delays of this type can be costly to the owner/operator of a ship. For example, the Paris Memorandum on Port State Control Annual Report (Paris Memorandum) for 2009 indicated that 27 oil tankers were detained worldwide under PSCs; 17 of these tankers (63 percent) were detained for violations of Annex I or SOLAS. With charter rates for oil tankers averaging $31,700 per day, even short delays under PSCs can result in substantial costs. None of these deficient ships were U.S. flag vessels because of the adherence to international standards enforced by the Coast Guard. With this proposed rule the Coast Guard intends to ensure that no ambiguities exist between MARPOL 73/78/SOLAS and the regulatory requirements of the CFR.

The Paris Memorandum for 2009, the latest year for which there are data, also indicated that 3,764 ships that were inspected worldwide under PSCs had deficiencies regarding Annex I requirements. Additionally, 15,800 ships were found deficient regarding safety and firefighting standards (SOLAS requirements). As with oil tankers (noted above) none of these deficient ships were U.S. flag vessels because of the adherence to international standards enforced by the Coast Guard.

We examined the risk reduction in terms of oil spill prevention that would equal the total regulatory cost of this proposed rule. From historical data,[4] we determined there was an average of 5,583 barrels of oil spilled annually from U.S. flagged SOLAS ships over the 2001–2010 period. To calculate the annual monetary value of remediating damages from oil spills, we used a cost of $10,700 per barrel of oil based on an analysis of expenditures from the Oil Spill Liability Trust Fund. Consequently, the costs of oil spill damages averaged $59.7 million (undiscounted) over the 2001–2010 period. Please refer to the Regulatory Analysis for further details.

The undiscounted costs of the provisions of the proposed rule over the ten year period of examination are approximately $23.2 million (or $2.3 million per year on average). The proposed regulations would have to reduce the annual volume of oil spills approximately 3.9 percent ($2.3 million/$59.7 million—both undiscounted) in order to achieve a breakeven between the regulatory costs and the benefit from reduced oil discharge.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket indicated under Section A of this preamble. There are an estimated 1,768 U.S. entities that would be affected by this proposed rule and these entities operate a maximum of 3,228 existing ships. We chose a random sample of 510 entities and evaluated these against the applicable standard for determining whether the entity was small (*i.e.,* SBA size standards for businesses and RFA standards for governments and not-for-profits). We found that 213 entities were not small according to applicable standards. The remaining 297 entities (approximately 58.2 percent of the sample size) are considered small; 175 of these had revenue or personnel data confirming their small business status using the Small Business Administration size standards and the remaining 125 businesses had no revenue or personnel data and were assumed to be small. None of the small entities was either a governmental or not-for-profit entity. We analyzed revenue impacts for the first year and for the annual recurring costs of this proposed rule. First year costs include costs for additional required Oil Record Book entries, equipment purchase and installation costs, and costs associated with the STS Operations Plan preparation and crew training. As all equipment is either stationary (tanks) or minimal maintenance (valves which only require periodic lubrication in conjunction with other shipboard equipment); we have not considered any additional maintenance expenses. Likewise, the expected life-cycle of the equipment extends beyond the timeframe of the ten year period of analysis, so no inclusion of replacement costs for newly installed equipment was required.

There are three provisions that affect small businesses: Additional Oil Record Book entry requirements; Valves separating the sludge tank drains from the bilge system; and Preparation of STS Operations Plans oil record book entry requirements. Of the costs to small businesses, 53.5 percent are associated with the separator valves with 35.3 percent of the costs for additional oil record book entries and 11.2 percent associated with STS plan requirements. This proposed rule has many provisions that would affect different types of

[4] U.S. Coast Guard MISLE data, 2001 to 2010, oil spilled from U.S. flagged, SOLAS vessels.

vessels and therefore, businesses' revenue impacts would vary according to the number and type of vessel owned. If vessels are subject to all provisions, we determined that approximately 7.3 percent of the small businesses would incur a cost impact of more than 1 percent of revenue during the first year.

For the annual recurring economic impact, we determined that 1.6 percent of small businesses would incur a cost more than 1 percent of revenue. Recurring costs include recordkeeping and costs related to the STS Operations Plan (maintenance and training new crew).

Based on the above information, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES** in the Notice of Proposed Rulemaking, [USCG–2010–0194]. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Scott Hartley, U.S. Coast Guard Office of Operating and Environmental Standards, (CG–5222); telephone (202) 372–1437, e-mail *Scott.E.Hartley@uscg.mil*. 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.

D. Collection of Information

This proposed rule would not require a new Collection of Information (COI) request under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) but would increase the burden hours under two existing COI reports. An additional breakdown of these information and reporting costs are presented in the section 'Costs' in VI. Regulatory Analyses of this preamble.

The information collected under the proposed rule is addressed in the existing COIs: OMB control number 1625–0009 (Oil Record Book for Ships (33 CFR 151.25)), which was reviewed by the OMB on September 9, 2009 and will expire after the 2-year approval period ends on September 9, 2011, unless renewed; and OMB control number 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates which was reviewed by the OMB on November 19, 2008, and will expire after the 3-year approval period ends on November 30, 2011, unless renewed.

As defined in 5 CFR 1320.3(c), ''collection of information'' (COI) comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Regarding OMB control number 1625–0009, Oil Record Book for Ships (33 CFR 151.25); the current authorized annual burden is 19,425 hours and the proposed rule would increase the annual burden by approximately 9,111 hours (46.9 percent). Information about this Information Collection Renewal (ICR) is shown in Table 6.

Regarding OMB control number 1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates (33 CFR 156.400 through 156.420 Subpart D–Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea), the current authorized annual burden for all collections in this control number is 2,067 hours and the proposed rule would increase the burden by a single non-recurring burden of 69,120 hours, and a recurring annual burden of 7,168 hours. The annual burden would increase from 2,067 hours to 9,235 hours which equals approximately 347 percent. The increase in burden hours from the proposed rule represents a non-recurring burden of 135 hours per ship and an additional recurring annual burden of 14 hours per ship.

This information collection request involves the preparation of a STS Operations Plan for all oil tankers and tank barges of 150 gross tons and above that engage in transfers of oil at sea. This would require a non-recurring development burden of 135 hours per vessel for each of the 512 ships affected. This ICR would also require recurring annual burden for training (5 hours per ship) and plan revisions (9 hours per ship). Information on this ICR is shown in Table 7 (non-recurring burden) and Table 8 (recurring burden).

The increases in the annual burdens are not considered material or substantive. To confirm this, the Coast Guard has submitted a change worksheet (OMB Form 83–C) to the Office of Information and Regulatory Affairs (OIRA) noting the change in the annual burden.

Details of the two information collection requests are as follows:

1. *Information Collection Request:* OMB control number 1625–0009 (Oil Record Book for Ships).

Title: Oil Record Book for Ships (33 CFR 151.25).

Summary of the Information Collection Request: The Coast Guard uses the information recorded in the Oil Record Book to verify sightings of actual violations of the APPS, to determine the level of compliance with MARPOL 73/78, and as a means of reinforcing the discharge provisions. The actual recording of discharge information reinforces the intent of the regulations. Unless this information is recorded, the Coast Guard would have to rely solely on actual sightings of oil discharges for enforcement. Violation of the law could go undetected resulting in continued pollution of the sea by oil. The Coast Guard would have no method of determining the level of compliance with regulations.

Need for Information: The Act to Prevent Pollution from Ships and MARPOL 73/78 require that information about oil cargo or fuel operations be entered into an Oil Record Book. The requirement is codified in 33 CFR 151.25. MARPOL 73/78 requires that the information be retained onboard a ship so that it is available for inspection, therefore, the electronic transmission of this information to the Coast Guard is not possible.

Proposed Use of Information: The Coast Guard uses the information recorded in the Oil Record Book to verify sightings of actual violations of the APPS, to determine the level of compliance with MARPOL 73/78, and as a means of reinforcing the discharge provisions. The actual recording of discharge information reinforces the intent of the regulations. Unless this information is recorded, the Coast Guard would have to rely solely on actual sightings of oil discharges for enforcement. Violation of the law could go undetected, resulting in continued oil pollution of the sea.

Description of the Respondents: Oil tankers and tank barges of 150 gross tons and above; ships 400 gross tons and above other than oil tankers (including freight barges equipped to discharge oil or oil mixtures); manned fixed or floating drilling rigs, except those that are not equipped to discharge oil or oil mixtures or rigs that are in compliance with the National Pollutant Discharge Elimination

System permit; and manned fixed or floating drilling platforms over 400 gross tons, primarily Mobile Offshore Drilling Units over 400 gross tons.

Number of Respondents: The current number of respondents is 1,546. This proposed rule would affect 1,672 respondents. This increase would coincide with an increased number of ships in each category listed above in the Description of Respondents. No new categories of respondents would be added.

Frequency of Response: The frequency of response is occasional reports for recordkeeping and reporting. The current number of annual responses authorized is 466,200. This proposed rule would increase the number of annual responses to 684,784. Of the increase of 218,584 responses, 199,504 (91 percent) would result from the increased reporting entries per ship and 19,080 (9 percent) of the reporting entries would result from an increase in the number of ships reporting.

Burden of Response: The burden of this proposed rule would require additional entries to the Oil Record Book to record seven types of events not currently recorded: (i) Disposal of oil residue; (ii) discharge overboard or disposal otherwise of bilge water that has accumulated in machinery spaces; (iii) bunkering of fuel or bulk lubricating oil; (iv) any failure of the oil filtering equipment; (v) closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations; (vi) disposal of oil residue; (vii) and any failure of the oil discharge monitoring and control system. The Coast Guard estimates that these additional entries would occur with the same frequency as the 17 events which currently require an Oil Record Book entry. Therefore, the increase in burden hours is 41.2 percent or from the current estimated 540 entries per ship per year for oil tankers and tank barges to 762 entries per year; and from 180 entries per ship per year for non-oil ships to 254 entries per year.

Estimate of Total Annual Burden: The current annual burden for this collection is 19,424 hours. The proposed rule would increase the total annual burden by approximately 9,105 hours. The calculation of the annual burden increase for the Oil Record Book entries is shown in Table 6.

2. *Information Collection Request:* OMB control number 1625–0041 MARPOL 73/78 Related Documents STS Operations Plan.

Title: Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates (33 CFR 156.400 through 156.420, Subpart D–Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea).

Summary of the Information Collection Request: The Coast Guard is requiring oil tankers and tank barges of 150 gross tons and above that engage in transfers of oil at sea to comply with an international agreement (MARPOL 73/78), to which the U.S. is a signatory, in order to reduce the possibility of an accidental oil spill/discharge during a STS transfer operation.

Need for Information: These provisions of the proposed rule incorporate the new Chapter 8 of the 2009 Amendments to Annex I adopted in MEPC.186(59) adopted in the 2009 Amendments to Annex I. The 2009 Amendments to Annex I relate to regulations covering STS operations. This Amendment entered into force on January 1, 2011 for all nations that are signatory to MARPOL 73/78.

Proposed Use of Information: The Coast Guard uses this information to confirm that each ship involved in STS Operations is in compliance with the new Chapter 8 of the 2009 Amendments to MARPOL 73/78. This procedural information documents that each ship involved in STS Operations is compliant with industry guidelines designed to ensure against oil discharges in STS Operations.

Description of the Respondents: This ICR would apply to oil tankers and tank barges who engage in STS Operations.

Number of Respondents: The current approval number of responses is 1,210, which represents 842 non-tank vessels and 368 tank ships and barges. The proposed rule would require additional reporting from tank ships and barges whose population is currently 512. The increase in the number of respondents would be 144 ships (512 – 368).

Frequency of Response: The frequency of response is a non-recurring burden for the initial preparation of an STS Operations Plan and the recurring annual burden for updates to the plan and familiarization (training) of responsible persons.

Burden of Response: The preparation of the STS Operations Plan involves the development of twelve procedures and we have estimated that most procedures would take approximately twelve hours to complete. The general requirements of the STS Operations Plan involve definitions of the responsibilities of the person in overall advisory control; descriptions of the required notifications to authorities; and general procedures for submitting radio navigational warnings and where copies of the STS Operations Plan should be located. The recurring burden of the plan has two components: training of 5 hours per vessel per year; and plan revisions of 9 hours per vessel per year. The calculations for the non-recurring costs of plan preparation are shown in Table 7 and the calculations for the recurring annual costs are shown in Table 8.

Estimate of Total Annual Burden: The current annual burden for this collection is 2,067 hours. The proposed rule would increase the total burden by a non-recurring requirement of approximately 69,120 hours for preparation of the STS Operations Plan and a recurring burden of approximately 7,168 hours.

TABLE 6—RECURRING ANNUAL BURDEN—OIL RECORD BOOK ENTRIES

[OMB control number 1625–0009]

Oil Record Book entries	Current Collection of Information					Total annual cost to industry	Amended Collection of Information					Total annual cost to industry	Change from proposed rule	
	Entries per ship per year	Burden hours per entry	Number of ships	Burden hours	Annual cost to industry per hour		Entries per ship per year	Burden hours per entry	Number of ships	Burden hours	Annual cost to industry per hour		Change in hours	Change in cost
Oil Tankers	540	0.04167	61	1,372	$99.00	$135,890	762	0.04167	51	1,619	$99.00	$160,320	247	$24,430
Tank Barges	540	0.04167	461	10,372	72.00	746,880	762	0.04167	461	14,638	72.00	1,053,930	4,264	307,050
Non-Oil Vessels	180	0.04167	1,024	7,680	72.00	553,000	254	0.04167	1,160	12,278	72.00	883,990	4,593	330,990
Totals	.....	.....	1,546	19,425	.....	1,435,770	.....	.....	1,672	28,535	.....	2,098,240	9,105	662,470

Note: Numbers may not add due to rounding.

TABLE 7—BURDEN OF REPORTING FROM STS OPERATIONS PLAN REQUIREMENTS: NON-RECURRING BURDEN
[OMB control number 1625–00090041]

Ship type	Number of ships	Current requirement	Amended requirement—plan preparation (non-recurring burden)			Total change in hours
			Burden hours per ship	Cost per hour	Total non-recurring cost	
Oil Tanker	51		135	$36.00	$247,860	6,885
Tank Barge	461		135	36.00	2,240,460	62,235
Total	512				2,448,320	69,120

Note: Numbers may not add due to rounding.

TABLE 8—BURDEN OF REPORTING FROM STS OPERATIONS PLAN REQUIREMENTS: RECURRING BURDEN
[OMB control number 1625–00090041]

Ship type	Number of ships	Current requirement	Amended requirement—STS operations plan training (recurring burden)			Amended requirement—STS operations plan revision (recurring burden)			Total recurring costs	Total change in hours
			Burden hours per ship	Cost per hour	Total recurring cost—training	Burden hours per ship	Cost per hour	Total recurring cost—plan revision		
Oil Tanker	51		5	$43.70	$11,144	9	$36.00	$16,524	$27,668	714
Tank Barge	461		5	43.70	100,729	9	36.00	149,364	250,093	6,454
Total	512				111,873			165,888	277,761	7,168

Note: Numbers may not add due to rounding.

If you submit comments on the COI, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES** in the Notice of Proposed Rulemaking [USCG–2010–0194], by the date under **DATES**.

E. 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. The U.S. Supreme Court has long recognized the field preemptive impact of the Federal regulatory regime for inspected vessels. See, e.g., *Kelly* v. *Washington ex rel Foss Co.,* 302 U.S. 1 (1937) and the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 113–116 (2000). Therefore the Coast Guard's view is that regulations issued under the authority of 33 U.S.C. 1903 and 46 U.S.C. 3306 in the areas of design, construction, alteration, operation, hulls, fittings, equipment, appliances, propulsion machinery, auxiliary machinery, piping, and material safety labeling have preemptive effect over State regulation in these fields, regardless of whether the Coast Guard has issued regulations on the subject or not, and regardless of the existence of conflict between the State and Coast Guard regulation. For this reason, we do not believe that this rule has Federalism implications.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, as these categories are within a field foreclosed from regulation by the States (see *U.S.* v. *Locke,* above), the Coast Guard recognizes the key role State and local governments may have in making regulatory determinations. Additionally, Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to the docket using one of the methods specified under **ADDRESSES**. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon, and (3) a statement of the extent to which the concerns of State and local officials have been met.

F. 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 (adjusted for inflation) in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble and in the Regulatory Analysis.

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

K. Energy Effects

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

L. Technical Standards

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

This proposed rule uses the following voluntary consensus standards:

1. Ship to Ship Transfer Guide, Petroleum,
2. Manual on Oil Pollution, Section I: Pollution,
3. Guide to Helicopter/Ship Operations, and
4. ISO 8217:2005, Petroleum products.

The proposed sections that reference these standards and the locations where these standards are available are listed in 33 CFR 155.140, 33 CFR 156.111, 33 CFR 157.02, and 46 CFR 197.810.

If you disagree with our analysis of the voluntary consensus standards listed above or are aware of voluntary consensus standards that might apply but are not listed, please send a comment to the docket using one of the methods under **ADDRESSES**. In your comment, please explain why you disagree with our analysis and/or identify voluntary consensus standards we have not listed that might apply.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. This rule involves regulations which are editorial or procedural; regulations concerning manning, documentation, admeasurement, inspection, and equipping of vessels; and congressionally mandated regulations. This rule falls under section 2.B.2, figure 2–1, paragraphs 34(a) and (d) of the Instruction and under section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48244, July 23, 2002). We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 155

Alaska, Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 157

Cargo vessels, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 197

Benzene, Diving, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 151, 155, 156, and 157, and 46 CFR part 197, as follows:

Title 33—Navigation and Navigable Waters

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); E.O. 12777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 170.1.

2. Amend § 151.05 as follows:

a. Remove the second definition for ''Oily mixture'' that reads ''Oily mixture means a mixture with any oil content, including bilge slops, oily wastes, oil residues (sludge), oily ballast water, and washings from cargo oil tanks'';

b. Relocate, in alphabetical order, the definitions for ''Oil-like NLS'' and ''Oil tanker'';

c. Revise the definition for ''Oil residue'' as set out below; and

d. Add new definitions, in alphabetical order, for ''Oil residue (sludge)'', ''Oil residue (sludge) tank'', ''Oily bilge water'', and ''Oily bilge water holding tank'', as set out below.

§ 151.05 Definitions.

* * * * *

Oil residue means oil cargo residue.

Oil residue (sludge) means the residual waste oil products generated during the normal operation of a ship such as those resulting from the purification of fuel or lubricating oil for main or auxiliary machinery, separated waste oil from oil filtering equipment, waste oil collected in drip trays, and waste hydraulic and lubricating oils.

Oil residue (sludge) tank means a tank which holds oil residue (sludge) from which sludge may be disposed directly through the standard discharge

connection or any other approved means of disposal.

* * * * *

Oily bilge water means water which may be contaminated by oil resulting from things such as leakage or maintenance work in machinery spaces. Any liquid entering the bilge system including bilge wells, bilge piping, tank top or bilge holding tanks is considered oily bilge water.

Oily bilge water holding tank means a tank collecting oily bilge water prior to its discharge, transfer or disposal.

* * * * *

3. In § 151.13, revise paragraph (a) to read as follows:

§ 151.13 Special areas for Annex I of MARPOL 73/78.

(a) For the purposes of §§ 151.09 through 151.25 of this subpart, the special areas are the Mediterranean Sea area, the Baltic Sea area, the Black Sea area, the Red Sea area, the Gulfs area, the Gulf of Aden, the Antarctic area, the North West European waters, the Oman area of the Arabian Sea, and the Southern South African Waters, which are described in § 151.06 of this subpart. The discharge restrictions are effective in the Mediterranean Sea, Baltic Sea, Black Sea, and the Antarctic area.

* * * * *

4. In § 151.25, revise paragraphs (d)(3), (d)(4), (e)(9), and (e)(10), and add paragraphs (d)(5), (d)(6), and (e)(11) to read as follows:

§ 151.25 Oil Record Book.

* * * * *

(d) * * *

(3) Disposal of oil residue;

(4) Discharge overboard or disposal otherwise of bilge water that has accumulated in machinery spaces;

(5) Bunkering of fuel or bulk lubricating oil; and

(6) Any failure, and the reasons for, of the oil filtering equipment.

(e) * * *

(9) Closing of valves necessary for isolation of dedicated clean ballast tanks from cargo and stripping lines after slop tank discharge operations;

(10) Disposal of oil residue; and

(11) Any failure, and the reasons for, of the oil discharge monitoring and control system.

* * * * *

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

5. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j), 1903; 46 U.S.C. 3703; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Section 155.490 also issued under section 4110(b) of Pub. L. 101–380. Sections 155.1110 through 155.1150 also issued under 33 U.S.C. 2735.

6. In § 155.140, add paragraph (d)(3) to read as follows:

§ 155.140 Incorporation by reference.

* * * * *

(d) * * *

(3) MARPOL 73/78, Annex I, regulation 12A, incorporation by reference approved for § 155.250.

* * * * *

7. Add § 155.250 to read as follows:

§ 155.250 Oil fuel tank protection.

Each ship with an aggregate oil fuel capacity of 600 cubic meters or more that is delivered on or after August 1, 2010, must meet the minimum standard of oil fuel tank protection required by Annex I, regulation 12A (incorporated by reference, see § 155.140).

8. In § 155.360, revise paragraph (a)(1), add paragraph (a)(3), revise paragraph (b) introductory text, and add paragraph (b)(3) to read as follows:

§ 155.360 Oily mixture (bilge slops) discharges on oceangoing ships of 400 gross tons and above but less than 10,000 gross tons, excluding ships that carry ballast water in their fuel oil tanks.

(a)(1) Except as provided in paragraph (a)(3) of this section, no person may operate an oceangoing ship of 400 gross tons and above but less than 10,000 gross tons, excluding a ship that carries ballast water in its fuel oil tanks, unless it is fitted with approved 15 parts per million (ppm) oily-water separating equipment for the processing of oily mixtures from bilges or fuel oil tank ballast.

* * * * *

(3) Any ship certified under the International Code of Safety for High-Speed Craft engaged on a scheduled service with a turn-around time not exceeding 24 hours and covering also non-passenger/cargo-carrying relocation voyages for these ships need not be provided with oil filtering equipment. These ships must be fitted with an oily bilge water holding tank having a volume adequate for the total retention onboard of the oily bilge water. All oily bilge water must be retained onboard for subsequent discharge to reception facilities.

(b) No person may operate a ship under this section unless it is fitted with an oil residue (sludge) tank or tanks of adequate capacity to receive the oil residue that cannot be dealt with otherwise.

* * * * *

(3) Ships subject to this section must—

(i) Be provided with a designated pump for disposal that is capable of taking suction from the oil residue (sludge) tank(s); and

(ii) Have no discharge connections to the bilge system, oily bilge water holding tank(s), tank top or oily water separators except that the tank(s) may be fitted with drains, with manually operated self-closing valves and arrangements for subsequent visual monitoring of the settled water, that lead to an oily bilge water holding tank or bilge well, or an alternative arrangement, provided such arrangement does not connect directly to the bilge piping system.

* * * * *

9. In § 155.370, revise paragraph (a) introductory text, add paragraph (a)(5), revise paragraph (b) introductory text and add paragraph (b)(3) to read as follows:

§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

(a) Except as provided in paragraph (a)(5) of this section, no person may operate an oceangoing ship of 10,000 gross tons and above, or any oceangoing ship of 400 gross tons and above, that carries ballast water in its fuel oil tanks, unless it has—

* * * * *

(5) Any ship certified under the International Code of Safety for High-Speed Craft engaged on a scheduled service with a turn-around time not exceeding 24 hours and covering also non-passenger/cargo-carrying relocation voyages for these ships need not be provided with oil filtering equipment. These ships must be fitted with an oily bilge water holding tank having a volume adequate for the total retention onboard of the oily bilge water. All oily bilge water must be retained onboard for subsequent discharge to reception facilities.

* * * * *

(b) No person may operate a ship under this section unless it is fitted with an oil residue (sludge) tank or tanks of adequate capacity to receive the oil residue that cannot be dealt with otherwise.

* * * * *

(3) Ships subject to this section must—

(i) Be provided with a designated pump for disposal that is capable of taking suction from the oil residue (sludge) tank(s); and

(ii) Have no discharge connections to the bilge system, oily bilge water holding tank(s), tank top or oily water separators except that the tank(s) may be fitted with drains, with manually operated self-closing valves and arrangements for subsequent visual monitoring of the settled water, that lead to an oily bilge water holding tank or bilge well, or an alternative arrangement, provided such arrangement does not connect directly to the bilge piping system.

* * * * *

PART 156—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

10. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715, 6101; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) is also issued under 46 U.S.C. 3703.

11. Revise § 156.111 to read as follows:

§ 156.111 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Compliance (CG–543), 2100 2nd Street SW., Washington, DC 20593–0001, telephone 202–372–1251, and is available from the sources listed below. It is also available for inspection 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/code_of_federal_regulations/ibr_locations.html.*

(b) Oil Companies International Marine Forum (OCIMF), 15th Floor, 96 Victoria Street, London SW1E 5JW, England, telephone +44(0)20 7654 1200, *http://www.ocimf.com/.*

(1) Ship to Ship Transfer Guide, Petroleum, Fourth Edition, 2005, incorporation by reference approved for § 156.330(b), § 156.410(c)(2), and § 156.410(f).

(2) [Reserved]

(c) International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, United Kingdom, telephone +44(0)20 7735 7611, *http://www.imo.org/.*

(1) Manual on Oil Pollution, Section I: Prevention, as amended, incorporation by reference approved for § 156.410(c)(2), and § 156.410(f).

(2) [Reserved]

(d) International Chamber of Shipping, 12 Carthusian Street, London EC1M 6EB, England, telephone +44 20 7417 8844, *http://www.marisec.org/.*

(1) Guide to Helicopter/Ship Operations, Fourth Edition, 2009, incorporation by reference approved for § 156.330(c).

(2) [Reserved]

§ 156.200 [Amended]

12. In § 156.200 after the words ''when conducting response activities'' add the words '', or to tank vessels of 150 gross tons or more engaged in the transfer of oil cargo between tank vessels at sea on or after April 1, 2012.''.

§ 156.205 [Amended]

13. In § 156.205 revise the definition of Lightering or Lightering operation to read as follows:

§ 156.205 Definitions.

* * * * *

Lightering or Lightering operation means the transfer of a cargo of oil in bulk from one oil tanker less than 150 gross tons to another oil tanker less than 150 gross tons, or a cargo of hazardous material in bulk from one vessel to another, including all phases of the operation from the beginning of the mooring operation to the departure of the service vessel from the vessel to be lightered, except when that cargo is intended only for use as fuel or lubricant aboard the receiving vessel.

14. In § 156.330, revise paragraphs (b) and (c) to read as follows:

§ 156.330 Operations.

* * * * *

(b) Lightering operations should be conducted in accordance with the Oil Companies International Marine Forum (OCIMF) Ship to Ship Transfer Guide, Petroleum, Fourth Edition, 2005 (incorporated by reference, see § 156.111) to the maximum extent practicable.

(c) Helicopter operations should be conducted in accordance with the International Chamber of Shipping Guide to Helicopter/Ship Operations, Fourth Edition, 2009 (incorporated by reference, see § 156.111) to the maximum extent practicable.

* * * * *

15. Add subpart D, consisting of §§ 156.400 through 156.420, to read as follows:

Subpart D—Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea

Sec.
156.400 Applicability.
156.405 Definitions.
156.410 General.
156.415 Notification.
156.420 Reporting of Incidents.

§ 156.400 Applicability.

Subpart D—Prevention of Pollution During Transfer of Oil Cargo Between Oil Tankers at Sea

(a) This subpart applies to oil tankers engaged in the ship-to-ship transfer of oil cargo between oil tankers (STS Operations), and to their STS Operations conducted on or after April 1, 2012, when at least one of the oil tankers is of 150 gross tonnage and above. These rules are in addition to the rules of subpart A of this part, as well as the rules in the applicable sections of parts 151, 153, 155, 156, and 157 of this chapter.

(b) This subpart does not apply to STS Operations—

(1) If the oil cargo is intended only for use as a fuel or lubricant aboard the receiving vessel (bunker operations);

(2) When the oil transfer operation is for the purpose of securing the safety of a ship, saving life at sea, or addressing specific pollution incidents to minimize damage from pollution; or

(3) When at least one of the ships involved in the oil transfer operation is a warship or a naval auxiliary or other ship owned or operated by a nation and used, at the time of the transfer, in government noncommercial service only.

(4) When the STS Operations are necessary for the purpose of securing the safety of a ship or saving life at sea, or for combating specific pollution incidents in order to minimize the damage from pollution; except that such vessels are subject to the requirements of § 156.420.

§ 156.405 Definitions.

(a) In addition to the definitions specifically stated in this section, the definitions in § 154.105 of this chapter apply to this subpart except definitions for Tank Barge, Tank Ship and Tank Vessel.

(b) Definitions specific to this part—

Authorized Classification Society means a recognized classification society that has been delegated the authority to conduct certain functions

and certifications on behalf of the Coast Guard.

Flag State means the authority under which a country exercises regulatory control over the commercial vessel which is registered under its flag. This involves the inspection, certification, and issuance of safety and pollution prevention documents.

Marine environment means—

(1) The navigable waters of the United States;

(2) The waters of an area over which the United States asserts exclusive fishery management authority; and

(3) The waters superjacent to the Outer Continental Shelf of the United States.

Oil tanker means a vessel that is constructed or adapted primarily to carry crude oil or products in bulk as cargo. This includes a tank barge, a tankship, and a combination carrier, as well as a vessel that is constructed or adapted primarily to carry noxious liquid substances in bulk as cargo and which also carries crude oil or products in bulk as cargo.

STS Operations means the transfer of oil cargo carried in bulk from one oil tanker to another at sea, when at least one of the oil tankers is of 150 gross tonnage and above.

§ 156.410 General.

(a) After April 1, 2012, oil tankers subject to this subpart, and for each U.S. oil tanker, wherever located, subject to this subpart, shall carry onboard an STS Operations Plan that prescribes how that vessel will conduct STS Operations.

(b) Any oil tanker subject to this subpart must carry onboard an STS Operations Plan, prescribing how to conduct STS Operations, no later than the date of the first annual, intermediate, or renewal survey of the oil tanker, which must be carried out on or after January 1, 2011.

(c) The STS Operations Plan must be—

(1) Written in the working language of the oil tanker's crew;

(2) Developed using the information contained in the best practice guidelines for STS Operations identified in the IMO Manual on Oil Pollution, Section 1: Prevention, as amended, and in the ICS and OCIMF Ship to Ship Transfer Guide (Petroleum), fourth edition, 2005 (both documents are incorporated by reference, see § 156.111); and

(3) Approved by the vessel's Flag State for oil tankers operated under the authority of a country other than the United States. For U.S. oil tankers, the STS Operations Plan must be approved by the Commandant (CG–5431) or an Authorized Classification Society.

(d) When chapter IX of the International Convention for the Safety of Life at Sea, 1974, as amended is applicable to the vessel, the STS Operations Plan may be incorporated into an existing required Safety Management System.

(e) Any oil tanker subject to this subpart must comply with the vessel's approved STS Operations Plan while engaging in STS Operations.

(f) The person in overall advisory control of STS Operations must be qualified to perform all relevant duties, taking into account the qualifications found in the best practice guidelines for STS Operations identified in the IMO Manual on Oil Pollution, Section I: Prevention, as amended, and in the ICS and OCIMF Ship to Ship Transfer Guide (Petroleum), fourth edition, 2005 (both documents are incorporated by reference, see § 156.111).

(g) In addition to any records required by the vessel's approved STS Operations Plan, each STS operation must be recorded in the oil tanker's Oil Record Book, required by § 151.25 of this chapter.

(h) All records of STS Operations shall be retained onboard for 3 years and be readily available for inspection.

(i) No oil tanker may transfer oil in a port or place subject to the jurisdiction of the United States, if the oil cargo has been transferred by an STS Operation in the marine environment beyond the baseline, unless:

(1) Both oil tankers engaged in the STS Operation have, onboard, at the time of transfer all certificates required by this chapter for transfer of oil cargos, including a valid Certificate of Inspection or Certificate of Compliance, as applicable to any transfer of oil taking place in a port or place subject to the jurisdiction of the United States;

(2) Both oil tankers engaged in the STS operation have onboard at the time of transfer, evidence that each vessel is operating in compliance with the National Response System as described in section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)). Additionally, the vessels must comply with the Declaration of Inspection requirements delineated in § 156.150 and a vessel response plan if required under part 155 of this chapter; and

(3) Both oil tankers engaged in STS Operations have onboard, at the time of transfer, an International Oil Pollution Prevention (IOPP) Certificate or equivalent documentation of compliance with Annex I, as would be required by part 151 of this chapter for vessels in navigable waters of the United States. The IOPP Certificate or documentation of compliance shall be that prescribed by §§ 151.19 and 151.21 of this chapter, and shall be effective under the same timetable as specified in § 151.19.

(j) In an emergency, the Captain of the Port (COTP), upon request, may authorize a deviation from any requirement in this part if the COTP determines that its application will endanger persons, property, or the environment.

§ 156.415 Notification.

(a) Except as provided for in paragraph (g) of this section, the master, owner or agent of each oil tanker subject to this subpart planning to conduct STS Operations in the territorial sea or exclusive economic zone of the United States must give at least 48 hours advance notice to the COTP nearest the geographic position chosen to conduct these operations. This advance notice must include:

(1) The oil tanker's name, call sign or official number, and registry;

(2) The cargo type and approximate amount onboard;

(3) The number of transfers expected, the amount of cargo expected to be transferred during each transfer, and whether such transfer will be conducted at anchor or underway;

(4) The date, estimated time of arrival, and geographical location at the commencement of the planned STS Operations;

(5) The estimated duration of STS Operations;

(6) Whether STS operations are to be conducted at anchor or underway;

(7) The name and destination of receiving oil tanker(s);

(8) Identification of STS Operations service provider or person in overall advisory control and contact information; and

(9) Confirmation that the oil tanker has onboard an approved STS Operations Plan.

(c) If the estimated arrival time of an oil tanker to the reported geographic location for the commencement of STS operation changes by more than 6 hours, the master, owner, or agent of that oil tanker must provide a revised estimated time of arrival to the COTP.

(d) Where STS Operations are conducted as a result of collision, grounding, tank rupture or any similar emergency, the master, owner, or agent of a vessel must give immediate notice to the Coast Guard office.

(e) In addition to the other requirements in this section, the master, owner, or agent of a vessel that requires a Certificate of Compliance (COC) or other special Coast Guard inspection in

order to conduct STS Operations must request the COC or other inspection from the cognizant Officer in Charge, Marine Inspection (OCMI) at least 72 hours prior to commencement of STS Operations.

(f) The STS Operation advanced notice is in addition to the Notification of Arrival requirements in 33 CFR Part 160.

(g) The master, owner or agent of each oil tanker subject to this subpart planning to conduct STS Operations in a designated lightering zone must give at least 24 hours advance notice to the COTP nearest the geographic position chosen to conduct these operations. This advance notice must include the items listed in paragraph (a) of this section.

(h) If STS operations are conducted under exigent circumstances to secure the safety of a ship, save life at sea, or combat specific incidents in order to minimize the damage from pollution within the territorial sea or exclusive economic zone of the United States, the master, owner, or agent of each oil tanker subject this subpart shall provide notice with adequate explanation, as soon as practicable, to the COTP nearest the geographic position where the exigent STS operation took place.

§ 156.420 Reporting of incidents.

(a) Any vessel affected by fire, explosion, collision, grounding, or any similar emergency that poses a threat to the vessel(s) engaged in STS Operations must report the incident to the nearest Coast Guard office.

(b) The receiving vessel in an STS operation must report, in accordance with the procedures specified in § 151.15 of this chapter, any incident of discharge of oil into the water.

(c) Immediately after the addressing of resultant safety concerns, all marine casualties must be reported to the nearest COTP, Sector Office, Marine Inspection Office, or OCMI in accordance with 46 CFR part 4.

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

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

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); Department of Homeland Security Delegation No. 0170.1. Subparts G, H, and I are also issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520; Pub. L. 104–55, 109 Stat. 546.

17. In § 157.02, add paragraphs (b)(9) and (b)(10) to read as follows:

§ 157.02 Incorporation by reference: Where can I get a copy of the publications mentioned in this part?

* * * * *

(b) * * *

(9) MARPOL 73/78, Annex I, regulation 22, incorporation by reference approved for § 157.14.

(10) MARPOL 73/78, Annex I, regulation 23, incorporation by reference approved for § 157.20.

* * * * *

18. In § 157.08, add paragraph (o) to read as follows:

§ 157.08 Applicability of subpart B.

* * * * *

(o) Section 157.11(h) applies to every oil tanker delivered on or after January 1, 2010, meaning an oil tanker—

(1) For which the building contract is placed on or after January 1, 2007;

(2) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after July 1, 2007;

(3) The delivery of which is on or after January 1, 2010; or

(4) That has undergone a major conversion—

(i) For which the contract is placed on or after January 1, 2007;

(ii) In the absence of a contract, the construction work of which is begun on or after July 1, 2007; or

(iii) That is completed on or after January 1, 2010.

19. In § 157.11, add paragraph (h) to read as follows:

§ 157.11 Pumping, piping and discharge arrangements.

* * * * *

(h) Every oil tanker of 150 gross tons or more delivered on or after January 1, 2010, as defined in § 157.08(o), that has installed a sea chest that is permanently connected to the cargo pipeline system, must be equipped with both a sea chest valve and an inboard isolation valve. The sea chest must be able to be isolated from the cargo piping system by use of a positive means while the tanker is loading, transporting, or discharging cargo. This positive means must be installed in the pipeline in such a way as to prevent, under all circumstances, the section of pipe between the sea chest valve and the inboard valve from being filled with cargo.

20. Add § 157.14 to read as follows:

§ 157.14 Pump-room bottom protection.

Each oil tanker of 5,000 tons deadweight or more constructed on or after January 1, 2007, must meet the minimum standard of pump room bottom protection required by MARPOL 73/78, as amended, Annex I, regulation 22 (incorporated by reference, see § 157.02).

21. Amend § 157.19 as follows:

a. Revise paragraph (a) introductory text to read as set out below;

b. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f), respectively; and

c. Add new paragraph (b) to read as follows:

§ 157.19 Cargo tank arrangement and size.

(a) With the exception of those vessels listed in paragraph (b) of this section, this section applies to:

* * * * *

(b) This section does not apply to U.S. or foreign oil tankers delivered on or after January 1, 2010.

* * * * *

22. Add § 157.20 to read as follows:

§ 157.20 Accidental oil outflow performance.

Each oil tanker which is delivered on or after January 1, 2010 must meet the minimum standard of accidental oil outflow performance required by MARPOL 73/78 Annex I, regulation 23 (incorporated by reference, see § 157.02).

Title 46—Shipping

PART 197—GENERAL PROVISIONS

23. The authority citation for part 197 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703, 6101; Department of Homeland Security Delegation No. 0170.1.

24. Revise § 197.205 by adding paragraph (b)(3) and (b)(4) to read as follows:

§ 197.205 Availability of standards.

* * * * *

(b) * * *

(3) International Standards Organization, ISO Central Secretariat, 1, ch. de la Voie-Creuse, CP 56, CH–1211 Geneva 20, Switzerland.

(4) International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom.

25. Add subpart D, consisting of §§ 197.801 through 197.820, to read as follows:

Subpart D—Hazard Notification

Sec.
197.801 Applicability.
197.805 Definitions.
197.810 Incorporation by reference.
197.820 MSDS Certificates.
Appendix A to Subpart D—
Recommendations for Material Safety Data Sheets (MSDS) for Marine Use That Meet the Particular Needs of the Marine Industry and Contain Safety, Handling, and Environmental Information To Be

Supplied to a Ship Prior to the Loading of Annex I Type Oil as Cargo in Bulk and the Bunkering of Oil Fuel
Appendix B to Subpart D—Guidelines for the Completion of MSDS for the Annex I Type Oil as Cargo in Bulk and Oil Fuel

Subpart D—Hazard Notification

§ 197.801 Applicability.

This subpart applies to all vessels subject to SOLAS 1974, including tank ships and barges that are carrying the liquids listed in MARPOL 73/78, Annex I List of Oils, in bulk as cargo or as oil fuel.

§ 197.805 Definitions.

As used in this subpart:

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, November 2, 1973), modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London, February 17, 1978).

Oil means petroleum, whether in solid, semi-solid, emulsified, or liquid form, including, but not limited to, crude oil, fuel oil, sludge, oil refuse, oil residue, and refined products. This term also includes the substances listed in Appendix I of Annex I of MARPOL 73/78. This term does not include animal- and vegetable-based oil or noxious liquid substances (NLS) designated under Annex II of MARPOL 73/78.

Oil fuel means oil used as fuel for machinery in the vessel in which it is carried.

SOLAS 1974 means the International Convention for the Safety of Life at Sea, as amended.

§ 197.810 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. To enforce any edition other than the one (b) in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at U.S. Coast Guard, Office of Operating and Environmental Standards (CG–522), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources listed below. It is also available for inspection 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/code_of_federal_regulations/ibr_locations.html*. All approved material is available from the sources indicated in paragraph (b) of this section.

(b) International Maritime Organization (IMO) Publications Section, International Maritime Organization, 4 Albert Embankment, London SE1 7SR, United Kingdom

(1) Appendix 1 to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating to that convention (MARPOL 73/78), incorporation by reference approved for §§ 197.805 and 197.820.

(2) [Reserved]

§ 197.820 MSDS Certificates.

(a) Each vessel subject to SOLAS 1974 must carry a Material Safety Data Sheet (MSDS) for each Annex I cargo and ship fuel carried in bulk after January 1, 2011.

(b) The data in the MSDS may be either specific to the individual cargo or fuel oil or it may be generic for that cargo or fuel oil.

(c) Due to the human health hazards from benzene and hydrogen sulfide, and to the fact that sulfur can form hydrogen sulfide, the MSDS must contain the benzene, hydrogen sulfide, and sulfur concentration ranges and their related health hazards.

(d) The MSDS information must be in the English language. However, if the crew cannot understand English, the MSDS must also be in the working language or languages of the ship.

(e) Appendix A to Subpart D contains a non-mandatory example of one format for the MSDS.

(f) Appendix B to Subpart D contains guidelines for completing the MSDS Appendix A to Subpart D.

Appendix A to Subpart D—Recommendations for Material Safety Data Sheets (MSDS) for Marine Use That Meet the Particular Needs of the Marine Industry and Contain Safety, Handling, and Environmental Information To Be Supplied to a Ship Prior to the Loading of Annex I Type Oil as Cargo in Bulk and the Bunkering of Oil Fuel

Section	Heading	Content
1	Identification of the substance or mixture and of the supplier.	• Name of the category. See guidance in Annex II for Annex I type oil cargoes and oil fuels. • The name of the substances. • Trade name of the substances. • Description on Bill of Lading (B/L), Bunker Delivery Note or other shipping document. • Other means of identification. • Suppliers details (including name, address, telephone number, etc.). • Emergency telephone number.
2	Hazards identification	• GHS* classification of the substance/mixture and any regional information. • Other hazards which do not result in classification (e.g., hydrogen sulphide) or are not covered by the GHS. See Guidelines in Annex II.
3	Composition/information on ingredients	• Common name, synonyms, etc. • Impurities and stabilizing additives which are themselves classified and which contribute to the classification of the substances. • The chemical identity and concentration or concentration ranges of all ingredients which are hazardous within the meaning of GHS and are present above their cut-off levels. Cut-off level for reproductive toxicity, carcinogenicity and category 1 mutagenicity is 0.1%. Cut-off level for all other hazard classes is 1%. See Guidelines in Annex II.
4	First aid measures	• Description of necessary measures, subdivided according to the different routes of exposure, i.e. inhalation, skin and eye contact, and ingestion. • Most important symptoms/effects, acute and delayed. • Indication of immediate medical attention and special treatment, if necessary.

Section	Heading	Content
5	Fire-fighting measures	• Suitable extinguishing media. • Specific hazards arising from the chemical (e.g., nature of any hazardous combustion products). • Special protective equipment and precautions for fire-fighters.
6	Accidental release measures	• Personal precautions, protective equipment and emergency procedures. • Environmental precautions. • Methods and materials for containment and clean-up.
7	Handling and storage	• Precautions for safe handling. • Conditions for safe storage, including any incompatibilities.
8	Exposure controls/personal protection	• Control parameters (e.g., occupational exposure limit values). • Appropriate technical precautions. • Individual protection measures, such as personal protective equipment.
9	Physical and chemical Properties	See Guidelines in Annex II.
10	Stability and reactivity	• Chemical stability. • Possibility of hazardous reactions. • Conditions to avoid (e.g., static discharge).
11	Toxicological information	• Concise but complete and comprehensible description of the various toxicological (health) effects and the available data used to identify those effects, including: ▪ Information on the likely routes of exposure (inhalation, ingestion, skin and eye contact); Symptoms related to the physical, chemical and toxicological characteristics; ▪ Delayed and immediate effects and also chronic effects from short- and long-term exposure. • Numerical measures of toxicity (such as acute toxicity estimates). • See Guidelines in Annex II.
12	Ecological information	• Ecotoxicity (aquatic and terrestrial, where available). • Persistence and degradability. • Bioaccumulation potential. • Mobility in soil. • Other adverse effects. • See Guidelines in Annex II.
13	Disposal considerations	Description of waste residues and information on their safe handling and methods of disposal, in line with MARPOL 73/78 requirements.
14	Transport information	• UN number, where applicable. • UN Proper shipping name, where applicable. • Transport Hazard class(es), where applicable. • Special precautions that a user needs to be aware of or needs to comply with in connection with transport (e.g., heating and carriage temperatures). • Note that this product is being carried.
15	Regulatory information	Safety, health and environmental regulations specific for the product in question.
16	Other information, including information on preparation and revision of the MSDS.	• Version No. • Date of issue. • Issuing source.

Globally Harmonized System of Classification and Labeling of Chemicals (GHS), United Nations (2007 edition, as revised).

Appendix B to Subpart D—Guidelines for the Completion of MSDS for the Annex I Type Oil as Cargo in Bulk and Oil Fuel

1 Categories of Liquids

The following categories subdivide the full scope of substances covered by Annex I of MARPOL 73/78 and set in groups specific products for general identification purposes.

.1 Crude oils;
.2 Fuel and residual oils, including ship's bunkers*;
.3 Unfinished distillates, hydraulic oils and lubricating oils;
.4 Gas oils, including ship's bunkers**;
.5 Kerosenes;
.6 Naphthas and condensates;
.7 Gasoline blending stocks;
.8 Gasoline and spirits; and
.9 Asphalt solutions.

2 Properties and Information

In addition to properties and information specified in Annex 1, the following properties and information should be reported:

.1 For the following provide appropriate hazards identification in section 2, composition/information on ingredients in section 3, and toxicological information in section 11 of the MSDS:
  .1 Benzene. If present ≥0.1% by weight (even if naturally occurring ingredient of the material);
  .2 Hydrogen sulphide. If present at any concentration, in liquid and vapor phases, or if possible to accumulate in a tank's vapor space; and
  .3 Total Sulphur. If present ≥0.5% by weight, identify in section 3 and warn of potential for hydrogen sulphide evolution in sections 2 and 11;
.2 For physical and chemical properties in section 9 of the MSDS:
  .1 Appearance (physical state, color, etc.);
  .2 Odor;
  .3 Pour point;
  .4 Boiling range;
  .5 Flashpoint;
  .6 Upper/lower flammability or explosive limits;
  .7 Vapor pressure (Reid vapor pressure (RVP) when appropriate);
  .8 Vapor density;
  .9 Density;
  .10 Auto-ignition temperature; and
  .11 Kinematic viscosity; and
.3 For ecological information in section 12 of the MSDS: Persistent or non-persistent oil as per the International Oil Pollution Compensation (IOPC) Fund definition*.

* Refer to standard ISO 8217:2005, Petroleum products. Fuels (class F). Specifications of marine fuels, table 2.

** Refer to standard ISO 8217:2005, Petroleum products. Fuels (class F). Specifications of marine fuels, table 1.

Dated: March 1, 2012.

F.J. Sturm,

Acting Director of Commercial Regulations, and Standards, U.S. Coast Guard.

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Part VI

The President

Proclamation 8796—Education and Sharing Day, U.S.A., 2012

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Presidential Documents

Title 3—

The President

Proclamation 8796 of April 3, 2012

Education and Sharing Day, U.S.A., 2012

By the President of the United States of America

A Proclamation

For centuries, the pursuit of knowledge and the cultivation of character have driven American progress and enriched our national life. On Education and Sharing Day, U.S.A., we renew our commitment to these timeless aspirations, and we rededicate ourselves to fostering in our sons and daughters inquiring minds and compassionate hearts.

In a global economy where more than half of new jobs will demand higher education or advanced training, we must do everything we can to equip our children with the tools for success. Their journey begins early, and it demands stewardship from throughout the community—from parents and caregivers who inspire a love of learning to teachers and mentors who guide our children along the path to achievement. Our Nation's prosperity grows with theirs, and by ensuring every child has access to a world class education, we reach for a brighter future for all Americans.

Yet, we also move forward knowing we cannot secure the promise of tomorrow through formal education alone. With each generation, our Nation has confronted questions that tested the quality and character of our people. We have borne witness to seemingly insurmountable problems of inequality, oppression, or dire circumstance at home and abroad, and where we have recognized injustice, the way forward has not always been clear. Time and again, during moments of trial, Americans have demonstrated a fundamental commitment to compassion, cooperation, and goodwill toward others—doing not what is easy, but what is right. These qualities have come to define us, and as we prepare today's students to become tomorrow's leaders, let us nourish in them the virtues that have sustained our country for generations.

On Education and Sharing Day, U.S.A., we reflect on the teachings of Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, who embodied that humanitarian spirit. As a tireless advocate for youth around the world, he inspired millions to lift the cause of education, to practice kindness and generosity, and to aspire toward their highest ideals. His enduring legacy lives on in those he touched, and today, we resolve to carry forward his dedication to service and scholarship.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 3, 2012, as Education and Sharing Day, U.S.A. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of April, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

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