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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9648]

RIN 1545–BK53

Dividend Equivalents From Sources Within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to certain dividend equivalents for purposes of section 871(m) of the Internal Revenue Code (Code). The regulations provide guidance to nonresident alien individuals and foreign corporations that hold specified notional principal contracts providing for payments that are contingent upon or determined by reference to U.S. source dividend payments and to withholding agents.

DATES: *Effective Date:* These regulations are effective on December 5, 2013.

Applicability Date: For dates of applicability, see §§ 1.863–7(a)(2), 1.871–15(o), 1.881–2(e), 1.892–3(c), 1.894–1(e), 1.1441–2(f), 1.1441–3(h)(2), 1.1441–4(g)(1), 1.1441–6(i)(1), 1.1441–7(a)(4) and (g), and 1.1461–1(c)(2)(iii).

FOR FURTHER INFORMATION CONTACT: D. Peter Merkel or Karen Walny at (202) 317–6938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

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

Section 871(m) applies to any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction (repo) that is contingent upon, or determined by reference to, the payment of a U.S. source dividend, any payment made pursuant to a notional principal contract (NPC) that is a specified notional principal contract (specified NPC) when the payment is contingent upon, or determined by reference to, the payment of a U.S. source dividend, and any other payment determined by the Secretary to be substantially similar (dividend equivalent). Section 871(m) treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 871(m) generally applies to any dividend equivalent payment made on or after September 14, 2010. With respect to payments made on or after September 14, 2010, and on or before March 18, 2012, section 871(m)(3)(A) provides a factor-based test for determining whether an NPC is a specified NPC. With respect to payments made after March 18, 2012, section 871(m)(3)(B) provides that any NPC is a specified NPC unless the Secretary determines that the contract is of a type which does not have the potential for tax avoidance.

On January 23, 2012, the **Federal Register** published temporary regulations (TD 9572) at 77 FR 3108 (2012 temporary regulations), and a notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing at 77 FR 3202 (2012 proposed regulations, and together with the 2012 temporary regulations, 2012 section 871(m) regulations) under section 871(m) of the Code. The 2012 section 871(m) regulations related to dividend equivalents from sources within the United States paid to nonresident alien individuals and foreign corporations. Corrections to the 2012 temporary regulations were published on February 6, 2012, and March 8, 2012, in the **Federal Register** at 77 FR 5700 and 77 FR 13969, respectively. A correcting amendment to the 2012 temporary regulations was also published on August 31, 2012, in the **Federal Register** at 77 FR 53141.

The Treasury Department and the IRS received written comments on the 2012 section 871(m) regulations, which are available at *www.regulations.gov*. A public hearing was held on April 27, 2012. The majority of the comments related to the 2012 proposed regulations. Comments received regarding the provisions being finalized in this document are described in the Explanation of Provisions part of the preamble. An explanation of the other comments on the 2012 section 871(m) regulations is provided in the withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing on this subject in the Proposed Rules Section in this issue of the **Federal Register**.

Explanation of Provisions

Section 1.871–15(d)(1) of these final regulations adopts with minimal changes § 1.871–16T(b) of the 2012 temporary regulations, which incorporates the definition of a specified NPC provided in section 871(m)(3)(A). The four-factor specified NPC definition provided in § 1.871–16T(b) applies to payments made after March 18, 2012, and before January 1, 2014. These final regulations extend the applicability of the four-factor definition to payments made before January 1, 2016. Proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register** (the 2013 proposed regulations) contain the proposed definition of a specified NPC for payments made on or after January 1, 2016. The 2013 proposed regulations replace the 2012 proposed regulations, which provided a seven-factor approach to defining a specified NPC. Comments indicated that financial services providers would have difficulty modifying their systems to implement the 2012 proposed regulations under the timeline provided in the 2012 proposed regulations. The Treasury Department and the IRS believe that an extension of the statutory definition of the term specified NPC is necessary because the 2013 proposed regulations adopt a different approach from the 2012 proposed regulations for determining whether an NPC is a specified NPC. In addition, this extension will allow the financial services industry adequate time to establish necessary systems and other operating procedures to comply with the rules described in the 2013 proposed regulations.

The 2012 temporary regulations amended several regulations to clarify the application of section 871(m). For example, the 2012 temporary regulations modified § 1.863–7 to provide that the general source rule for NPCs did not apply to a dividend equivalent under section 871(m). The 2012 temporary regulations also provided that section 871(m) and § 1.871–16T applied to dividend equivalents received by foreign corporations. These final regulations adopt those temporary rules without change.

These final regulations also amend certain regulations under section 1441 to require a withholding agent to withhold tax owed with respect to a dividend equivalent. Generally, these amendments are consistent with the amendments made in the 2012 temporary regulations. In addition, these final regulations reinstate to § 1.1441–7(a)(3) examples relating to the definition of a withholding agent, which were inadvertently deleted by the 2012 temporary regulations.

One comment suggested that the regulations clarify that financial intermediaries and custodians are not parties to a section 871(m) transaction and should not be withholding agents with respect to a dividend equivalent payment. The Treasury Department and the IRS disagree and believe that a financial intermediary or custodian that satisfies the definition of a withholding agent provided in § 1.1441–7(a) should be considered a withholding agent for purposes of section 871(m).

Another comment stated that § 1.1441–3T(i), which permitted a withholding agent to use the distributing corporation's estimates to determine the amount of a dividend equivalent, was unduly harsh because the withholding agent remained liable for tax, interest, and penalties when the actual dividend exceeded the estimate. Section 1.1441–3T(i) is withdrawn and is not adopted in these final regulations. The Treasury Department and the IRS believe that withholding agents should comply with § 1.1441–3(d)(1) in the event that the amount of a dividend equivalent is uncertain.

Other comments relating to the withholding provisions described the difficulties that withholding agents would encounter when administering the 2012 proposed regulations. The Treasury Department and the IRS believe that withdrawing the 2012 proposed regulations and publishing the 2013 proposed regulations addresses these comments.

In addition, these regulations finalize portions of the 2012 proposed regulations relating to the treatment of dividend equivalent payments for purposes of sections 892 and 894. Comments to the 2012 proposed regulations generally supported the proposed regulations under sections 892 and 894. These portions of the proposed regulations are finalized without change.

The Treasury Department and the IRS will continue to closely scrutinize other transactions that are not covered by section 871(m) and that may be used to avoid U.S. taxation and U.S. withholding. In addition, the IRS may challenge the U.S. tax results claimed in connection with transactions that are designed to avoid the application of section 871(m) using all available statutory provisions and judicial doctrines (including the substance over form doctrine, the economic substance doctrine under section 7701(o), the step transaction doctrine, and tax ownership principles) as appropriate. For example, nothing in section 871(m) precludes the IRS from asserting that a contract labeled as an NPC is in fact an ownership interest in the equity referenced in the contract.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect multinational financial institutions, which tend to be larger businesses, and foreign entities. Moreover the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are D. Peter Merkel and Karen Walny of the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS also participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.863–7 and adding an entry for § 1.871–15 to read in part as follows:

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

§ 1.863–7 also issued under 26 U.S.C. 863(a) and 871(m). * * * § 1.871–15 also issued under 26 U.S.C. 871(m). * * *

■ **Par. 2.** Section 1.863–7 is amended by:

■ 1. Revising paragraph (a)(1).

■ 2. In paragraph (a)(2), revising the heading and adding a sentence at the end.

The revisions and addition read as follows:

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

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

(2) *Effective/applicability date.* * * * With respect to a dividend equivalent described in section 871(m) and the regulations thereunder, this section applies to payments made on or after January 23, 2012.

* * * * *

§ 1.863–7T [Removed].

■ **Par. 3.** Section 1.863–7T is removed.

■ **Par. 4.** Section 1.871–15 is added as follows:

§ 1.871–15 Treatment of dividend equivalents.

(a) through (c) [Reserved].

(d) *Specified NPCs*—(1) *Specified NPCs before January 1, 2016.* For payments made after March 18, 2012, and before January 1, 2016, a specified NPC is any NPC if—

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

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

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

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

(d)(2) through (n) [Reserved].

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

§ 1.871–15T [Removed].

■ **Par. 5.** Section 1.871–15T is removed.

§ 1.871–16T [Removed].

■ **Par. 6.** Section 1.871–16T is removed.

■ **Par. 7.** Section 1.881–2 is amended by:

■ 1. Revising paragraph (b)(3).

■ 2. In paragraph (e), revising the heading and adding a sentence at the end.

The revisions and addition read as follows:

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

* * * * *

(b) * * *

(3) *Dividend Equivalents.* For rules applicable to a foreign corporation's receipt of a dividend equivalent, see section 871(m) and the regulations thereunder.

* * * * *

(e) *Effective/applicability date.* * * * Paragraph (b)(3) of this section applies to payments made on or after January 23, 2012. * * *

§ 1.881–2T [Removed].

■ **Par. 8.** Section 1.881–2T is removed.

■ **Par. 9.** Section 1.892–3 is added to read as follows:

§ 1.892–3 Income of foreign governments.

(a)(1) through (a)(5) [Reserved]. For further information, see § 1.892–3T(a)(1) through (a)(5).

(6) *Dividend equivalents.* Income from investments in stocks includes the payment of a dividend equivalent described in section 871(m) and the regulations thereunder.

(b) [Reserved]. For further information, see § 1.892–3T(b).

(c) *Effective/applicability date.* Paragraph (a)(6) of this section applies to payments made on or after December 5, 2013.

■ **Par. 10.** Section 1.894–1 is amended by:

■ 1. Redesignating paragraph (c) as (c)(1) and adding paragraph (c)(2).

■ 2. In paragraph (e):

■ a. Revising the heading,

■ b. Revising the third sentence, and

■ c. Adding a new fourth sentence.

The addition and revisions read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(c) * * *

(2) *Dividend equivalents.* The provisions of an income tax convention relating to dividends paid to or derived by a foreign person apply to the payment of a dividend equivalent described in section 871(m) and the regulations thereunder.

* * * * *

(e) *Effective/applicability date.* * * * Paragraph (c)(1) of this section applies to payments made after November 13, 1997. Paragraph (c)(2) of this section applies to payments made on or after December 5, 2013. * * *

■ **Par. 11.** Section 1.1441–2 is amended by:

■ 1. Revising paragraph (b)(6).

■ 2. Adding a sentence to the end of paragraph (f).

The revision and addition read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(b) * * *

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

* * * * *

(f) *Effective/applicability date.* * * * Paragraph (b)(6) of this section applies to payments made on or after January 23, 2012.

§ 1.1441–2T [Removed].

■ **Par. 12.** Section 1.1441–2T is removed.

■ **Par. 13.** Section 1.1441–3 is amended by:

■ 1. Revising paragraph (h).

■ 2. Removing paragraph (i).

■ 3. Redesignating paragraph (j) as newly-designated paragraph (i) and removing the language ''paragraph (g)'' from newly-redesignated paragraph (i) and adding ''paragraphs (g) and (h)'' in its place.

The revisions read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

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

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

* * * * *

§ 1.1441–3T [Removed].

■ **Par. 14.** Section 1.1441–3T is removed.

■ **Par. 15.** Section 1.1441–4 is amended by:

■ 1. Revising paragraphs (a)(3)(i) and (iii).

■ 2. Revising the heading to paragraph (g).

■ 3. Removing the language ''2000.'' in paragraph (g)(1) and adding ''2000, except that paragraph (a)(3)(iii) of this section applies to payments made on or after January 23, 2013.'' in its place

The revisions read as follows:

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

(a) * * *

(3) *Income on notional principal contracts*—(i) *General rule.* Except as otherwise provided in paragraph (a)(3)(iii) of this section, a withholding agent that pays amounts attributable to a notional principal contract described in § 1.863–7(a) or § 1.988–2(e) shall have no obligation to withhold on the amounts paid under the terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent

must file returns under § 1.1461–1(b) and (c) reporting the income that it must treat as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must treat the income as effectively connected with the conduct of a U.S. trade or business if the income is paid to, or to the account of, a qualified business unit of a foreign person located in the United States or, if the payment is paid to, or to the account of, a qualified business unit of a foreign person located outside the United States, the withholding agent knows, or has reason to know, the payment is effectively connected with the conduct of a trade or business within the United States. Income on a notional principal contract does not include the amount characterized as interest under the provisions of § 1.446–3(g)(4).

* * * * *

(iii) *Exception for specified notional principal contracts.* A withholding agent that makes a payment attributable to a specified notional principal contract described in section 871(m) and the regulations thereunder that is not treated as effectively connected with the conduct of a trade or business within the United States is obligated to withhold on the amount of the payment that is a dividend equivalent.

* * * * *

(g) *Effective/applicability date*—* * *

* * * * *

§ 1.1441–4T [Removed].

■ **Par. 16.** Section 1.1441–4T is removed.

■ **Par. 17.** Section 1.1441–6 is amended by:

■ 1. Revising paragraph (c)(2).

■ 2. Redesignating paragraph (h) as paragraph (i) and revising newly-redesignated paragraph (i)(1).

■ 3. Adding a new paragraph (h).

The revisions and addition read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(c) * * *

(2) *Income to which special rules apply.* The income to which paragraph (c)(1) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1), dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a), and amounts paid with respect to loans of securities described in this paragraph (c)(2). With respect to a dividend equivalent described in section 871(m) and the regulations thereunder, this paragraph (c)(2) applies to the extent that the underlying security described in section 871(m) and the regulations thereunder satisfies the requirements of this paragraph (c)(2). For purposes of this paragraph (c)(2), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and § 1.1092(d)–1 when documentation is provided.

* * * * *

(h) *Dividend equivalents.* The rate of withholding on a dividend equivalent may be reduced to the extent provided under an income tax treaty in effect between the United States and a foreign country. For this purpose, a dividend equivalent as described in section 871(m) and the regulations thereunder is treated as a dividend from sources within the United States. To receive a reduced rate of withholding with respect to a dividend equivalent, a foreign person must satisfy the other requirements described in this section.

(i) *Effective/applicability dates*—(1) *General rule.* This section applies to payments made after December 31, 2000, except that—

(i) Paragraph (g) of this section applies to payments made after December 31, 2001, and

(ii) Paragraph (h) of this section applies to payments made on or after December 5, 2013.

* * * * *

■ **Par. 18.** Section 1.1441–7 is amended by:

■ 1. Removing paragraph (a)(3).

■ 2. Redesignating paragraph (a)(2) as paragraph (a)(3) and revising newly-redesignated paragraph (a)(3).

■ 3. Adding a new paragraph (a)(2).

■ 4. Adding a new paragraph (a)(4).

■ 5. Revising paragraph (g).

The revisions and additions read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) * * *

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

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

Example 1. USB is a broker organized in the United States. USB pays U.S. source dividends and interest, which are amounts subject to withholding under § 1.1441–2(a), to FC, a foreign corporation that has an investment account with USB. USB is a withholding agent as defined in paragraph (a)(1) of this section.

Example 2. USB is a bank organized in the United States. FB is a bank organized in country X. FB has an omnibus account with USB through which FB invests in debt and equity instruments that pay amounts subject to withholding as defined in § 1.1441–2(a). FB is a nonqualified intermediary, as defined in § 1.1441–1(c)(14). Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

Example 3. The facts are the same as in *Example 2,* except that FB is a qualified intermediary. Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

Example 4. FB is a bank organized in country X. FB has a branch in the United States. FB's branch has customers that are foreign persons who receive amounts subject to withholding, as defined in § 1.1441–2(a). FB is a withholding agent under paragraph (a)(1) of this section and is required to withhold and report payments of amounts subject to withholding in accordance with chapter 3 of the Internal Revenue Code.

Example 5. X is a foreign corporation. X pays dividends to shareholders who are foreign persons. Under section 861(a)(2)(B), a portion of the dividends are from sources within the United States and constitute amounts subject to withholding within the meaning of § 1.1441–2(a). The dividends are not subject to tax under section 884(a). See section 884(e)(3). X is a withholding agent under paragraph (a)(1) of this section.

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

(4) *Effective/applicability date.* Paragraph (a)(2) of this section and *Example 6* apply on or after January 23, 2012.

* * * * *

(g) *Effective/applicability date.* Except as otherwise provided in paragraphs (a)(4) and (f)(3) of this section, this section applies to payments made after December 31, 2000.

§ 1.1441–7T [Removed].

■ **Par. 19.** Section 1.1441–7T is removed.

■ **Par. 20.** Section 1.1461–1 is amended by:

■ 1. Revising paragraph (c)(2)(i)(L).

■ 2. Adding paragraph (c)(2)(iii).

The revision and addition read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

* * * * *

(c) * * *

(2) * * *

(i) * * *

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

* * * * *

(iii) *Effective/applicability date.* Paragraph (c)(2)(i)(L) of this section applies on or after January 23, 2012.

* * * * *

§ 1.1461–1T [Removed].

■ **Par. 21.** Section 1.1461–1T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: November 26, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–28933 Filed 12–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1168–P]

RIN 1120–AB68

Compassionate Release

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: The Bureau of Prisons (Bureau) changes its regulations on compassionate release, to provide that when considering an inmate for reduction in sentence, the General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced; and the final decision is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

DATES: This rule will be effective December 5, 2013. Written comments must be postmarked and electronic comments must be submitted on or before February 3, 2014. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. BOP 1168'' on all electronic and written correspondence. The Department encourages all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site for easy reference. Paper comments that duplicate the electronic submission are not necessary as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. Should you, however, wish to submit written comments via regular or express mail, they should be sent to Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

SUPPLEMENTARY INFORMATION: The Bureau published a proposed rule revising all of the regulations in 28 CFR part 571, subpart G, on December 21, 2006 (71 FR 76619). We also published an interim rule making a technical change to the regulations on February 28, 2013 (78 FR 13478).

We now withdraw the proposed rule published in 2006. The Bureau is continuing to consider issues relating to compassionate release and the public comments submitted in response to the 2006 notice of proposed rulemaking.

At this time, we are promulgating this interim rule which makes the following changes to the regulations on compassionate release: (1) Providing that, when considering an inmate for reduction in sentence, the General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced; and (2) clarifying that the final decision is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

Section 571.62 describes procedures the Bureau follows to review a request for reduction in sentence. The request must be reviewed by the Warden, General Counsel, Medical Director (for medical referrals), the Assistant Director (for non-medical referrals), and the Director. During the course of this review, the United States Attorney's Office is consulted and made aware of a request being considered for approval.

This is current practice for requests for reduction in sentence.

We now codify this practice to make it clear to inmates and the public that the United States Attorney's Office will be consulted in the course of the review of the Office of General Counsel. We will therefore insert a provision stating that the General Counsel will solicit the opinion of the U.S. Attorney in the district in which the inmate was sentenced.

Also, in § 571.62(a)(2), which describes the Bureau's approval of a request to make a motion for compassionate release, we add a statement clarifying that final decision authority is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

Administrative Procedure Act 5 U.S.C. 553

The two changes made in this interim rule are ''matter[s] relating to agency management'' as described in 5 U.S.C. 553(a)(1), and are ''rules of agency organization, procedure, or practice'' as described in section 553(b)(A), and, accordingly, they are not subject to the requirement for prior notice and comment under section 553(b). These changes impose no new restrictions on inmates or the public. Because this rule relates to agency management as described in section 553(a)(1), and is not a ''substantive rule'' as described in section 553(d), this rule is not subject to a requirement for a delayed effective date. This rule is made effective upon issuance.

Congressional Review Act

The Bureau of Prisons has determined that this action pertains to agency management and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (CRA), (Subtitle E of the Small Business Regulatory Enforcement Fairness Act, (SBREFA)). Therefore, the reports to Congress and the General Accounting Office specified by section 801 of SBREFA are not required.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation, and Executive Order 13563, ''Improving Regulation and Regulatory Review''. Because this interim rule is ''limited to agency organization, management, or personnel matters,'' within the meaning of Executive Order 12866, section 3(d)(3), it does not fall within the scope of a ''regulation'' or ''rule'' that is subject to review under Executive Order 12866. Accordingly this regulation has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of inmates committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This regulation is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 571

Prisoners.

Thomas R. Kane

Deputy Director, Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR chapter V, subchapter D, part 571, as follows.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

■ 1. Revise the authority citation for 28 CFR part 571 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565; 3568 and 3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509 and 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1–1.10; D.C. Official Code sections 24–101, 24–461, 24–465, 24–467, and 24–468.

Subpart G—Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g))

■ 2. In 571.62, the second sentence of paragraph (a)(2) is removed and two sentences are added in its place to read as follows:

§ 571.62 Approval of request.

(a) * * *

(2) * * * The General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced. With these opinions, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision, subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

* * * * *

[FR Doc. 2013–29076 Filed 12–4–13; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 211

[Docket ID: DOD–2011–OS–0054; RIN 0790–AI69]

Mission Compatibility Evaluation Process

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Final rule.

SUMMARY: Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 required the Department of Defense (DoD) to designate a senior official and a lead organization to serve as a clearinghouse for the coordination of DoD review of applications filed with the Secretary of Transportation. Applications referred to the DoD involve proposals for the construction of structures that may affect navigable air space. Section 358 requires DoD to issue procedures for addressing the impacts of those structures on military operations and determining if they pose an unacceptable risk to the national security of the United States. Section 358 requires the establishment of a comprehensive strategy for addressing military impacts of renewable energy projects and other energy projects and annual reports to Congress; these requirements are not part of this rule and will be addressed separately. Nor does this rule deal with other proposal review processes not included in section 358, such as those applied by the Bureau of Land Management, Department of the Interior.

DATES: This rule is effective on January 6, 2014.

FOR FURTHER INFORMATION CONTACT: Bill Van Houten, (703) 571–9068, or at *DoDSitingClearinghouse@osd.mil*.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
III. Summary of Significant Changes to the Rule
  A. Definitions
  B. Project Evaluation Procedures
  C. Communications and Outreach
IV. Other Adjustments to the Final Rule
V. Executive Summary
VI. Administrative Requirements
  A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review.
  B. Section 202, Public Law 104–4, Unfunded Mandates Reform Act
  C. Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)
  D. Section 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)
  E. Executive Order 13132, Federalism

I. Authority

This action is authorized by section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111–383, as amended by section 331 of Public Law 112–81.

II. Background

The Department of Defense (hereinafter the ''Department'') published an interim final rule in the **Federal Register** on October 20, 2011, at 76 FR 65112.

The public comment period for the interim final rule ended on December 19, 2011. Two commenters submitted comments on the interim final rule. The preamble to the final rule provides a discussion of each section of the interim final rule on which comments were received. Where changes in the rule are being made, specific reference is made to those changes in the discussion. Where no specific reference is made in the discussion, no change to the interim final rule is being made. Revisions to the rule that are simply editorial or that do not reflect substantive changes are not addressed in this preamble.

All comments the Department received are presented in a document available at *http://www.acq.osd.mil/ie/siting.shtml*.

III. Summary of Significant Changes to the Final Rule

This section contains the Department's responses to the comments received on the interim final rule, organized by the structure of the interim final and final rules.

The primary purpose of the rule is to promulgate the Department's policies and procedures for the external interfaces that are necessary to comply with section 358 of Public Law 111–383. Most of the comments received were recommendations for greater specificity in the rule, particularly with respect to standards, criteria, and communications. The Department has carefully considered the comments it has received. Its responses follow:

A. Definitions

Comment: One comment characterized the definition of ''adverse impact on military operations and readiness'' as overly broad and stated that it is not clear from either section 358 or the interim final rule how an adverse impact that rises to the level of an unacceptable risk to national security differs from an adverse impact that does not. The same comment suggested that the rule distinguish impacts that do not significantly impact military operations from those that could so that further evaluation and discussion of mitigation measures could be focused on the latter.

Response: The Department has made some minor grammatical adjustments to the definition of ''Unacceptable risk to the national security of the United States''. However, the coordinated evaluation process required by section 358 is still not sufficiently mature for the Department to establish more specific quantitative thresholds to distinguish adverse impacts that do not significantly impact military operations and readiness from those that do. The law provides for the Department to establish procedures to ensure that the Secretary of Defense does not object to a project unless the Secretary of Defense or a senior officer designated by the Secretary of Defense determines that the project would result in an unacceptable risk to the national security of the United States. The rule provides that the Deputy Secretary of Defense may make a determination that a particular project would pose an unacceptable risk to national security and it establishes procedures to ensure that, in such cases, the Deputy Secretary of Defense has the benefit of a recommendation from a senior official as well as information about the mitigation measures that were available to both the Department and the applicant. The Department does not believe that further specificity is needed at this time.

Comment: One comment suggested expanding the definition of the term ''requester'' in the rule. Under the rule, a requester is authorized to ask the DoD for an informal review of a proposed project. However, the definition of ''requester'' in the interim final rule did not include landowners, and the comment argued that large landowners are in a position to steer developers to portions of their property that have better resources for renewable energy projects and fewer or more manageable conflicts with DoD interests.

Response: The Department agrees, and the definition of ''requester'' has been expanded in the final rule to include landowners. A definition of the term ''landowner'' has been provided in the rule.

B. Project Evaluation Procedures

Comment: One comment stated that the interim final rule was not clear as to what level of information will be shared with the applicant or with the Federal Aviation Administration to explain a DoD determination that a project will have an adverse impact on military

operations and readiness or pose an unacceptable risk to national security.

Response: Because some explanations may involve sensitive or classified information, it is appropriate to avoid committing the Department to a certain level, or format, for transmitting information about such determinations to either applicants or the Federal Aviation Administration. The language in the rule allows the Department the flexibility to provide explanations in a manner that the Department considers necessary and appropriate as well as to withhold information that could compromise the national security of the United States if it were released. No change was made to the rule to address this comment.

Comment: One comment questioned the provision in section 211.6(b)(1)(ii) of the interim final rule that requires the applicant to amend an application that has been filed with the Secretary of Transportation if the applicant and the Department reach agreement on mitigation measures that remove an adverse impact on military operations and readiness. The comment contends that such an amendment is unnecessary if the agreed-upon mitigation solely involves measures to be taken by DoD.

Response: The Department agrees, and the provision has been modified in the final rule to require the applicant to file an amended application only if the agreed-upon mitigation measures entail modification to the proposed project.

Comment: One comment pointed out that the language in the subpart of the interim final rule that addresses project evaluation procedures could be interpreted as implying a preference for mitigation measures to be taken by the applicant over mitigation measures to be taken by the Department. The comment recommended that the language in question be modified to ensure there is no implied preference for mitigation on the part of the applicant.

Response: The Department does not agree that the language in the rule suggests a preference for mitigation measures to be taken by the applicant. Section 211.6(b)(2)(iii) and Section 211.6(c)(3) provide for consideration of the mitigation actions that are available to the Department as well as those that have been agreed to by the applicant. No change was made in the rule to address this comment.

Comment: One comment raised a question as to whether all adverse impacts must be mitigated or only those that are determined to pose an unacceptable risk to national security.

Response: Since only the senior officer designated by the Secretary of Defense can officially determine that a proposed project poses an unacceptable risk to the national security of the United States and communicate that determination to the Secretary of Transportation, it would not be cost effective to make such determinations relative to each project before deciding whether or not to mitigate the adverse impact of that project. However, in response to that comment, sections 211.6(a)(3)(ii) and 211.7(b)(2)(ii) have been added to provide for determinations that the adverse impact posed by a proposed project is sufficiently attenuated that it does not require mitigation.

Comment: One comment recommended that the procedures in the rule be modified to allow landowners to address mitigation. That comment contended that large landowners in particular would have more flexibility in addressing mitigation than a developer who only has a leasehold interest on a portion of the landowner's property.

Response: In the final rule, section 211.3 has been modified to include the owners of land on which a proposed project is planned among the parties that are eligible to request an informal review from the Department of Defense. Additionally, section 211.7(b)(2)(ii)(B) has been modified to ensure that landowners (when they are requesters) are notified of Clearinghouse determinations.

Comment: One comment recommended that the Department provide quantitative guidance in the rule concerning what constitutes at acceptable level of mitigation.

Response: It is not currently possible to identify objective measures of mitigation with sufficient specificity to enumerate them in a rule. The Department is working to develop guidelines and models, but those guidelines and models are not yet mature. To provide some additional clarity, however, in section 211.9(b) of the final rule, the Department included a provision that an applicant or requester discussing mitigation with the Department should consider limiting the daily operating hours or the number of days that equipment in the proposed structure would be in use along with other possible actions that could be taken to avoid an unacceptable risk to the national security of the United States.

Comment: One commenter expressed concern that section 211.9(b)(3) of the interim final rule urged applicants to consider providing a voluntary contribution to offset the cost of mitigation measures undertaken by the DoD, but did not provide a specific process for the transfer of such funds or a statement of what commitments the Department would make in return for such funds. The comment also requested clarification as to how large a contribution would be necessary to lead the Department to withdraw an objection, whether the only acceptable level of contributions was to pay the full cost of mitigation, or whether a Federal cost share would be available in some circumstances.

Response: It is not possible to specify in a rule what commitments, if any, the Department would make in conjunction with any given voluntary contribution. Certainly, the decision to withdraw an objection based on the existence of an unacceptable risk to national security will not be predicated on the magnitude of a voluntary contribution. A voluntary contribution is in the nature of mitigation since it allows the Department to reduce or eliminate an adverse impact. The effect that a voluntary contribution has on the analysis of adverse impact and unacceptable risk will vary from project to project. In some instances, it may remove an adverse impact; in others, an unacceptable risk may be unavoidable and not subject to mitigation. The facts of each project will determine whether a voluntary contribution will act to mitigate an adverse impact. It is not necessary to specify a method of payment in the rule since that information will be available on the Clearinghouse Web site. No change was made to the rule to address this comment.

C. Communications and Outreach

Comment: With respect to section 211.12 of the interim final rule, one comment observed that proposed renewable energy projects are competition sensitive. Because of that concern, the comment recommended that the Department refrain from publicizing proposed projects for which a requester is seeking informal review on the DoD Web site, noting that publication of such projects would limit the attractiveness of the early consultation option.

Response: The rule requires only the minimum information necessary to conduct a useful review. An additional provision was added to section 211.7(a) encouraging requestors to mark any documents containing proprietary or competition-sensitive information accordingly when requesting an informal review of a proposed project. However, the DoD must comply with all applicable laws, including the Freedom of Information Act.

In response to this comment, section 211.12 was modified to eliminate the requirement for the Department to include the requests for informal review that the Department is considering on its Web site.

IV. Other Adjustments to the Final Rule

This section identifies and explains minor adjustments that the Department made to the rule that were not the result of public comments.

In the final rule, the applicability of the rule is extended to Indian tribal governments, and they are included in the definition of a ''requester'' so they, like State and local governments, have the authorization to seek informal reviews of proposed projects. It was the Department's view that Indian tribal governments fell within the category of state governments, to which they are somewhat analogous as separate sovereigns. But in order to avoid any doubt, the rule is being changed to clarify this point.

In section 211.7 of the final rule, the Department includes a requirement for requesters that desire an informal review of a project to provide the height of the project as part of the required information. It was the Department's view that the requirement to provide the ''nature of the project'' would necessarily include the project's height. However, to avoid any doubt, the rule is being changed to specifically include a reference to the height of the project.

V. Executive Summary

In section 358 of Public Law 111–383, Congress required, among other things, that the DoD implement new procedures relating to how the DoD reviews and comments on applications filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718. Section 358 also specifies who within DoD may provide such comments to the Secretary of Transportation, that DoD will engage in outreach activities with interested parties, and that Congress must be advised when the DoD objects to an application filed pursuant to 49 U.S.C. 44718.

Section 211.1 of this rule states the two primary purposes of the rule which are to provide for DoD commenting on (1) applications filed pursuant to 49 U.S.C. 44718 and (2) requests for reviews of projects prior to applications being filed pursuant to 49 U.S.C. 44718.

Section 211.2 addresses the applicability of part 211. This part applies to all components of the DoD, those applicants filing applications pursuant to 49 U.S.C. 44718 when those applications are conveyed by the Secretary of Transportation to the Department of Defense, those requesting reviews of projects prior to applications being filed under 49 U.S.C. 44718 (including State, Indian tribal, and local officials and landowners), and those providing comments to DoD relating to its actions in reviewing applications. It also applies, geographically, to the United States.

Section 211.3 provides definitions. The definition of ''adverse impact on military operations and readiness'' provides that a demonstrable impairment or degradation of the ability of the armed forces to perform their warfighting missions constitutes an adverse impact. The definition of ''applicant'' refers to an entity filing a proper application with the Secretary of Transportation pursuant to 49 U.S.C. 44718, and whose application has been provided by the Secretary of Transportation to the DoD. The definition of ''armed forces'' refers to the definition at 10 U.S.C. 101(a)(4), which includes the Army, Navy, Air Force, and Marine Corps, but excludes the Coast Guard. The definition of ''congressional defense committees'' is taken from section 3 of Public Law 111–383, which, in turn, adopts by reference the definition of the term in 10 U.S.C. 101(a)(16). The definition of ''military readiness'' is taken from the definition of the term provided in section 358. The definition of ''mitigation'' provides a general description of the term while leaving to individual actions more specific examples of what may constitute mitigation. The definition of ''proposed project'' is the project as submitted to the Secretary of Transportation pursuant to 49 U.S.C. 44718. The definition of ''requester'' refers to a developer of a renewable energy development or other energy project, a landowner on whose property such project is proposed to be built, or a State, Indian tribal, or local official seeking an informal review of a project by the DoD prior to the project being submitted for formal review pursuant to 49 U.S.C. 44718. The definition of ''section 358'' refers to the authorizing provision, section 358 of Public Law 111–383. The definition of ''unacceptable risk to the national security of the United States'' includes the two existing criteria found in 49 U.S.C. 44718, namely the construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill that endangers safety in air commerce or interferes with the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports, but, for purposes of this rule, only when related to the activities of the DoD. The definition also includes an additional criterion consisting of actions that will significantly impair or degrade the capability of the DoD to conduct training, research, development, testing, and evaluation, and operations or to maintain military readiness. The definition of ''United States'' is included to provide the geographical limitation of the part, clarifying that it does not apply outside of the United States.

Section 211.4 provides the general policy of the part, taken from section 358(a). It also limits the participation of DoD in the Federal Aviation Administration's process under 49 U.S.C. 44718 to the process provided in this rule.

Section 211.5 specifies the officials with authorities and responsibilities under the part pursuant to section 358. The Deputy Secretary of Defense is designated as the senior officer who is authorized to provide a determination to the Secretary of Transportation that a project filed pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States. The Under Secretary of Defense for Acquisition, Technology, and Logistics is designated as the senior official who may make a recommendation to the Deputy Secretary of Defense that such a project would result in such a risk. The Deputy Under Secretary of Defense (Installations & Environment) is designated as the official who, in coordination with the Deputy Assistant Secretary of Defense (Readiness) and the Principal Deputy Director, Operational Test and Evaluation, reviews such a project and provides a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk. The Office of the Deputy Under Secretary of Defense (Installations & Environment) is designated as the lead organization, and the DoD Siting Clearinghouse is established and organized under the Deputy Under Secretary.

Section 211.6 provides the procedures for formal DoD review of a project filed by an applicant with the Secretary of Transportation pursuant to 49 U.S.C. 44718.

Section 211.7 provides the procedures for informal DoD review of a project submitted by a requester prior to submitting a formal application pursuant to 49 U.S.C. 44718.

Section 211.8 directs DoD Components to forward any inquiries or

requests they may receive to the Clearinghouse so as to avoid unauthorized action by a Component outside of the process established by this rule.

Section 211.9 provides some of the types of mitigation to be considered by the DoD and the applicant/requester when discussing mitigation.

Section 211.10 provides for the notification to Congress required by section 358 when the senior officer makes a determination that a project presents an unacceptable risk to the national security of the United States.

Section 211.11 provides for a public Web site where the public can review the actions being considered by DoD, track their progress, and offer comments.

VI. Administrative Requirements

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

It has been certified that this rule is not an economically significant rule that will result in an annual effect of $100 million or more on the national economy or which will have other substantial impacts. This rule has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

B. Section 202, Public Law 104–4, Unfunded Mandates Reform Act

It has been certified that 32 CFR part 211 does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

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

The Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The RFA requires agencies to analyze the economic impact of regulations to determine the extent to which there is anticipated to be a significant economic impact on a substantial number of small entities. DoD anticipates that the rule could potentially affect a few entities that might otherwise have located structures on public or private lands that would present an unreasonable risk to the national security of the United States. DoD further anticipates that some of these entities will be small entities as defined by the Small Business Administration; however, DoD does not expect the potential impact to be significant because this rule provides procedures to mitigate the impact of such an unreasonable risk to the benefit of both the proponent and the DoD.

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

It has been certified that the Paperwork Reduction Act applies. This rule contains information collection requirements under OMB Control Number 0790–0005 titled, ''Informal DoD Review of Energy Projects.''

E. Executive Order 13132, Federalism

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

(1) The States

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

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

List of Subjects in 32 CFR Part 211

Energy, Evaluation.

Accordingly 32 CFR part 211 is revised to read as follows:

PART 211—MISSION COMPATIBILITY EVALUATION PROCESS

Subpart A—General

Sec.
211.1 Purpose.
211.2 Applicability.
211.3 Definitions.

Subpart B—Policy

211.4 Policy.
211.5 Responsibilities.

Subpart C—Project Evaluation Procedures

211.6 Initiating a formal DoD review of a proposed project.
211.7 Initiating an informal DoD review of a project.
211.8 Inquiries received by DoD Components.
211.9 Mitigation options.
211.10 Reporting determinations to Congress.

Subpart D—Communications and Outreach

211.11 Communications with the Clearinghouse.
211.12 Public outreach.

Authority: Public Law 111–383, Section 358, as amended by Public Law 112–81, Section 331.

Subpart A—General

§ 211.1 Purpose.

This part prescribes procedures pursuant to section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011 to provide:

(a) A formal review of projects for which applications are filed with the Secretary of Transportation under 49 U.S.C. 44718, to determine if they pose an unacceptable risk to the national security of the United States.

(b) An informal review of a renewable energy development or other energy project in advance of the filing of an application with the Secretary of Transportation under 49 U.S.C. 44718.

§ 211.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the ''DoD Components'').

(b) Persons filing applications with the Secretary of Transportation for proposed projects pursuant to 49 U.S.C. 44718, when such applications are received by the Department of Defense from the Secretary of Transportation.

(c) A State, Indian tribal, or local official, a landowner, or a developer of a renewable energy development or other energy project seeking a review of such project by DoD.

(d) Members of the general public from whom comments are received on notices of actions being taken by the Department of Defense under this part.

(e) The United States.

§ 211.3 Definitions.

Adverse impact on military operations and readiness. Any adverse impact upon military operations and readiness, including flight operations research, development, testing, and evaluation and training, that is demonstrable and is likely to impair or degrade the ability of the armed forces to perform their warfighting missions.

Applicant. An entity filing an application with the Secretary of Transportation pursuant to 49 U.S.C. 44718, and whose proper application has been provided by the Secretary of Transportation to the Clearinghouse.

Armed forces. This term has the same meaning as provided in 10 U.S.C. 101(a)(4) but does not include the Coast Guard.

Clearinghouse. The DoD Siting Clearinghouse, established under the Deputy Under Secretary of Defense (Installations & Environment).

Congressional defense committees. The—

(1) Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

Days. All days are calendar days but do not include Federal holidays.

Landowner. A person, partnership, corporation, or other legal entity, that owns a fee interest in real property on which a proposed project is planned to be located.

Military readiness. Includes any training or operation that could be related to combat readiness, including testing and evaluation activities.

Mitigation. Actions taken by either or both the DoD or the applicant to ensure that a project does not create an unacceptable risk to the national security of the United States.

Proposed project. A proposed project is the project as described in the application submitted to the Secretary of Transportation pursuant to 49 U.S.C. 44718 and transmitted by the Secretary of Transportation to the Clearinghouse.

Requester. A developer of a renewable energy development or other energy project, a State, Indian tribal, or local official, or a landowner seeking an informal review by the DoD of a project.

Section 358. Section 358 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, Public Law 111–383.

Unacceptable risk to the national security of the United States. The construction, alteration, establishment, or expansion, or the proposed construction, alteration, establishment, or expansion, of a structure or sanitary landfill that would:

(1) Endanger safety in air commerce, related to the activities of the DoD.

(2) Interfere with the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports, related to the activities of the DoD.

(3) Significantly impair or degrade the capability of the DoD to conduct training, research, development, testing, and evaluation, and operations or to maintain military readiness.

United States. The several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, Guam, Midway and Wake Islands, the U.S. Virgin Islands, any other territory or possession of the United States, and associated navigable waters, contiguous zones, and territorial seas and the airspace of those areas.

Subpart B—Policy

§ 211.4 Policy.

(a) It is an objective of the Department of Defense to ensure that the robust development of renewable energy sources and the increased resiliency of the commercial electrical grid may move forward in the United States, while minimizing or mitigating any adverse impacts on military operations and readiness.

(b) The participation of the DoD in the process of the Federal Aviation Administration conducted pursuant to 49 U.S.C. 44718 shall be conducted in accordance with this part. No other process shall be used by a DoD Component.

(c) Nothing in this part shall be construed as affecting the authority of the Secretary of Transportation under 49 U.S.C. 44718.

§ 211.5 Responsibilities.

(a) Pursuant to subsection (e)(4) of section 358, the Deputy Secretary of Defense is designated as the senior officer. Only the senior officer may convey to the Secretary of Transportation a determination that a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(b) Pursuant to subsection (b)(1) of section 358, the Under Secretary of Defense for Acquisition, Technology, and Logistics is designated as the senior official. Only the senior official may provide to the senior officer a recommendation that the senior officer determine a project filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 would result in an unacceptable risk to the national security of the United States.

(c) Pursuant to subsection (e)(1) of section 358, the Deputy Under Secretary of Defense (Installations & Environment), in coordination with the Deputy Assistant Secretary of Defense (Readiness) and the Principal Deputy Director, Operational Test and Evaluation, shall review a proper application for a project filed pursuant to 49 U.S.C. 44718 and received from the Secretary of Transportation and provide a preliminary assessment of the level of risk of adverse impact on military operations and readiness that would arise from the project and the extent of mitigation that may be needed to address such risk.

(d) Pursuant to subsection (b)(1) of section 358, the Office of the Deputy Under Secretary of Defense (Installations & Environment) is designated as the lead organization. Under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, there is, within the Office of the Deputy Under Secretary, a DoD Siting Clearinghouse. The Clearinghouse:

(1) Shall have a governing board organized in accordance with DoD Instruction 5105.18, DoD Intergovernmental and Intragovernmental Committee Management Program.

(2) Has an executive director who is a Federal Government employee, appointed by the Deputy Under Secretary of Defense (Installations & Environment).

(3) Performs such duties as assigned in this part and as the Deputy Under Secretary directs.

Subpart C—Project Evaluation Procedures

§ 211.6 Initiating a formal DoD review of a proposed project.

(a) A formal review of a proposed project begins with the receipt from the Secretary of Transportation by the Clearinghouse of a proper application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718.

(1) The Clearinghouse will convey the application as received to those DoD Components it believes may have an interest in reviewing the application.

(2) The DoD Components that receive the application shall provide their comments and recommendations on the application to the Clearinghouse no later than 20 days after they receive the application.

(3) Not later than 30 days after receiving the application from the Secretary of Transportation, the Clearinghouse shall evaluate all comments and recommendations received and take one of three actions:

(i) Determine that the proposed project will not have an adverse impact on military operations and readiness, in which case it shall notify the Secretary of Transportation of such determination.

(ii) Determine that the proposed project will have an adverse impact on military operations and readiness but that the adverse impact involved is sufficiently attenuated that it does not require mitigation. When the Clearinghouse makes such a determination, it shall notify the Secretary of Transportation of such determination.

(iii) Determine that the proposed project may have an adverse impact on military operations and readiness. When the Clearinghouse makes such a determination it shall immediately—

(A) Notify the applicant of the determination of the Clearinghouse and offer to discuss mitigation with the applicant to reduce the adverse impact;

(B) Designate one or more DoD Components to engage in discussions with the applicant to attempt to mitigate the adverse impact;

(C) Notify the Secretary of Transportation that the Department of Defense has determined that the proposed project may have an adverse impact on military operations and readiness, and, if the cause of the adverse impact is due to the proposed project exceeding an obstruction standard set forth in subpart C of part 77 of title 14 of the Code of Federal Regulations, identify the specific standard and how it would be exceeded; and

(D) Notify the Secretary of Transportation and the Secretary of Homeland Security that the Clearinghouse has offered to engage in mitigation discussions with the applicant.

(4) The applicant must provide to the Clearinghouse its agreement to discuss the possibility of mitigation within five days of receipt of the notification from the Clearinghouse.

(b) If the applicant agrees to enter into discussions with the DoD to seek to mitigate an adverse impact, the designated DoD Components shall engage in discussions with the applicant to attempt to reach agreement on measures that would mitigate the adverse impact of the proposed project on military operations and readiness. The Clearinghouse shall invite the Administrator of the Federal Aviation Administration and the Secretary of Homeland Security to participate in such discussions. The Clearinghouse may also invite other Federal agencies to participate in such discussions.

(1) Such discussions shall not extend more than 90 days beyond the initial notification to the applicant, unless both the designated DoD Components and the applicant agree, in writing, to an extension of a specific period of time.

(i) If agreement between the applicant and the designated DoD Components has not been reached on mitigation measures by that time and no extension has been mutually agreed to, the designated DoD Components shall notify the Clearinghouse of the results of the discussions and the analysis and recommendations of the Components with regard to the proposed project as it is proposed after discussions.

(ii) If agreement between the applicant and the designated DoD Components has been reached on mitigation measures that remove the adverse impact of the proposed project on military operations and readiness, the DoD Components shall notify the Clearinghouse of the agreement. If the mitigation measures entail modification to the proposed project, the applicant shall notify the Secretary of Transportation of such agreement and amend its application accordingly.

(2) If the applicant and the designated DoD Components are unable to reach agreement on mitigation, the Clearinghouse shall review the analysis and recommendations of the DoD Components and determine if the proposed project as it may have been modified by the applicant after discussions would result in an unacceptable risk to the national security of the United States.

(i) If the Clearinghouse determines that the proposed project as it may have been modified by the applicant after discussions would result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect. If the Clearinghouse determines, contrary to the recommendations of the DoD Components, that the proposed project as it may have been modified by the applicant after discussions would not result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect.

(ii) If the senior official concurs with the recommendation of the Clearinghouse, the senior official shall make a recommendation to the senior officer that is consistent with the recommendation of the Clearinghouse. If the senior official does not agree with the recommendation of the Clearinghouse, the senior official may make a recommendation to the senior officer to that effect.

(iii) The senior officer shall consider the recommendation of the senior official, and, after giving full consideration to mitigation actions available to the DoD and those agreed to by the applicant, determine whether the proposed project as it may have been modified by the applicant would result in an unacceptable risk to the national security of the United States. If the senior officer makes such a determination, the senior officer shall convey that determination to the Secretary of Transportation, identifying which of the three criteria in § 211.3 creates the unacceptable risk to the national security of the United States.

(iv) Any mitigation discussions engaged in by the Department of Defense pursuant to this part shall not be binding upon any other Federal agency, nor waive required compliance with any other law or regulation.

(c) If the applicant does not agree to enter into discussions with the DoD to seek to mitigate an adverse impact, the Clearinghouse shall review the analysis and recommendations of the designated DoD Components and determine if the proposed project would result in an unacceptable risk to the national security of the United States.

(1) If the Clearinghouse determines that the proposed project would result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect. If the Clearinghouse determines, contrary to the recommendations of the DoD Components, that the proposed project would not result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect.

(2) If the senior official concurs with the recommendation of the Clearinghouse, the senior official shall make a recommendation to the senior officer that is consistent with the recommendation of the Clearinghouse. If the senior official does not agree with the recommendation of the Clearinghouse, the senior official may make a recommendation to the senior officer to that effect.

(3) The senior officer shall consider the recommendation of the senior official, and, after giving full consideration to mitigation actions available to the DoD and those agreed to by the applicant, determine whether the proposed project would result in an unacceptable risk to the national security of the United States. If the senior officer makes such a determination, the senior officer shall convey that determination to the Secretary of Transportation, identifying which of the three criteria in § 211.3 creates the unacceptable risk to the national security of the United States.

(d) The Clearinghouse may, on behalf of itself, the senior official, or the senior officer, seek an extension of time from the Secretary of Transportation for consideration of the application.

§ 211.7 Initiating an informal DoD review of a proposed project.

(a) An informal review of a project begins with the receipt from a requester by the Clearinghouse of a request for an informal review. In seeking an informal

review, the requester shall provide the following information to the Clearinghouse:

(1) The geographic location of the project including its latitude and longitude,

(2) The height of the project,

(3) The nature of the project.

(4) The requester is encouraged to provide as much additional information as is available. The more information provided by the requester, the greater will be the accuracy and reliability of the resulting DoD review. When a request for an informal review includes information that is proprietary or competition sensitive, requesters are encouraged to mark the documents they submit accordingly.

(b) The Clearinghouse shall, within five days of receiving the information provided by the requester, convey that information to those DoD Components it believes may have an interest in reviewing the request.

(1) The DoD Components that receive the request from the Clearinghouse shall provide their comments and recommendations on the request to the Clearinghouse no later than 30 days after they receive the request.

(2) Not later than 50 days after receiving the request from the requester, the Clearinghouse shall evaluate all comments and recommendations received and take one of three actions:

(i) Determine that the project will not have an adverse impact on military operations and readiness, in which case it shall notify the requester of such determination. In doing so, the Clearinghouse shall also advise the requester that the informal review by the DoD does not constitute an action under 49 U.S.C. 44718 and that neither the DoD nor the Secretary of Transportation are bound by the determination made under the informal review.

(ii) Determine that the project will have an adverse impact on military operations and readiness but that the adverse impact involved is sufficiently attenuated that it does not require mitigation. The Clearinghouse shall notify the requester of such determination. In doing so, the Clearinghouse shall also advise the requester that the informal review by the DoD does not constitute an action under 49 U.S.C. 44718 and that neither the DoD nor the Secretary of Transportation are bound by the determination made under the informal review.

(iii) Determine that the project will have an adverse impact on military operations and readiness.

(A) When the requester is the project proponent, the Clearinghouse shall immediately—

(*1*) Notify the requester of the determination and the reasons for the conclusion of the Clearinghouse and advise the requester that the DoD would like to discuss the possibility of mitigation to reduce any adverse impact; and

(2) Designate one or more DoD Components to engage in discussions with the requester to attempt to mitigate the adverse impact.

(B) When the requester is a State, Indian tribal, or local official or a landowner, notify the requester of the determination and the reasons for that conclusion.

(c) If the requester is the project proponent and agrees to enter into discussions with the DoD to seek to mitigate an adverse impact, the designated DoD Components shall engage in discussions with the requester in an attempt to reach agreement on measures that would mitigate the adverse impact of the project on military operations and readiness.

§ 211.8 Inquiries received by DoD Components.

(a) An inquiry received by a DoD Component other than the Clearinghouse relating to an application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 shall be forwarded to the Clearinghouse by the DoD Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the inquiry.

(b) A request for informal DoD review or any other inquiry related to matters covered by this part and received by a DoD Component other than the Clearinghouse shall be forwarded to the Clearinghouse by that Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the request.

§ 211.9 Mitigation options.

(a) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the DoD Components designated to discuss mitigation with an applicant or requester shall, as appropriate and as time allows, analyze the following types of DoD mitigation to determine if they identify feasible and affordable actions that may be taken to mitigate adverse impacts of projects on military operations and readiness:

(1) Modifications to military operations.

(2) Modifications to radars or other items of military equipment.

(3) Modifications to military test and evaluation activities, military training routes, or military training procedures.

(4) Providing upgrades or modifications to existing systems or procedures.

(5) The acquisition of new systems by the DoD and other departments and agencies of the Federal Government.

(b) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the applicant or requester, as the case may be, should consider the following possible actions:

(1) Modification of the proposed structure, operating characteristics, or the equipment in the proposed project.

(2) Changing the location of the proposed project.

(3) Limiting daily operating hours or the number of days the equipment in the proposed structure is in use in order to avoid interference with military activities.

(4) Providing a voluntary contribution of funds to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of the project on military operations and readiness.

§ 211.10 Reporting determinations to Congress.

(a) Not later than 30 days after making a determination of unacceptable risk pursuant to § 211.6, the senior officer shall submit to the congressional defense committees a report on such determination and the basis for such determination.

(b) Such a report shall include—

(1) An explanation of the operational impact that led to the determination.

(2) A discussion of the mitigation options considered.

(3) An explanation of why the mitigation options were not feasible or did not resolve the conflict.

Subpart D—Communications and Outreach

§ 211.11 Communications with the Clearinghouse.

All communications to the Clearinghouse by applicants, requesters, or members of the public should be addressed to: Executive Director, DoD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense (Installations and Environment), Room 5C646, 3400 Defense Pentagon, Washington, DC 20301–3400, or, if by electronic mail, to *DoDSitingClearinghouse@osd.mil*. Additional information about the

Clearinghouse and means of contacting it are available at the following URL: *http://www.acq.mil/ie/sch.*

§ 211.12 Public outreach.

(a) The DoD shall establish a Web site accessible to the public that—

(1) Lists the applications that the DoD is currently considering.

(2) Identifies the stage of the action, e.g., preliminary review, referred for mitigation discussions, determined to be an unacceptable risk.

(3) Indicates how the public may provide comments to the DoD.

(b) The Clearinghouse shall publish a handbook to provide applicants, requesters, and members of the public with necessary information to assist them in participating in the Mission Compatibility Evaluation Process.

Dated: November 18, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–NERI–14336; PPNENERIP0, PPMPRLE1Z.Y00000]

RIN 1024–AD95

Special Regulations; Areas of the National Park System, New River Gorge National River, Bicycling

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule authorizes bicycle use on new and existing multi-use trails and administrative roads within the New River Gorge National River. The rule is necessary because the National Park Service general regulation for bicycle use requires publication of a special regulation when new trails are constructed outside of developed areas.

DATES: The rule is effective January 6, 2014.

FOR FURTHER INFORMATION CONTACT: Jamie Fields, Outdoor Recreation Planner, New River Gorge National River, P.O. Box 246 (104 Main St), Glen Jean, WV 25846, (304) 465–6527, *Jamie_Fields@nps.gov.*

SUPPLEMENTARY INFORMATION:

Administrative Background

The New River Gorge National River (NERI or park), a unit of the National Park System located in West Virginia, encompasses approximately 72,000 acres within a 53-mile corridor along the New River, extending from Hawks Nest State Park to Hinton. Congress established NERI as a unit of the National Park System, largely in response to a 20-year grassroots effort organized by local community leaders. In 1978, President Jimmy Carter signed legislation establishing the park, ''for the purpose of conserving and interpreting outstanding natural, scenic, and historic values and objects in and around the New River Gorge and preserving as a free-flowing stream an important segment of the New River in West Virginia for the benefit and enjoyment of present and future generations'' (Pub. L. 95–625, sec. 1101, 1978). Subsequent legislation concerning the park states in its findings that NERI ''has provided the basis for increased recreation and tourism activities in southern West Virginia due to its nationally recognized status and has greatly contributed to the regional economy'' (Pub. L. 100–534, sec. 2(a)(1)–(2), 1988).

Park Planning

The park's 1982 General Management Plan (1982 GMP) anticipated accommodating an expanding array of recreational pursuits, including off-road bicycling. It states that ''[l]evels of use of new or unusual forms of recreation (such as hang gliding, rock climbing, dirt bicycling) will be managed to avoid problems of visitor safety, conflicts between uses, or resource impacts.''

The 1982 GMP also anticipated trail construction as funding became available. A subsequent park-wide Trail Development Plan (1993) recommended that the park develop a trail system emphasizing multiple uses, including hiking and bicycling. Both of these plans can be viewed by going to the NERI park planning Web site, *http://www.nps.gov/neri/parkmgmt/planning.htm,* then following this path: Click the link for ''Environmental Assessment: Design and Build Two Stacked Loop Hiking and Biking Trail Systems . . .''; click the link to the Document List on the left; click the link to either the ''1982 NERI General Management Plan'' or the ''1993 NERI Trail Development Plan''; then download the documents on their respective pages.

The park began developing a new, updated general management plan in 2005 to respond to changes in park boundaries, land acquisitions, and park and public needs and priorities that had occurred since the 1982 GMP was approved. The park's updated 2010/2011 GMP and Environmental Impact Statement (2010/2011 GMP/EIS) process revealed substantial and consistent public support for authorizing bicycle use on trails during public scoping (February 2004 through October 2007) and public comment (January 13, 2010 through April 16, 2010).

The 2010/2011 GMP/EIS proposed that, after promulgation of the required special regulations and proper compliance with the National Environmental Policy Act (NEPA), bicycle use would be an appropriate use on new and existing trails. This would include bicycle use in frontcountry zones, in backcountry zones on single track trails, and on a limited basis on a variety of trail types in historic resource, river corridor, and park development zones. The Record of Decision (ROD) for the 2010/2011 GMP/EIS was signed, and the Notice of Availability was published in the **Federal Register** (77 FR 12877, March 2, 2012). The 2010/2011 GMP/EIS can be viewed by going to the NERI park planning Web site, *http://www.nps.gov/neri/parkmgmt/planning.htm,* then following this path: Click the link for ''General Management Plan''; click the link to the Document List on the left; click the link to the ''Draft General Management Plan and EIS/Draft Foundation Plan''; then download the documents at the bottom of the page (corrections to the 2010/2011 GMP/EIS are located in the ''Abbreviated Final General Management Plan . . .'', also in the Document List).

As a result of the public support for bicycle use expressed early in the 2010/2011 GMP/EIS process, the park developed an Environmental Assessment (Trails EA) to evaluate the impact of the construction of new trails and designation of new and existing park trails as routes for bicycle use. Public scoping for the Trails EA, which occurred from November 10, 2009 until January 15, 2010 (with a public focus group on November 10, 2009 and a public open house on December 8, 2009), confirmed there was overwhelming support for bicycle use on trails. Only one of approximately 400 scoping comments from residents of 32 states was opposed to bicycle use at NERI.

The Trails EA

The Preferred Alternative that became the NPS Selected Action upon approval of the Finding of No Significant Impact (FONSI) provided for the designation of some existing park trails and administrative roads as routes open to bicycle use, and for the construction and designation of three new trails for

hiking and bicycle use by converting existing, abandoned roads into the Mud Turn, Panther Branch Connector, and Brooklyn Miner's Connector Trails. The Selected Action also provided for the development and construction of approximately 11 miles of new single track trail, called the Craig Branch Stacked Loop Trail System, and the development and construction of approximately 33 miles of new single track trail, called the Garden Ground Stacked Loop Trail System, for hiking and bicycle use.

The Trails EA, FONSI, and maps of these trails can be viewed by going to the NERI park planning Web site, *http://www.nps.gov/neri/parkmgmt/planning.htm,* then following this path: Click the link for ''Environmental Assessment: Design and Build Two Stacked Loop Hiking and Biking Trail Systems . . .''; click the link to the Document List on the left, click the link to either the ''Environmental Assessment—Design and Build . . .'' or the ''Finding of No Significant Impact (FONSI)''; then download the documents on their respective pages.

Renaming of Trails

Since the FONSI was signed, several trail names in the Nuttallburg area of the park have changed. The Nuttall Mine Trail (an administrative road) was renamed the Headhouse Trail on public maps. The Nuttallburg Town Connector Trail was renamed the Nuttallburg Town Loop Connector Trail. The Nuttallburg Tipple Trail (also an administrative road) was divided into two segments on maps and renamed the Tipple Trail and the Seldom Seen Trail. The Keeneys Creek Trail has been renamed on some maps and documents as the Keeneys Creek Rail Trail, but older materials still call it the Keeneys Creek Trail.

Since its construction in summer of 2011, the Craig Branch Stacked Loop Trail System has been renamed the Arrowhead Trail. The final rule and future park maps will reflect this change, while prior documents (including the Trails EA and FONSI) refer to the Craig Branch Stacked Loop Trail System. Additionally, the Trails EA and FONSI refer to the stacked loop trails in the Craig Branch (now Arrowhead) and Garden Ground areas as ''trail systems.'' In the final rule, they are called the ''Arrowhead Trail'' and the ''Garden Ground Stacked Loop Trail,'' and are each treated as individual trails with interconnected segments.

A park map showing existing trails and administrative roads can be viewed by downloading the NERI Trails Guide from the following Web site: *http://www.nps.gov/neri/planyourvisit/trails-guide.htm.*

Notice of Proposed Rulemaking

On August 27, 2012, the NPS published a Notice of Proposed Rulemaking for the designation of certain new trails, existing trails, and administrative roads in NERI as routes for bicycle use (77 FR 51733). The proposed rule was available for a 60-day public comment period, from August 27, 2012 through October 26, 2012.

Summary of and Responses to Public Comment

Comments were accepted through the mail, by hand delivery, and through the Federal eRulemaking Portal: *http://www.regulations.gov.* The NPS received 84 public comments during the comment period. Of these responses, 76 expressed support for the proposed rule. Three of the responses were from organizations, and the rest were from individuals. The two organizations that responded in support of the rule were the International Mountain Bicycling Association (IMBA) and the Roanoke Chapter of IMBA. The Public Employees for Environmental Responsibility (PEER) responded in opposition to the rule. Some of the individuals who responded identified themselves as being affiliated with the following organizations: IMBA, Mid-Atlantic Off Road Enthusiasts (MORE), Shenandoah Valley Bicycle Coalition (SVBC), Aarhus School of Architecture in Denmark, South Alabama Mountain Bike Association (SAMBA), Lower Arkansas Valley Mountain Biking Association (LAMBA), Greater Lynchburg Off-Road Cyclists, Pisgah Area Southern Off-Road Bicycle Association (SORBA), Winchester Wheelmen, and West Virginia Mountain Bike Association (WVMBA).

The 76 supporting comments expressed nine central themes:

1. Off-road bicycle use is environmentally appropriate and can contribute to protection of natural and cultural resources because many individuals who are avid off-road bicyclists voluntarily participate in trail maintenance, such as by cleaning up debris.

2. The regulation is consistent with nearly 30 years of planning and public involvement at NERI and embraces elements of the America's Great Outdoors Initiative launched by President Obama.

3. Allowing off-road bicycle use is consistent with other uses of NERI, such as climbing, hiking, kayaking, and whitewater rafting.

4. The authorization of off-road bicycle use in NERI will provide our nation's youth with new and exciting opportunities to participate in outdoor recreation activities. Providing younger members of society with off-road bicycling opportunities encourages them to develop a sense of pride and ownership in the trails they ride and maintain.

5. Allowing off-road bicycle use will make remote parts of NERI more accessible to some visitors who want to experience the full breadth of resources in the park.

6. Allowing off-road bicycle use is important for public health and contributes to healthy, active lifestyles.

One West Virginia resident remarked,

> Mountain biking is a sport that can be enjoyed by people of all ages. I started mountain biking in 2007 in an attempt to continue enjoying the outdoors after surviving cancer. I'm a 55 year old who loves the outdoors and have hiked and camped since my childhood. Mountain biking is easier on my knees than hiking and is very enjoyable.

7. Off-road bicycling is an affordable activity that encourages positive outdoor experiences for families.

8. Allowing off-road bicycle use is an important draw for tourism and a catalyst for economic development in the New River Gorge area, as it attracts visitors from all over the country.

9. Bicycle trails in NERI have been the center point for partnerships and community development, such as the volunteer efforts of the Boy Scouts to build the Arrowhead Trail. If permanent access for bicycle use is allowed, these relationships will continue to flourish, building a sense of stewardship among trail users and park staff.

Some commenters supported the new bike rule but also asked questions for which the NPS has prepared responses. The questions are paraphrased and answered below:

1. *Question:* Will commercial tours be authorized on the new trails? If so, will there be licensing requirements for tour companies, and will private citizens be able to make complaints on the conduct of commercial groups?

Response: The Trails EA states, on page 35, ''special events, special uses and large group use of all proposed trails would be subject to existing park policies and regulations.'' Commercial bike tours require, and are subject to the conditions of, a NPS Commercial Use Authorization. Using the discretionary authority of 36 CFR 1.5 and 1.7 (Superintendent's Compendium) the Superintendent has established size limits and guest-to-guide ratios for commercially led hiking and bicycling

groups. There is also a daily park-wide limit on the number of commercially led hiking and bicycling groups that may use the park. The park will continue to use these authorities to adaptively manage commercially led groups to address issues such as user conflict. Citizens always have the ability to make complaints on the conduct of commercial groups or any other issues concerning visitor use or park management. For general complaints, contact the park headquarters at (304) 465–0508.

2. Question: Are there procedures in place to mitigate the impacts on bats if the wildlife habitat survey missed the presence of a bat nursery colony tree?

Response: The Trails EA includes mitigations to protect wildlife in Section 2.6.3, with a sub-section on mitigations specific to bats on page 37. The wildlife surveys, conducted by park staff or contractors and which have occurred or would occur along corridors within which the trail would be constructed, identify trees that are potentially important for bat habitat. The NPS understands that some trees would need to be removed for trail construction. Therefore, the NPS will inspect every tree proposed for removal that is greater than or equal to five inches diameter breast height (≥5″ DBH) for the presence of and evidence of use by bats. Trees that are identified as active bat habitat would be avoided through a re-routing of the proposed trail. Trees that are free of evidence of active bat use would only be removed between November 15 and March 31 to minimize the impacts to locally-present bat species. The incorporation of this mitigation measure into the trail design and construction process should minimize the possibility of removing a tree used by bats. Because there is always the chance that a bat could be missed, no matter how thorough the survey and inspection processes, the park recommended a determination of *May Affect, but Not Likely to Adversely Affect* under Section 7 of the Endangered Species Act, indicating that unintended failure to detect roosting bats along proposed trail routes may have indirect adverse impacts on some bats. However, adverse impacts to federally listed bat species (Indiana and Virginia big-eared bats) are not anticipated. The U.S. Fish and Wildlife Service concurred with the park's recommendation.

3. *Question:* Will areas closest to colonized bat caves or mine shafts be monitored?

Response: NERI does not have any caves, but mine shafts throughout the park, whether or not they are located along or near trails, are already regularly monitored for bat activity.

4. *Question:* The first page of the FONSI states that the Boy Scouts of America (BSA) have requested to ''bring about 2,000 volunteers to the park during June and July 2011 to construct new trails and participate in resource rehabilitation.'' The time period has passed. Are the Boy Scouts still interested in volunteering or is more funding required? If the proposed regulation is approved, will there be funding to start the trail rehabilitation and stop the damage of prohibited activities?

Response: Over 1,400 youth volunteers from the BSA, Order of the Arrow, along with numerous supporting adult volunteers, came to NERI over four weeks in July 2011. They contributed about 80,000 hours of work, estimated at about a $1.6 million dollar value, to construct the 13 miles of trail formerly known as the Craig Branch Stacked Loop Trail System and subsequently renamed the Arrowhead Trail. As part of the trail construction project, the volunteers created barriers to close off access from the trail corridor to abandoned logging roads and off-road vehicle (ORV) tracks. After trail construction, there were a few reports of ORV riders attempting to use the trails, but the high level of authorized use the area now gets, coupled with the efforts of the local cycling community and NPS law enforcement staff, has effectively ended ORV use in the Craig Branch area. The BSA has expressed interest in volunteering for future multi-use (hike and bike) trail construction and maintenance projects in NERI.

5. *Question:* While I support off-road bicycling in NERI, I am concerned about the number of alternatives evaluated in the EIS. Why did you not include more alternatives that proposed less mileage of newly constructed trail? I feel that the No Action Alternative did not sufficiently account for this possibility.

Response: The No Action Alternative is meant to represent a continuation of current management to serve as a baseline for analysis of impacts to the human environment. The EIS and related ROD are associated with the park's new GMP, which approved the concept of trail development throughout the park and bicycle use on some trails, as appropriate. The EIS is an umbrella document addressing management concepts for the entire park and does not address specific trail or mileage alternatives.

The Trails EA is the site-specific document that analyzes the impacts of the development and use of each individual trail. The NPS is required to consider a range of action alternatives when project scoping produces substantively different management or development approaches to meeting a project's purpose and need. Therefore, we considered alternatives of developing new trails primarily on existing, though unsustainable routes and developing new trails that generally avoided the use of existing routes. The latter was determined to be a more sustainable alternative that would cause fewer adverse impacts, such as erosion and stream sedimentation.

Of the eight comments received in opposition to the proposed regulation, three were submitted by one individual, two of which were identical. The NPS has addressed these concerns below.

1. Comment: The NPS has failed to adequately address safety concerns that are inherent in multi-use trails.

Response: Designating trails as routes open to bicycle use that have traditionally been used only by pedestrians is not expected to create unsafe conditions for trail users. Trails designated for bicycle use will be identified on maps, interpretive kiosks, and the park's Web site, and notices will be posted at trailheads and other appropriate locations. Trail users will be aware of the multiple uses occurring on those trails prior to using them. Additionally, the regulation includes provisions that bicyclists must yield to equestrians and pedestrians by slowing down to a safe speed, being prepared to stop, establishing communication, and passing safely. Failure to yield is prohibited, and violators may be ticketed. If a trail proves unsafe for multiple uses, the Superintendent may restrict or terminate bicycle use, including possible temporary closures if seasonal conditions make multiple uses inappropriate.

The Trails EA evaluated potential impacts to park resources and visitor experience that would result from opening certain existing trails to bicycle use. The NPS determined that bicycle use on those trails is appropriate and found that there will be no significant adverse impacts to resources or visitors as a result of that use.

2. Comment: Mountain biking in NERI is unnecessary and would contribute to deterioration of the environment.

Response: The NPS is mandated by Congress to conserve park resources and values and to provide for the enjoyment of the parks. If there is a conflict between the conservation provision and the enjoyment provision, conservation is predominant and controlling. Through the impact analysis in the Trails EA, the NPS determined that opening trails to bicycle use in NERI

will have no significant impact on, and will not impair, park resources or values. The adverse impacts to park resources that would occur from bicycle use are expected to be slightly different than the impacts of pedestrian use, but of no greater magnitude. Protection of land and water resources in the park remains a top priority, and environmental conditions will be monitored and will not be allowed to deteriorate as a result of bicycle use on designated trails.

3. Comment: Under the Clean Water Act, the NPS may not authorize off-road bicycling through streams and other waterways.

Response: Off-road bicycle use in NERI will be regulated in accordance with all relevant federal laws. Where existing trails that would be opened to bicycle use cross an intermittent or perennial stream, a bridge elevates trail users out of the course of the stream. On newly constructed trails, mitigations are built into the construction plans that will minimize erosion and protect streams from sedimentation. Additionally, the Trails EA states that bridges or bottomless culverts will be used where trails cross perennial or intermittent streams, thus keeping all trail users out of the streambeds. The Trails EA further states that crossings of ephemeral channels would be minimized, and if an ephemeral stream crossing is unavoidable, trails will cross perpendicular to the channel direction, minimizing the amount of streambed affected by trail use. Streamflow characteristics and water quality are protected by these measures.

4. Comment: The NPS decision to authorize bike use in NERI may have been unduly influenced by special interest groups who solicit public comments in support of their agenda.

Response: The NPS issued press releases, purchased newspaper ads, and held a public meeting to solicit public comments on the Trails EA. Press releases were similarly issued to solicit public comment on the proposed rule. The public has had reasonable opportunities to comment on decisions regarding bicycle use. While any interest group is free to advertise public comment opportunities and solicit or advocate responses, the number of comments received from an interest group is not the controlling factor in our decision to designate trails for bicycle use. As stated above, resource conservation is a higher priority than use for management of NPS lands, and decisions are made accordingly.

5. Comment: The NPS authorization of off-road bicycle use at NERI does not allow the NPS enough control over irresponsible behavior by visitors and potential damages to park resources.

Response: Most organized mountain bike organizations subscribe to a ''code of ethics'' (e.g. New England Mountain Bike Association: A Mountain Bicyclist's Guide to Responsible Riding). However, it is our experience that most user groups have a small percentage of participants who fail to respect rules and other recreational users. Trail design and management at NERI is structured to encourage appropriate use of the trails and to provide a positive experience that makes trail users of all types want to stay within the designed trail tread. If any cyclists behave in an unsafe manner or harm park resources, they can be cited for regulatory violations and subject to criminal penalty, as can any other irresponsible park visitors.

Mountain bikers are not being offered unconditional access to park resources. The final rule and NPS policy include provisions for the Superintendent to adaptively manage, and if necessary, restrict or prohibit bicycle use on trails if such actions are required for resource protection or visitor safety.

6. Comment: The FONSI wrongly concluded that the construction of an estimated 40 miles of new bicycle trails in the Craig Branch and Garden Ground areas of NERI had only *insignificant* impacts. The Trails EA and the FONSI are seriously flawed because they failed to analyze the precedent-setting nature of the proposal to construct trails to provide mountain bicycle opportunities.

Response: In revisions to the service-wide regulations on bicycles found at 36 CFR 4.30 the NPS stated: ''The National Park Service . . . believes that, with proper management, bicycling is an appropriate recreational activity in many park areas. In other areas, due to safety or other concerns, bicycling may not be appropriate'' (77 FR 29927, July 6, 2012). Through the FONSI, the NPS determined for NERI only, that development of the new multi-use (hike and bike) trails referenced in the comment and opening certain existing trails to bicycle use are consistent with the protection of park resources and appropriate at NERI. The Trails EA does not set precedent for bicycle use in the NPS. Several other units of the NPS have developed multi-use (hike and bike) trails and opened them to bicycle use through the promulgation of special regulations. Additionally, the service-wide regulation on bicycle use (36 CFR 4.30) establishes a process for Superintendents to determine whether that use is or is not appropriate.

7. Comment: The NPS has failed to adequately analyze the impacts of bicycling because the 2010/2011 GMP postdates the Trails EA and does not cover bicycle trails.

Response: The 1982 GMP very generally provides for the management of off-road bicycle use in the park, and the 1993 Trail Development Plan emphasizes the creation of a trail system for multiple uses, including bicycling. The 2011 Trails EA tiered to the 1982 GMP as the only current management guidance for NERI at the time the FONSI was signed, but referenced public input from the 2010/2011 GMP development process and new information about the existing conditions in the park's environment that became available through the development of the 2010/2011 GMP. The decision in the FONSI is consistent with both the 1982 GMP and the 2010/2011 GMP, which proposed (and the ROD approved) the concept of bicycle use on trails in NERI, the development of three stacked loop multi-use (hiking and biking) trail systems (including those in the Craig Branch and Garden Ground areas), and promulgation of a special regulation to authorize that use.

8. Comment: The studies cited in the Trails EA are scientifically flawed.

Response: Several of the studies specifically referenced in the full text of this comment were used to evaluate the potential impacts described in the impact analysis in the Trails EA. These reference materials are peer-reviewed and professionally published studies that provide the best available science on impacts of mountain biking. The impact analysis is specific to the park and the local ecosystem, and the studies in question provide general background information to the analysis to make it more robust and accurate. The impact analysis in the Trails EA produced a finding that no significant adverse impacts to the human environment would result from the proposed action, including opening the trails referenced in this rule to bicycle use.

Changes From the Proposed Rule

After consideration of the public comments, the park has decided that no substantive changes are necessary in the final rule, although some text was altered for clarity.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all

significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This conclusion is based on the results of a cost/benefit and regulatory flexibility threshold analysis available for review on the NERI park planning Web site, *http://www.nps.gov/neri/parkmgmt/planning.htm.* The rule would not regulate small business. The rule would likely increase visitation at the park, which could generate benefits for small businesses in the local community through increased spending for goods and services.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The July 2011 NPS economic analysis estimated that the addition of more than 100 miles of new trails will significantly improve NERI's attractiveness to bicyclists and thus drive additional economic activity.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will not impose restrictions on local businesses in the form of fees, training, record keeping, or other measures that would increase costs.

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

Unfunded Mandates Reform Act (UMRA)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule only designates bicycle routes and manages bicycle use on those routes within the boundaries of the New River Gorge National River. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of NPS administered lands. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Throughout numerous past and current park planning processes, no expression of affiliation has been asserted with NERI by any tribal governments or organizations. Tribes that could potentially be affiliated were contacted individually during the development of the 2010/2011 GMP/EIS and no response was received. Copies of the Trails EA were sent to 14 Native American tribes who were identified as possibly having some interest in the park. The Chief of the Remnant Yuchi Nation was the only tribal representative to respond; he indicated that he was grateful to be acknowledged, that the NPS should continue the excellent work, and that he had no formal questions at this time.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the PRA is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required because the NPS reached a FONSI for the Selected Alternative. The Trails EA, the FONSI and other relevant documents and records of the public process may be viewed by going to the NERI park planning Web site, *http://www.nps.gov/neri/parkmgmt/planning.htm.*

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Drafting Information

The primary authors of this rule were Jamie Fields, NPS New River Gorge National River; Russel J. Wilson and C. Rose Wilkinson, NPS Regulations and Special Park Uses, Washington, DC.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under D.C. Code 10–137 (2001) and D.C. Code 50–2201 (2001).

■ 2. In § 7.89 add paragraph (b) to read as follows:

§ 7.89 New River Gorge National River.

* * * * *

(b) *Bicycling.* (1) *Where may I ride a bicycle within New River Gorge National River?* Bicycle use is allowed:

(i) On park roads and in parking areas; and

(ii) On administrative roads and trails authorized for bicycle use as listed in the following table.

Administrative Roads and Trails Authorized for Bicycle Use—North to South

Hawks Nest Connector Trail
Fayetteville Trail
Park Loop Trail
Timber Ridge Trail
Kaymoor Trail
Craig Branch Trail
Arrowhead Trail
Long Point Trail (except 0.2 miles closest to Long Point Vista)
Keeneys Creek Rail Trail
Headhouse Trail
Tipple Trail
Seldom Seen Trail
Nuttallburg Town Loop Connector Trail
Brooklyn Mine Trail
Brooklyn Miner's Connector Trail
Southside Trail
Rend Trail
Stone Cliff Trail
Terry Top Trail
Garden Ground Stacked Loop Trail
Little Laurel Trail
Mud Turn Trail
Glade Creek Trail
Panther Branch Connector Trail

(2) *How will I know where these administrative roads and trails are located in the park?* The administrative roads and trails where bicycle use is authorized are identified on maps located in the Superintendent's office, at park visitor centers, at interpretive kiosks, and on the park's Web site. Additional information about bicycling will also be posted at appropriate trailheads and other locations.

(3) *What requirements must I meet to ride a bicycle within New River Gorge National River?* (i) In addition to the applicable provisions in 36 CFR part 4, all bicyclists must yield to other trail users in the following manner:

(A) A bicyclist must yield to an equestrian;

(B) A bicyclist must yield to a pedestrian; and

(C) A bicyclist travelling downhill must yield to a bicyclist travelling uphill.

(ii) Yielding the right of way requires slowing down to a safe speed, being prepared to stop, establishing communication, and passing safely.

(iii) Failure to yield is prohibited.

(4) *How will the Superintendent manage bicycle use where it is authorized?* The Superintendent may close park and administrative roads, parking areas and trails, or portions thereof, reopen the same, or impose conditions or restrictions for bicycle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(i) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(ii) Violating a closure, condition, or restriction is prohibited.

Dated: November 20, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–29087 Filed 12–4–13; 8:45 am]

BILLING CODE 4312–EJ–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R06–OW–2011–0712; FRL–9903–26–Region–6]

Ocean Dumping; Sabine-Neches Waterway (SNWW) Ocean Dredged Material Disposal Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA today designates four new Ocean Dredged Material Disposal Sites (ODMDS) located offshore of Texas for the disposal of dredged material from the Sabine-Neches Waterway (SNWW) Channel Improvement Project (CIP), which includes an extension of the Entrance Channel into the Gulf of Mexico, pursuant to the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA). The designation of these four disposal sites does not by itself authorize the disposal of dredged material, but makes these sites available for use for dredged material from the CIP if no environmentally preferable, practicable alternative for managing that dredged material exists, and if analysis of the dredged material indicates that it is suitable for open-water disposal. This action is to designate adequate, environmentally-acceptable ocean disposal site capacity for suitable dredged material generated from new work (construction) and future maintenance dredging from the SNWW CIP.

DATES: This rule is effective on January 6, 2014.

FOR FURTHER INFORMATION CONTACT: Jessica Franks, Ph.D., Marine and Coastal Section (6WQ–EC), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–8335, fax number (214) 665–6689; email address *franks.jessica@epa.gov*.

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- Paperwork Reduction Act
- Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996
- Unfunded Mandates
- Executive Order 13132: Federalism
- Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act
- National Technology Transfer Advancement Act
- Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations
- List of Subjects in 40 CFR Part 228

The supporting document for these site designations is the Final Environmental Impact Statement (EIS) for the Sabine-Neches Waterway Channel Improvement Project: Southeast Texas and Southwest Louisiana (SNWW CIP) dated March 2011, prepared by the U.S. Army Corps of Engineers (also Corps or USACE). Appendix B of Volume III contains the Ocean Dredged Material Disposal Sites Final Environmental Impact Statement. The U.S. Army Corps of Engineers Final EIS for the SNWW CIP was published in the **Federal Register** (FR) April 4, 2011 (Vol. 76, Nos. 43). That document is available for public inspection at the following locations:

1. Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733
2. Federal e-Rulemaking Portal: *http://www.regulations.gov*.

A. Potentially Affected Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters offshore of Texas for the disposal of dredged material from the Sabine-Neches Waterway, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Final Rule would be primarily of relevance to the US Army Corps of Engineers when proposing to dispose of dredged material from the Sabine-Neches Waterway. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Federal government	U.S. Army Corps of Engineers Civil Works projects, and other Federal agencies.
Industry and general public	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide regarding entities likely to be affected by this action. For questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* (MPRSA). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under Section 102 of MPRSA, EPA is responsible for designating an acceptable location for the ocean dredged material disposal sites (ODMDS). With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in 40 CFR part 227.

Pursuant to its voluntary NEPA policy, published at 63 FR 58045 (October 29, 1998), EPA typically relies on the EIS process to enhance public participation on the Final designation of an ODMDS. A site designation EIS evaluates alternative sites and examines the potential environmental impacts associated with disposal of dredged material at various locations. Such an EIS first demonstrates the need for the ODMDS designation action (40 CFR 6.203(a) and 40 CFR 1502.13) by describing available or potential aquatic and non-aquatic (*i.e.,* land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through a Zone of Siting Feasibility (ZSF) process. Potential alternative sites are then evaluated using EPA's ocean disposal criteria at 40 CFR part 228 and compared in the EIS. Of the sites that satisfy these criteria, the site that best complies is selected as the preferred alternative for designation through a rulemaking process published in the **Federal Register** (FR).

Formal designation of an ODMDS in the **Federal Register** and codification in the Code of Federal Regulations does not constitute approval of dredged material for ocean disposal. Site designation merely identifies a suitable ocean location in the event that dredged material is later approved for ocean disposal. Designation of an ODMDS provides an ocean disposal alternative for consideration in the review of each proposed dredging project. Before any ocean disposal may take place, the dredging project proponent must demonstrate a need for ocean disposal, including consideration of alternatives. Alternatives to ocean disposal, including the option for beneficial re-use of dredged material, are evaluated for each dredging project that may result in the ocean disposal of dredged materials from such project. Ocean disposal of dredged material is only allowed after both EPA and USACE determine that the proposed activity is environmentally acceptable under criteria codified at 40 CFR part 227 and 33 CFR part 336, respectively. In addition, ongoing management of these ODMDS would be subject to Site Management and Monitoring Plan(s) (SMMP) required by MPRSA section 102(c)(3)(F) and (c)(4), which are discussed more fully below.

Decisions to allow ocean disposal are made on a case-by-case basis through the MPRSA Section 103 permitting process, resulting in a USACE permit or its equivalent process for USACE's Civil Works projects. Material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (40 CFR parts 225 and 227), as determined from physical, chemical, and bioassay/bioaccumulation tests prescribed by national sediment testing protocols (EPA and USACE 1991). Only clean non-toxic dredged material is acceptable for ocean disposal. The newly designated sites will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

Evaluation of the ODMDS under EPA's general and specific criteria is described in the March 2011 ''Final Environmental Impact Statement for Sabine-Neches Waterway Channel Improvement Project Southeast Texas and Southwest Louisiana, Appendix B.'' The Final Rule provides adequate, environmentally-acceptable ocean disposal site capacity for suitable dredged material generated from new work (construction) and future maintenance dredging along the SNWW Entrance Channel 13.2-mile extension by formally designating the SNWW A–D sites as acceptable ocean disposal locations for dredged material meeting applicable requirements.

The proposed rule for designation was published in the **Federal Register** on June 27, 2013, as docket number EPA–R06–OW–2011–0712. The comment

period closed on August 12, 2013. Comments received are addressed in section G., below. Under NEPA, federal agencies prepare a public record of decision (ROD) at the time of their decision on any action for which an FEIS has been prepared. This final rulemaking notice serves the same purpose as a ROD required under regulations promulgated by the Council on Environmental Quality for federal agencies subject to NEPA (CEQ Regulations 40 CFR 1505.2

C. Location

As identified in Appendix B of the FEIS, the environmentally preferred sites which EPA now designates are SNWW–A, which is located 21 miles from shore, SNWW–B, which is located 24 miles from shore, SNWW–C, which is located 27 miles from shore, and SNWW–D, which is located 30 miles from shore. Each of the ODMDS occupies an area of 5.3 square statute miles, with depths ranging from 44 to 46 feet. The bottom topography is flat.

D. Disposal Volume Limit

The action designates the SNWW A–D for a one-time placement of approximately 18,737,000 cubic yards (cy) of new work (construction) material plus approximately 37,725,000 cubic yards of maintenance material over a 50-year period. The need for ongoing ocean disposal capacity is based on modeling in the USACE SNWW CIP Engineering Appendix.

E. Site Management and Monitoring Plan (SMMP)

Continuing use of the sites requires verification that significant impacts do not occur outside of the disposal site boundaries through implementation of the SMMP developed as part of the Final EIS for the Sabine-Neches Waterway Project. The SMMP provides a structured framework to ensure that dredged material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (Section 103(a) of the MPRSA). Two main objectives for management of SNWW A–D are: (1) To ensure that only dredged material that satisfies the criteria set forth in 40 CFR part 227, subparts B, C, D, E, and G and § 228.4(e) and is suitable for unrestricted placement at the ODMDS is, in fact, disposed at the sites, and; (2) to avoid excessive mounding, either within the site boundaries or in areas adjacent to the sites, as a direct result of placement operations.

The EPA and USACE Galveston District personnel will achieve SMMP objectives by jointly administering the following activities in accordance with MPRSA section 102(c)(3): (1) A baseline assessment of conditions at the sites; (2) a program for monitoring the sites; (3) special management conditions or practices to be implemented at the sites that are necessary for protection of the environment; (4) consideration of the quantity of dredged material to be discharged at the sites, and the presence, nature, and bioavailability of the contaminants in the material; (5) consideration of the anticipated use of the sites over the long term, including the anticipated closure date for the sites, if applicable, and any need for management of the sites after the closure; and (6) a schedule for review and revision of the SMMP.

The SMMP requires periodic physical monitoring to confirm that disposal material is deposited within the seafloor disposal boundary, as well as bathymetric surveys to confirm that there is no excessive mounding or short-term transport of material beyond the limits of the ODMDS. The SMMP describes physical and chemical sediment and biological monitoring requirements. Monitoring activities are required to be conducted based on the Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual, EPA 503/8–91/001 and the Joint EPA–USACE Regional Implementation Agreement (RIA) procedures. Results will be used to confirm that dredged material actually disposed at the sites satisfies the criteria set forth in 40 CFR part 227, subparts B, C, D, E, and G, and § 228.4(e) and is suitable for unrestricted ocean disposal. Other activities implemented through the SMMP to achieve these objectives include: (1) Regulating quantities and types of material to be disposed, including the time, rates, and methods of disposal; and (2) recommending changes to site use requirements, including disposal amounts or timing, based on periodic evaluation of site monitoring results.

E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)).

General Selection Criteria

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

The EPA selected SNWW A–D, including appropriate buffer zones, to avoid sport and commercial fishing activities, as well as other areas of biological sensitivity. The preferred ODMDS are outside the channel, including the navigation channel buffer zone, and safety fairways, and avoid known navigational obstructions, although they do infringe on two Fairway Anchorage areas.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

The sizes for the buffer zones and for the SNWW A–D sites are based on sediment transport modeling and the physical oceanographic characterization of the Sabine Pass area. Modeling and characterization, combined with the information on the expected quality of the material to be dredged, ensures that perturbations caused by placement are reduced to ambient conditions at the boundaries of the site. Reports of the modeling and characterization are included in the administrative record for this action.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

This criterion does not apply to the Final Site designations because they are not existing sites that had previously been approved on an interim basis.

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

The sizes of the Final Sites are as small as possible to reasonably meet the criteria stated in 40 CFR 228.5 and 40

CFR 228.6(a). The size for each Final ODMDS is 5.32 square statute miles (4.02 square nautical miles). The SMMPs were designed to provide adequate surveillance to prevent adverse long-range impacts.

5. The EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used.

Cost, safety, and time factors plus difficulties with monitoring and surveillance preclude the designation of any ODMDS beyond the edge of the Continental Shelf off Sabine Pass (and the Gulf of Mexico generally). Additionally, uncertainty about the resilience of the deep-ocean benthic community indicates that an off-shelf disposal site could threaten severe adverse impacts to that off-shelf benthic community. The EPA did not identify an environmental advantage to an off-shelf site designation, whereas possible adverse impacts to the human environment could be more easily monitored at a nearshore site. The existing ODMDS that have been used historically, while large enough to accommodate future maintenance material, are cost prohibitive with regard to disposal of dredged material from the channel extension. Without designation of the four new ODMDS, this material would need to be transported to the existing maintenance ODMDS. The end of the existing channel is roughly 13 miles from the end of the proposed extension, resulting in an increased travel distance of 26 miles for each load of dredged material from the extension work. Construction costs are expected to double under this scenario, making it impossible to economically justify the SNWW CIP.

Specific Selection Criteria

1. Geographical position, depth of water, bottom topography, and distance from the coast.

The four new ODMDS sites are bounded by the following coordinates (Location North American Datum from 1983):

A	ODMDS	29°24′47″ N, 93°43′29″ W; 29°24′47″ N, 93°41′08″ W
		29°22′48″ N, 93°41′09″ W; 29°22′49″ N, 93°43′29″ W
B	ODMDS	29°21′59″ N, 93°43′29″ W; 29°21′59″ N, 93°41′08″ W
		29°20′00″ N, 93°41′09″ W; 29°20′00″ N, 93°43′29″ W
C	ODMDS	29°19′11″ N, 93°43′29″ W; 29°19′11″ N, 93°41′09″ W
		29°17′12″ N, 93°41′09″ W; 29°17′12″ N, 93°43′29″ W
D	ODMDS	29°16′22″ N, 93°43′29″ W; 29°16′22″ N, 93°41′10″ W
		29°14′24″ N, 93°44′10″ W; 29°14′24″ N, 93°43′29″ W

The water depth at the SNWW A–D sites ranges from 44 to 46 feet and the bottom topography is flat. SNWW–A is located 21 miles from shore, SNWW–B is located 24 miles from shore, SNWW–C is located 27 miles from shore and SNWW–D is located 30 miles from shore.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

Due to the marine open water locale of the SNWW A–D sites, the presence of aerial, pelagic, or benthic living resources is likely within the area of the sites. The location of the ODMDS is between the principal spawning areas and the estuarine nursery areas. The water column and benthic effects associated with ocean disposal of dredged material at the ODMDS would not adversely affect the passage of organisms to and from the spawning-nursery areas through the waters above the disposal sites. Localized and intermittent dredged material disposal operations are unlikely to adversely affect migration, feeding, or nesting of marine mammals and sea turtles.

3. Location in relation to beaches and other amenity areas.

The SNWW A–D sites are over 21 miles from any beach and Sabine Bank is at least 1.7 miles from the nearest of the ODMDS. According to the dredged material transport model (available in the administrative record), the maximum distance for the mounded dredged material to reach ambient depth is 1,081 feet. Doubling this distance would provide a buffer of 0.4 mile, only a fraction of the 1.7 miles to Sabine Bank.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any.

Only suitable dredged material from the SNWW Entrance Channel 13.2 mile extension may be disposed at the sites. Dredged material proposed for ocean disposal is subject to strict testing requirements established by the EPA and USACE, and only clean (non-toxic) dredged materials from the SNWW Entrance Channel 13.2 mile extension would be allowed to be disposed of at the SNWW A–D sites. Approximately 18.7 mcy of new work material will be dredged during the construction of 13.2-mile extension of the Entrance Channel. Maintenance material per dredging cycle is estimated at three mcy for a total of 37.7 mcy over a period of 50 years. Dredged material is expected to be released from hopper dredges.

5. Feasibility of surveillance and monitoring.

Surveillance and monitoring are feasible at the SNWW A–D sites. The SMMP prepared for the sites consists of (1) a method for recording the location of each discharge; (2) bathymetric surveys; and, (3) grain-size analysis, sediment chemistry characterization, and benthic infaunal analysis at selected stations.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

These three physical oceanographic parameters were used by the U.S. Army Corps of Engineers to develop the necessary buffer zones for the exclusion analysis and to determine the adequacy of size of the SNWW A–D sites. Predominant longshore currents, and thus predominant longshore transport, are to the west. Long-term mounding has not historically occurred in the existing nearby ODMDS. Therefore, steady longshore transport and occasional storms, including hurricanes, are expected to remove the disposed material from the sites through dispersal, horizontal transport, and vertical mixing.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

The Final Environmental Impact Statement (EIS) discusses the results of chemical and bioassay testing of samples collected to support the proposed Waterway Extension and surrounds, and concluded that there were no indications of water or sediment quality problems in the ZSF, including the proposed disposal sites. Testing of dredged material collected and tested from past maintenance dredging indicates that the material dredged from the channel was acceptable for ocean disposal according to the evaluation criteria published at 40 CFR part 227. Based on current direction and modeling of the new work and maintenance material, the SNWW A–D sites are situated to prevent discharged material from reentering the

channel and to ensure that any mounding poses no obstruction to navigation. No cumulative mounding has been detected at the existing ODMDS and there is no reason to expect any at the SNWW A–D ODMDS.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.

The interference considerations that are pertinent to the present situation are shipping, mineral extraction, commercial and recreational fishing, and recreational areas. The SNWW A–D ODMDS will not interfere with these or other legitimate uses of the ocean because the exclusion processes used to identify the sites was designed to prevent the selection of sites that would cause any such interference. Ocean disposal of dredged material in the past has not interfered with other uses.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

The FEIS to support the proposed Waterway Extension project cited a baseline study, which used sediment samples from the area of the proposed Extension and the ZSF. No adverse water or sediment quality concerns were indicated. Sampled and characterized, benthos of the area, is dominated by polychaetes (57.7%) and included abundant populations of malacostracans (18.3%) and bivalves (7.7%). Density ranged from 4,055 organisms/square foot at Station 3 (north of ODMDS A) up to 30,265 organisms/square foot at Station 26 (center of ODMDS B). Areas of moderately high sand content (68 to 91%) supported the highest densities, located near ODMDS B and ODMDS C, near the center of the ZSF. In general, the water and sediment quality is good throughout the ZSF and in the existing (historically used) ODMDS. There have been no long-term adverse impacts on water and sediment quality or benthos at the existing ODMDS, and none are expected with use of the SNWW A–D sites.

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

With disturbances to any benthic community, opportunistic species would initially recolonize the area. At this location, however, these species would not be nuisance species, i.e., they would not interfere with other legitimate uses of the ocean, they would not be human pathogens, and they would not be non-indigenous species. The placement of dredged material in the past has not attracted or promoted development or recruitment of nuisance species, and the placement of the dredged material from new work and future maintenance dredged material should not attract or promote the development or recruitment of nuisance species.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

Historic records generated by the former Minerals Management Service (MMS) indicate that no historic shipwrecks are mapped within the limits of the SNWW A–D ODMDS, but remote-sensing surveys have not been conducted. Ocean disposal of dredged material is not expected to adversely affect any unrecorded wrecks given the depth of water through which the material would settle and the expected depth of burial at the time of disposal, particularly given the dispersive nature of the seabed environment in this portion of the Gulf. The distribution, depth, and dispersion of dredged material within these ODMDS have been evaluated by numerical modeling (PBS&J, 2006). Hopper dredges would drop dredged material onto the ODMDS, forming mound fields with individual mounds totaling no more than five feet in height. The effects of the deposition of material on any undiscovered feature would be cushioned by settling through water depths ranging from 30 to 45 feet. Previous monitoring of existing placement areas and studies of bottom ocean currents has shown that the material would disperse between channel maintenance cycles and not accumulate. The SNWW A–D ODMDS are located in Federal waters (i.e., outside of adjacent State jurisdiction).

G. Responses to Comments

The proposed rule for designation was published in the **Federal Register** on June 27, 2013, as docket number EPA–R06–OW–2011–0712. The comment period closed on August 12, 2013. The EPA received four comments on the proposed rule from three entities and one individual. These comments are responded to here.

1. Concerns About Minimizing Ocean Disposal by Maximizing Beneficial Re-Use

Two commenters expressed concerns about using new dredged material for beneficial use instead of placement in the ODMDS SNWW A–D designated areas. The Louisiana Department of Wildlife and Fisheries recommended using new work material beneficially. An individual commenter expressed concern that disposal of dredged material would increase hypoxia in the Gulf of Mexico and recommended beneficial use of dredged material.

Disposal or re-use placement alternatives that could practicably meet the purpose and need of a dredging project must be evaluated at the time of project-specific permitting. Timing and logistics can affect the practicability of dredged material disposal or beneficial use alternatives. For an individual project, ocean disposal is permitted only when other alternatives are not practicable. However, determining the availability of alternatives for individual dredging projects is independent of this ODMDS designation action, and such comments are not further addressed here.

2. Concerns About a Consistency Determination

The Louisiana Department of Natural Resources (LDNR), Office of Coastal Management, commented that this designation action ''will require the preparation of a consistency determination in accordance with section 307(c) of the Coastal Zone Management Act.'' Pursuant to section 307(c)(1) of the Coastal Zone Management Act, federal activities that affect a state's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the state's approved coastal zone management program. To implement that requirement, federal agencies prepare coastal consistency determinations and submit them to the appropriate state agencies, which may concur in or object to a consistency determination. In connection with its preparation of the EIS on the Sabine-Neches Waterway Channel Improvement Project, the Corps of Engineers prepared a coastal consistency determination on its proposed navigation projects and the ODMDS designation, which it submitted to the Louisiana Department of Natural Resources (LDNR) and the Texas General Land Office (TGLO), the agencies implementing approved coastal zone management plans for their respective states. On March 30, 2010, TGLO concurred in the Corps consistency determination. By letter of March 31, 2010, LDNR concurred on condition that the Corps submit a supplemental consistency determination to LDNR after the project planning and design process, which results in a more detailed description of project features. The LDNR's letter also generally opposed EPA's ODMDS designation, noting that the designation would provide the Corps an option

other than beneficial use for disposal of dredged material. More detailed plans and descriptions of the proposed navigation projects may be needed for LDNR and the Corps to resolve potential issues on the practicability of beneficial use of dredged materials in Louisiana's coastal zone. However, such issues are independent of EPA's proposed ODMDS designations, which only make an offshore disposal option available when the Corps deems beneficial use that might otherwise be required by a state CZM program impracticable. The EPA supports beneficial use of dredged material, but ODMDS designations do not in any way require that the Corps forego beneficial use in favor of ocean disposal.

Moreover, the closest of any of the four ODMDS is approximately 20 miles off the Texas coast at its nearest point. Predominant longshore currents in the ODMDS locations flow from east to west and dredged material transport modeling shows that any dredged materials discharged to them will not thus enter or otherwise affect Louisiana's coastal zone. Because this ODMDS designation will not affect any land or water use or natural resource of Louisiana's coastal zone, no coastal consistency determination need be prepared for this action.

3. Question on the Designation Process

One commenter from the U.S. Coast Guard asked for clarification on the Rule-Making process for the designation of the ODMDS A–D sites. The EPA provided clarification to the commenter.

G. Regulatory Requirements

1. National Environmental Policy Act (NEPA)

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), federal agencies are generally required to prepare an environmental impact statement (EIS) on major federal actions significantly affecting the quality of the human environment. Under the doctrine of functional equivalency, EPA designations of ODMDS under MPRSA are not subject to NEPA requirements. The EPA believes the NEPA process enhances public participation on such designations and the potential effects of these designations were fully analyzed in an EIS on the Sabine-Neches Waterway Channel Improvement Project: Southeast Texas and Southwest Louisiana (SNWW CIP). The Corps of Engineers was the lead agency on that EIS and EPA was a cooperating agency.

Notice of the draft EIS was published in the **Federal Register** on December 24, 2009, and the document was available for review and comment through March 10, 2010. In addition, public meetings on the EIS were held in Beaumont, Texas and Lake Charles, Louisiana. Comments included concerns on pipeline relocation, marsh ecology, beneficial use of dredged material, and increased danger from storms. Few comments were received on designation of the ODMDS. Detailed responses to comments were published in Appendix A of the final EIS, notice of which was published in the **Federal Register** on March 4, 2012. The EPA has relied on information from the EIS and its technical appendices in its consideration and application of ocean dumping criteria to the four ODMDS this Rule designates.

2. Endangered Species Act Consultation

During development of the SNWW CIP project EIS referenced above, USACE and EPA consulted with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to jeopardize the continued existence of any Federally-listed species. The consultation process is documented in the EIS.

Of the Threatened or Endangered Species noted in the biological assessment for the SNWW CIP, only sea turtles and whales are found as far offshore as the SNWW A–D ODMDS. The NMFS issued a biological opinion on August 13, 2007, that site designation is not likely to jeopardize the continued existence of any Federally-listed species.

3. Magnuson-Stevens Fishery Conservation and Management Act of 1996

The designation of the SNWW A–D ODMDS will not adversely affect essential fish habitat. By letter dated March 8, 2010, the National Marine Fisheries Service concurred with the USACE findings that beneficial features associated with the project would offset any adverse impacts of the Waterway Expansion project.

4. Coastal Zone Management Act

Pursuant to section 307(c)(1) of the Coastal Zone Management Act, federal activities that affect a state's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the state's approved Coastal Zone Management (CZM) program. To implement that requirement, federal agencies prepare coastal consistency determinations and submit them to the appropriate state agencies, which may concur in or object to a consistency determination.

In connection with its preparation of the EIS on the Sabine-Neches Waterway Channel Improvement Project, the Corps prepared a coastal consistency determination on its proposed navigation projects and the ODMDS designation, which it submitted to the Louisiana Department of Natural Resources (LDNR) and the Texas General Land Office (TGLO), the agencies implementing approved coastal zone management plans for their respective states. On March 30, 2010, TGLO concurred in the Corps consistency determination. By letter of March 31, 2010, LDNR concurred on condition that the Corps submit a supplemental consistency determination to LDNR after the project planning and design process, resulting in a more detailed description of project features. The LDNR's letter also generally opposed EPA's ODMDS designation, claiming it would provide the Corps an option other than beneficial use for disposal of dredged material.

More detailed plans and descriptions of the proposed navigation projects may be needed for LDNR and the Corps to resolve potential issues on the practicability of beneficial use of dredged materials in Louisiana's coastal zone. Such issues are independent of EPA's proposed ODMDS designations, however, which only make an offshore disposal option available when the Corps deems beneficial use that might otherwise be required by a state CZM program impracticable. The EPA supports beneficial use of dredged material, but ODMDS designations do not in any way require that the Corps forego beneficial use in favor of ocean disposal.

Moreover, the closest of any of the four SNWW A–D ODMDS is approximately 20 miles off the Texas coast at its nearest point. Predominant longshore currents in the SNWW A–D ODMDS locations flow from east to west. Dredged material transport modeling shows that any dredged materials discharged to the SNWW A–D ODMDS will not thus enter or otherwise affect Louisiana's coastal zone. Because the SNWW A–D ODMDS designations will not affect any land or water use or natural resource of Louisiana's coastal zone, a coastal consistency determination is not needed.

5. Coastal Barrier Improvement Act of 1990

The Coastal Barrier Improvement Act is intended to protect fish and wildlife resources and habitat, prevent loss of human life, and preclude the expenditure of Federal funds that may induce development on coastal barrier islands and adjacent nearshore areas. The Coastal Barrier Improvement Act of 1990 was enacted to reauthorize the Coastal Barrier Resources Act (CBRA) of 1982. Exceptions to the Federal expenditure restrictions include maintenance or constructed improvement(s) to existing Federal navigational channels and related structures (e.g., jetties), including the disposal of dredged materials related to maintenance and construction; therefore, project activities related to disposal are exempt from the prohibitions set forth in this act, as noted in the Final EIS for the SNWW CIP, Vol. II.

H. Administrative Review

This rule designates ocean dredged material disposal sites pursuant to Section 102 of the MPRSA. This action complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ''significant,'' and therefore subject to office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

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

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

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

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

This Final Rule should have minimal impact on State, local, or Tribal governments or communities. Consequently, EPA has determined that this Final Rule is not a ''significant regulatory action'' under the terms of Executive Order 12866.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Final Rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Final Rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This Final Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector that may result in estimated costs of $100 million or more in any year. It imposes no new enforceable duty on any State, local or Tribal governments or the private sector nor does it contain any regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Final Rule.

5. Executive Order 13132: Federalism

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

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

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This Final Rule does not have Tribal implications, as defined in Executive Order 13175.

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

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Final Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the

environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act

This Final Rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The Final Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, EPA concluded that this Final Rule is not likely to have any adverse energy effects.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This Final Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629) directs Federal agencies to determine whether the Final Rule would have a disproportionate adverse impact on minority or low-income population groups within the project area. The Final Rule would not significantly affect any low-income or minority population.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: October 31, 2013.

Ron Curry,

Regional Administrator, Region 6.

In consideration of the foregoing, EPA amends part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by adding paragraphs (j)(22) through (25) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(j) * * *

(22) Sabine-Neches, TX Dredged Material Site A.

(i) *Location:* 29°24′47″ N., 93°43′29″ W.; 29°24′47″ N., 93°41′08″ W.; 29°22′48″ N., 93°41′09″ W.; 29°22′49″ N., 93°43′29″ W.; thence to point of beginning.

(ii) *Size:* approximately 5.3 square miles.

(iii) *Depth:* Ranges from 44 to 46 feet.

(iv) *Primary Use:* Dredged material.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from the Sabine-Neches 13.2 mile Extension Channel that complies with EPA's Ocean Dumping Regulations. Dredged material that does not meet the criteria set forth in 40 CFR part 227 shall not be placed at the site. Disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed periodically, at least every 10 years.

(23) Sabine-Neches, TX Dredged Material Site B.

(i) *Location:* 29°21′59″ N., 93°43′29″ W.; 29°21′59″ N., 93°41′08″ W.; 29°20′00″ N., 93°41′09″ W.; 29°20′00″ N., 93°43′29″ W.; thence to point of beginning.

(ii) *Size:* approximately 5.3 square miles.

(iii) *Depth:* Ranges from 44 to 46 feet.

(iv) *Primary Use:* Dredged material.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from the Sabine-Neches 13.2 mile Extension Channel that complies with EPA's Ocean Dumping Regulations. Dredged material that does not meet the criteria set forth in 40 CFR part 227 shall not be placed at the site. Disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed periodically, at least every 10 years.

(24) Sabine-Neches, TX Dredged Material Site C.

(i) *Location:* 29°19′11″ N., 93°43′29″ W.; 29°19′11″ N, 93°41′09″ W.; 29°17′12″ N., 93°41′09″ W.; 29°17′12″ N., 93°43′29″ W.; thence to point of beginning.

(ii) *Size:* approximately 5.3 square miles.

(iii) *Depth:* Ranges from 44 to 46 feet.

(iv) *Primary Use:* Dredged material.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from the Sabine-Neches 13.2 mile Extension Channel that complies with EPA's Ocean Dumping Regulations. Dredged material that does not meet the criteria set forth in 40 CFR part 227 shall not be placed at the site. Disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed periodically, at least every 10 years.

(25) Sabine-Neches, TX Dredged Material Site D.

(i) *Location:* 29°16′22″ N., 93°43′29″ W.; 29°16′22″ N., 93°41′10″ W.; 29°14′24″ N., 93°44′10″ W.; 29°14′24″ N., 93°43′29″ W.; thence to point of beginning.

(ii) *Size:* approximately 5.3 square miles.

(iii) *Depth:* Ranges from 44 to 46 feet.

(iv) *Primary Use:* Dredged material.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to dredged material from the Sabine-Neches 13.2 mile Extension Channel that complies with EPA's Ocean Dumping Regulations. Dredged material that does not meet the criteria set forth in 40 CFR part 227 shall not be placed at the site. Disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed periodically, at least every 10 years.

* * * * *

[FR Doc. 2013–28808 Filed 12–4–13; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 303–70

[FTR Amendment 2013–02; FTR Case 2013–302; Docket Number 2013–0010, Sequence 1]

RIN 3090–AJ37

Federal Travel Regulation (FTR); Agency Requirements for Payment of Expenses Connected With the Death of Certain Employees and Family Members

AGENCY: Office of Governmentwide Policy, U.S. General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) by revising its policy on agency requirements for payment of expenses connected with the death of certain employees and family members. This final rule establishes policy and procedures for relocation of dependents and household goods of an employee whose death occurred while away from the official station on a mandatory mobility agreement in support of a contingency operation. This final rule also updates the FTR to allow transportation of an employee's remains to the place of interment or where the immediate family is going to reside, and shipment of a Privately Owned Vehicle (POV) from the Temporary Duty (TDY) station. Finally, this final rule reorganizes the policy to make it easier to understand.

DATES: *Effective:* This final rule is effective January 6, 2014.

Applicability date: This final rule as addressing FTR part 303–70, subparts A through F, H and I is applicable January 6, 2014. This final rule as addressing FTR, part 303–70, Subpart G, is applicable to travel relating to employees who died on or after January 28, 2008.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Rick Miller, Office of Governmentwide Policy, Travel and Relocation Policy Division at 202–501–3822 or email at *rodney.miller@gsa.gov*. Contact the U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405–0001, 202–501–4755, for information pertaining to status or publication schedules. Please cite FTR Amendment 2013–02, FTR Case 2013–302.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe necessary regulations to implement laws regarding Federal employees who travel in the performance of official business away from their official stations. Similarly, 5 U.S.C. 5738 mandates that the Administrator of General Services prescribe regulations relating to official relocation. In addition, Executive Order 11609, as amended, delegates to the Administrator of General Services the authority to issue regulations under 5 U.S.C. 5742(b) relating to the payment of expenses when an employee dies.

Also, the Presidential Memorandum, ''Delegation Under Section 2(a) of the Special Agent Samuel Hicks Families of Fallen Heroes Act,'' dated September 12, 2011, and published in the **Federal Register** (76 FR 57621), delegates to the Administrator of General Services the authority to issue regulations under Public Law 111–178, the Special Agent Samuel Hicks Families of Fallen Heroes Act, codified at 5 U.S.C. 5724d, relating to the payment of certain expenses when a covered employee dies as a result of injuries sustained in the performance of his or her official duties. The overall implementing authority is the FTR, codified in Title 41 of the Code of Federal Regulations, Chapters 300–304 (41 CFR Chapters 300–304).

This final rule incorporates language based on Public Law 110–181, the National Defense Authorization Act (NDAA) for Fiscal Year 2008, Section 1103 and codified in 5 U.S.C. 5742, to allow agencies to provide for relocation of dependents and household effects of a employee whose death occurred while performing official duties outside the continental United States (OCONUS) or in transit thereto or therefrom, or for an employee whose death occurred while subject to a mandatory mobility agreement OCONUS and was supporting an overseas contingency operation or overseas emergency as declared by the President. This final rule allows the agency to relocate the dependents and household goods to the covered employee's former actual residence or such other place as is determined by the head of the agency concerned. The term ''contingency operation'' has the meaning given in 10 U.S.C. 101(a)(13), to include a military operation that:

(A) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12304a, 12305, or 12406 of this title, chapter 15 of this title, or any other provision of law during a war or during a national emergency declared by the President or Congress.

Pursuant to this authority, this final rule amends and updates FTR part 303–70 regarding the authority to relocate dependents and household goods of an employee on a service agreement or mandatory mobility agreement who dies at or while in transit to or from an official station OCONUS. This final rule amends and updates the FTR to clarify no death-related expenses are authorized to relocate the immediate family to another location for an employee who dies while at the permanent official station except when the employee dies while performing duties under the provisions of Subparts F, G, and H of Chapter 303.

This final rule amends and updates the FTR to allow transportation of the remains to the place of interment and shipment of a POV from the TDY location or from an official station OCONUS when the agency previously determined that use of POV was in the best interest of the Government. This final rule also amends the household goods temporary storage timeframe in Subpart H, and allows the agency to authorize additional storage not to exceed a total of 150 days, which is the same as an employee with relocation entitlements. This final rule reorganizes FTR part 303–70 to make it easier to understand. Finally, this final rule amends the part heading by adding the words ''and family members''.

B. Executive Orders 12866 and 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 final rule has not been designated as a ''significant regulatory action'' and not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. This final rule is also exempt from Administrative Procedure Act per 5 U.S.C. 553(a)(2), because it applies to agency management or personnel. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from

offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801, since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 303–70

Agency requirements for payment of expenses connected with the death of certain employees.

Dated: October 25, 2013.

Dan Tangherlini,

Acting Administrator of General Services.

For the reasons set forth in the Preamble, 41 CFR part 303–70 is revised to read as set forth below:

PART 303–70—AGENCY REQUIREMENTS FOR PAYMENT OF EXPENSES CONNECTED WITH THE DEATH OF CERTAIN EMPLOYEES AND FAMILY MEMBERS

Subpart A—General Policies

Sec.

303–70.1 When must we authorize payment of expenses related to an employee's death?

303–70.2 Must we pay death-related expenses when the employee's death is not work-related?

303–70.3 Must we pay death-related expenses for an employee who dies while on leave, or who dies on a non-workday, while on temporary duty (TDY) or stationed OCONUS?

303–70.4 Must we pay death-related expenses under this chapter if the same expenses are payable under other laws of the United States?

303–70.5 Must we pay death-related expenses under this chapter to relocate the immediate family to another location for an employee who dies while at the permanent official station?

Subpart B—Allowances for Preparation and Transportation of Employee Remains

303–70.100 Must we provide assistance for preparation and transportation of employee remains?

303–70.101 What costs must we pay for preparation and transportation of employee remains?

303–70.102 Are there any limitations on the place of interment?

Subpart C—Escort of Employee Remains

303–70.200 Under what circumstances may we authorize an escort for the remains of a deceased employee?

303–70.201 How many persons may be authorized travel expenses to escort the remains of a deceased employee?

303–70.202 What travel expenses may we authorize for the escort of a deceased employee's remains?

Subpart D—Allowances for Preparation and Transportation of the Remains of Immediate Family Members

303–70.300 When an immediate family member, residing with the employee, dies while the employee is stationed OCONUS, must we furnish mortuary services?

303–70.301 When an immediate family member, residing with the employee, dies while the employee is stationed OCONUS, must we pay expenses to transport the remains?

303–70.302 When an immediate family member, residing with the employee, dies while the employee is stationed OCONUS, may we pay interment expenses?

303–70.303 When an immediate family member, residing with the employee, dies while in transit to or from the employee's duty station OCONUS, must we furnish mortuary services and/or transportation of the remains?

Subpart E—Transportation of Employee's Baggage and Privately Owned Vehicles (POV) From Official Temporary Duty (TDY) Station

303–70.400 Must we pay transportation costs to return the deceased employee's baggage from an official TDY location?

303–70.401 Are there any limitations on the baggage we must transport from an official TDY location?

303–70.402 Must we pay transportation costs to return the deceased employee's POV from the TDY location?

Subpart F—Transportation of Immediate Family Members, Baggage, Household Goods, and Privately Owned Vehicles (POV)

303–70.500 When the employee, on a service agreement or a mandatory mobility agreement, dies at or while in transit to or from his/her official station OCONUS, must we return the employee's immediate family, baggage, POV, and household goods to the former actual residence, new official station in CONUS, or alternate destination?

303–70.501 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies while in transit from a OCONUS official station to his/her new official station within CONUS?

303–70.502 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies after reporting to the new official station within CONUS, but the family was in transit to the new official station or had not begun its en route travel?

303–70.503 What relocation expenses must we authorize for the immediate family under §§ 303–70.501 and 303–70.502?

Subpart G—Transportation of Immediate Family Members, Baggage, Household Goods, and Privately Owned Vehicles (POV) for Employees Assigned to Contingency Operation or an Operation in Response to an Emergency Declared by the President

303–70.600 When an employee dies while performing official travel duties directly supporting or directly relating to a contingency operation or an operation in response to an emergency declared by the President, must we provide transportation for the employee's immediate family, baggage, and household goods from the current official station to the former actual residence or an alternate destination?

303–70.601 What relocation expenses must we authorize for the immediate family under § 303–70.600?

303–70.602 Must we pay transportation costs to return the deceased employee's POV from the TDY location or from a official station OCONUS for deceased employees under § 303–70.600?

Subpart H—Transportation of Immediate Family Members, Baggage, Household Goods, and Privately Owned Vehicle for Law Enforcement Assignment

303–70.700 When an employee dies as a result of personal injury sustained while in the performance of the employee's law enforcement duties, either on official travel duties away from the official station, or at the current official station, must we provide transportation for the employee's immediate family, baggage, and household goods to a alternate residential destination?

303–70.701 What relocation expenses must we authorize for the immediate family under § 303–70.700?

303–70.702 Must we pay transportation costs to return the deceased employee's privately owned vehicle (POV) from the temporary duty (TDY) location or from a official station OCONUS under § 303–70.700?

Subpart I—Policies and Procedures for Payment of Expenses

303–70.800 Are receipts required for claims for reimbursement under this part?

303–70.801 To whom should we make payment?

Authority: 5 U.S.C. 5721–5738; 5741–5742; E.O. 11609, 3 CFR, 1971–1975 Comp., p 586; Presidential Memorandum dated September 12, 2011, ''Delegation Under Section 2(a) of the Special Agent Samuel Hicks Families of Fallen Heroes Act.''

Subpart A—General Policies

§ 303–70.1 When must we authorize payment of expenses related to an employee's death?

You must authorize payment of expenses when, at the time of death, the employee was:

(a) On official travel status (away from the official station); or

(b) Performing official duties OCONUS or in transit to or there from; or

(c) Reassigned away from his/her actual place of residence under a mandatory mobility agreement; or

(d) In direct support of or directly related to a military operation, including a contingency operation, or an

operation in response to an emergency declared by the President as provided in § 303–70.600; or

(e) Performing official duties as determined by the head of agency and be a covered employee as provided in § 303–70.700.

§ 303–70.2 Must we pay death-related expenses when the employee's death is not work-related?

Yes, provided the requirements in § 303–70.1 are met.

§ 303–70.3 Must we pay death-related expenses for an employee who dies when on leave, or who dies on a non-workday, while on temporary duty (TDY) or stationed OCONUS?

Yes, provided the requirements in § 303–70.1 are met. However, payment cannot exceed the amount allowed if death had occurred while on duty at the TDY station or at the official station OCONUS.

§ 303–70.4 Must we pay death-related expenses under this Chapter if the same expenses are payable under other laws of the United States?

No. When an employee dies from injuries sustained while performing official duty, certain death-related expenses are payable under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8134. For further information contact the: Department of Labor, Division of Federal Employees' Compensation, 200 Constitution Avenue NW., Washington, DC 20210.

§ 303–70.5 Must we pay death-related expenses under this Chapter to relocate the immediate family to another location for an employee who dies while at the permanent official station?

No, except when the employee dies while performing duties under the provisions of Subparts F, G, and H of this Chapter.

Subpart B—Allowances for Preparation and Transportation of Employee Remains

§ 303–70.100 Must we provide assistance for preparation and transportation of employee remains?

Yes, in accordance with §§ 303–70.101 and 303–70.102.

§ 303–70.101 What costs must we pay for preparation and transportation of employee remains?

You must pay all actual costs including but not limited to:

(a) Preparation of remains, including:

(1) Embalming or cremation;

(2) Necessary clothing;

(3) A casket or container suitable for shipment to place of interment; and

(4) Expenses necessary to comply with local laws at the port of entry in the United States; and

(b) Transportation of remains by common carrier (that is normally used for transportation of remains), hearse, other means, or a combination thereof, from the TDY station, OCONUS location, or CONUS location covered by § 303–70.1(e), to the employee's residence, official station, or place of interment, including but not limited to:

(1) Movement from place of death to a mortuary and/or cemetery;

(2) Shipping permits;

(3) Outside case for shipment and sealing of the case if necessary;

(4) Removal to and from the common carrier; and

(5) Ferry fares, bridge tolls, and similar charges.

Note to § 303–70.101: Costs for an outside case are not authorized for transportation by hearse. Costs for transportation by hearse or other means cannot exceed the cost of common carrier (that is normally used for transportation of remains).

§ 303–70.102 Are there any limitations on the place of interment?

No. You may pay expenses to transport the remains for interment at the actual residence, the official station, or such other place appropriate for interment as determined by the head of your agency.

Subpart C—Escort of Employee Remains

§ 303–70.200 Under what circumstances may we authorize an escort for the remains of a deceased employee?

You may authorize the escort of remains when the employee's death occurs:

(a) While in official travel status away from the official station inside CONUS;

(b) While assigned to official duties OCONUS or in transit thereto or therefrom; or

(c) While reassigned away from actual place of residence under a mandatory mobility agreement.

§ 303–70.201 How many persons may be authorized travel expenses to escort the remains of a deceased employee?

You may authorize travel expenses for no more than two persons.

§ 303–70.202 What travel expenses may we authorize for the escort of a deceased employee's remains?

You may authorize any travel expenses in accordance with Chapter 301 of this Title that are necessary for the escort of remains to:

(a) The home or official station of the deceased; or

(b) Any other place appropriate for interment as determined by the head of your agency.

Subpart D—Allowances for Preparation and Transportation of the Remains of Immediate Family Members

§ 303–70.300 When an immediate family member, residing with the employee, dies while the employee is stationed OCONUS, must we furnish mortuary services?

Yes, if requested by the employee and when:

(a) Local commercial mortuary facilities or supplies are not available; or

(b) The cost of available mortuary facilities or supplies is prohibitive as determined by your agency head.

Note to § 303–70.300: The employee must reimburse you for all furnished mortuary facilities and supplies.

§ 303–70.301 When an immediate family member, residing with the employee, dies while the employee is stationed OCONUS, must we pay expenses to transport the remains?

Yes, if requested by the employee, you must pay to transport the remains to the residence of the immediate family member. The employee may elect an alternate destination, but it must be approved by your agency head or his/her designated representative.

§ 303–70.302 When an immediate family member, residing with the employee, dies while the employee is stationed OCONUS, may we pay interment expenses?

No. You may not pay interment expenses when an immediate family member, residing with the employee, dies while the employee is stationed OCONUS.

§ 303–70.303 When a immediate family member, residing with the employee, dies while in transit to or from the employee's duty station OCONUS, must we furnish mortuary services and/or transportation of the remains?

Yes, you must furnish transportation if requested by the employee. You must follow the guidelines in § 303–70.301 for transportation expenses. You must furnish mortuary services only if the conditions in § 303–70.300 are met.

Subpart E—Transportation of Employee's Baggage and Privately Owned Vehicles (POV) From Official Temporary Duty (TDY) Station

§ 303–70.400 Must we pay transportation costs to return the deceased employee's baggage from an official TDY station?

Yes, you must pay transportation costs to return the deceased employee's baggage to his/her official station or

residence. However, you may not pay insurance of, or reimbursement for, loss or damage to baggage.

§ 303–70.401 Are there any limitations on the baggage we must transport from an official TDY location?

Yes. You must only transport Government property and the employee's personal property, including professional books, papers, and equipment (PBP&E).

§ 303–70.402 Must we pay transportation costs to return the deceased employee's POV from the TDY location?

Yes. You must pay costs associated with returning the POV from the TDY location to the employee's permanent official station, but only if the agency had authorized the use of the employee's POV at the TDY location as more advantageous to the Government than other means of transportation.

Subpart F—Transportation of Immediate Family Members, Baggage, Household Goods, and Privately Owned Vehicles (POV)

§ 303–70.500 When the employee, on a service agreement or a mandatory mobility agreement, dies at or while in transit to or from his/her official station OCONUS, must we return the employee's immediate family, baggage, POV, and household goods to the former actual residence, new official station in CONUS, or alternate destination?

Yes. Travel and transportation must begin within one year from the date of the employee's death. A one-year extension may be granted if requested by the family prior to the expiration of the one-year limit. The agency head or designated representative may approve the immediate family's relocation to one of the following:

(a) The place of the employee's former residence at the time of assignment to duty OCONUS; or

(b) The new CONUS location if in transit; or

(c) An alternate destination as approved by the agency.

§ 303–70.501 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies while in transit from a OCONUS official station to his/her new official station within CONUS?

Yes, if the immediate family chooses to continue the relocation, you must continue payment of relocation expenses for the immediate family, provided the immediate family was included on the employee's relocation travel orders. (See § 303–70.503.)

§ 303–70.502 Must we continue payment of relocation expenses for an employee's immediate family if the employee dies after reporting to the new official station within CONUS, but the family was in transit to the new official station or had not begun its en route travel?

Yes, if the immediate family chooses to continue the relocation, you must continue payment of relocation expenses for the immediate family, provided the immediate family was included on the employee's relocation travel orders. (See § 303–70.503.)

§ 303–70.503 What relocation expenses must we authorize for the immediate family under §§ 303–70.501 and 303–70.502?

When the immediate family chooses to continue the relocation, the following expenses must be authorized:

(a) Travel to the new duty station or alternate destination as approved by the agency.

(b) Shipment of household goods not to exceed 18,000 pounds net weight to the new duty station, or to an alternate destination selected by the immediate family and approved by the agency.

(c) Storage of household goods not to exceed 60 days with a additional 90 days extension, if approved by the agency, not to exceed a total of 150 days.

(d) Reimbursement of real estate expenses incident to the relocation, unless relocation is to the former actual residence.

(e) Temporary quarters subsistence expense (TQSE) not to exceed 60 days, to be paid at the per diem rate for an unaccompanied spouse or domestic partner, and immediate family, if the TQSE was originally authorized in the relocation travel orders.

(f) Shipment of one POV to the new duty station, or to an alternate destination selected by the immediate family and approved by the agency, if the POV shipment was originally authorized in the relocation travel orders.

Subpart G—Transportation of Immediate Family Members, Baggage, Household Goods, and Privately Owned Vehicles (POV) for Employees Assigned to Contingency Operation or an Operation in Response to an Emergency Declared by the President

§ 303–70.600 When an employee dies while performing official travel duties directly supporting or directly relating to a contingency operation or an operation in response to an emergency declared by the President, must we provide transportation for the employee's immediate family, baggage, and household goods from the current official station to the former actual residence or an alternate destination?

Yes. However, the employee must have died as a result of disease or injury incurred while performing official duties:

(a) In an overseas location where the employee was performing such official duties;

(b) Within the area of responsibility of the Commander of the United States Central Command; and

(c) In direct support of or directly related to a military operation, including a contingency operation (as defined in 10 U.S.C. 101(a)(13)) or an operation in response to an emergency declared by the President.

§ 303–70.601 What relocation expenses must we authorize for the immediate family under § 303–70.600?

When the immediate family selects to relocate to the former actual residence or alternate destination as approved by the agency, you must authorize the following expenses:

(a) Transportation of the immediate family;

(b) Transportation of household goods of the immediate family, including transporting, packing, crating, draying, and unpacking, not to exceed 18,000 pounds net weight; and

(c) Storage of household goods moved pursuant to subparagraph (b) of this section, not to exceed 60 days with an additional 90 days extension, if approved by the agency, not to exceed a total of 150 days.

§ 303–70.602 Must we pay transportation costs to return the deceased employee's POV from the TDY location or from an official station OCONUS under § 303–70.600?

Yes. You must pay costs associated with returning the POV from the following:

(a) TDY location to the employee's permanent official station, if the agency had authorized the use of the employee's POV at the TDY location as more advantageous to the Government than other means of transportation; or

(b) Official station OCONUS to the employee's former actual residence or alternate destination as approved by the agency, if the agency had determined that the use of the employee's POV was required in accordance with part 302–9 of this Title.

Subpart H—Transportation of Immediate Family Members, Baggage, Household Goods, and Privately Owned Vehicle for Law Enforcement Assignment

§ 303–70.700 When an employee dies as a result of personal injury sustained while in the performance of the employee's law enforcement duties, either on official travel duties away from the official station, or at the current official station, must we provide transportation for the employee's immediate family, baggage, and household goods to a alternate residential destination?

Yes. If the head of the agency concerned (or a designee) determines that the employee died as a result of personal injury sustained while in the performance of the employee's duties, and the employee was:

(a) A law enforcement officer as defined in 5 U.S.C. 5541;

(b) An employee in or under the Federal Bureau of Investigation who is not described in paragraph (a); or

(c) A Customs and Border Protection officer as defined in 5 U.S.C. 8331(31).

§ 303–70.701 What relocation expenses must we authorize for the immediate family under § 303–70.700?

If the place where the immediate family will reside is different from the place where the immediate family resided at the time of the employee's death, and within the United States, then the agency must approve the following expenses:

(a) Transportation of the immediate family;

(b) Moving the household goods of the immediate family, including transporting, packing, crating, draying, and unpacking, not to exceed 18,000 pounds net weight;

(c) Storage of household goods moved pursuant to paragraph (b) of this section, not to exceed 60 days with an additional 90 days extension, if approved by the agency, not to exceed a total of 150 days; and

(d) Transportation of one privately owned motor vehicle.

§ 303–70.702 Must we pay transportation costs to return the deceased employee's privately owned vehicle (POV) from the temporary duty (TDY) location or from an official station OCONUS under § 303–70.700?

Yes. The agency must pay cost associated with returning the POV from the following:

(a) TDY location to the employee's permanent official station if the agency had authorized the use of the employee's POV at the TDY location as being advantageous to the Government; or

(b) Official station OCONUS to the employee's former actual residence or alternate destination as approved by the agency, if the agency determined that the use of the employee's POV was required in accordance with part 302–9 of this Title.

Subpart I—Policies and Procedures for Payment of Expenses

§ 303–70.800 Are receipts required for claims for reimbursement under this part?

Yes. Receipts are required for claims for reimbursement under this part.

§ 303–70.801 To whom should we make payment?

You should:

(a) Pay the person performing the service; or

(b) Reimburse the person who made the original payment.

[FR Doc. 2013–28741 Filed 12–4–13; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–156; DA 13–2104]

Radio Broadcasting Services; Benjamin and Cisco, TX; De Beque, CO; Port Lions, AK; Rule and Shamrock, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends the Table of FM Allotments by removing Channel 221C0 at Port Lions, Alaska; Channel 247C3 at De Beque, Colorado; Channel 237C3 at Benjamin, Texas; Channel 261C3 at Cisco, Texas; Channel 288C2 at Rule, Texas; and Channel 225C2 at Shamrock, Texas. These vacant allotments have been offered in two or more FM auctions. No bids were entered for these allotments in Auction 94. It is Commission's policy not to delete an FM allotment where a *bona fide* expression of interest exists, absent a compelling reason to do so. Accordingly, we are deleting these six vacant allotments because no *bona fide* expressions of interests were filed.

DATES: Effective December 16, 2013.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MB Docket No. 13–156, adopted October 31, 2013, and released November 1, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *www.BCPIWEB.com.* The Commission will send a copy of the *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

As stated in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCASTING SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments, is amended by:

■ a. Under Alaska, removing Port Lions, Channel 221C0.

■ b. Under Colorado, removing De Beque, Channel 247C3.

■ c. Under Texas, removing Benjamin, Channel 237C3; by removing Cisco, Channel 261C3; by removing Channel 288C2 at Rule; and by removing Channel 225C2 at Shamrock.

[FR Doc. 2013–28550 Filed 12–4–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3148–02]

RIN 0648–XD013

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to fully use the 2013 total allowable catch of Pacific ocean perch specified for the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 2, 2013, through 1200 hrs, A.l.t., December 13, 2013. Comments must be received at the following address no later than 4:30 p.m., A.l.t., December 17, 2013.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number ''NOAA–NMFS–2012–0210'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0210,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

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

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

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

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

NMFS closed the directed fishery for Pacific ocean perch (POP) in the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) (78 FR 13813, March 1, 2013).

NMFS has determined that approximately 6,400 metric tons of POP remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2013 total allowable catch of POP in the Bering Sea subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for POP in Bering Sea subarea of the BSAI, effective 1200 hrs, A.l.t., December 2, 2013, through 1200 hrs, A.l.t., December 13, 2013. This will enhance the socioeconomic well-being of harvesters dependent on POP in this area.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after four weeks. Consequently, NMFS is prohibiting directed fishing for POP in Bering Sea subarea of the BSAI, effective 1200 hrs, A.l.t., December 31, 2013. The Administrator, Alaska Region considered the following factors in reaching this decision: (1) The current catch of POP in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of POP directed fishing in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 29, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for POP in the Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until December 17, 2013.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 2, 2013.

Sean F. Corson,

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

[FR Doc. 2013–29059 Filed 12–2–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 234
Thursday, December 5, 2013

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

Agricultural Marketing Service

7 CFR Part 970

[Doc. No. AO–FV–09–0138; AMS–FV–09–0029; FV09–970–1]

National Marketing Agreement Regulating Leafy Green Vegetables; Termination of Proceeding on Proposed Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a rulemaking proceeding that proposed to establish a marketing agreement (agreement) under the Agricultural Marketing Agreement Act of 1937 (Act) to regulate the handling of fresh leafy green vegetables in the United States. The agreement that was proposed by members of the produce industry would have authorized the development and implementation of handling regulations (audit metrics) to reflect the United States Food and Drug Administration's (FDA) Good Agricultural Practices (GAPs), Good Handling Practices (GHPs), and Good Manufacturing Practices (GMPs).

DATES: This termination is made on December 6, 2013.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 952, Moab, UT 84532; Telephone (202) 557–4783, Fax (435) 259–1502, or Email: *Melissa.Schmaedick@ams.usda.gov,* or Michelle P. Sharrow, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Michelle.Sharrow@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include: Notice of Public Hearing issued on August 31, 2009, and published in the September 3, 2009, issue of the **Federal Register** (74 FR 45565); Notice of Additional Time for Public Hearing issued on September 18, 2009, and published in the September 23, 2009, issue of the **Federal Register** (74 FR 48423); and Recommended Decision and Opportunity to File Written Exceptions issued on April 22, 2011, and published in the April 29, 2011, issue of the **Federal Register** (76 FR 24292). The hearings were held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements (7 CFR Part 900).

This rulemaking action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

On June 10, 2009, a petition for rulemaking and request for public hearing on a proposed national marketing agreement for leafy green vegetables was submitted to AMS. The proposal was submitted by a group of producers, handlers, and interested persons representing a cross-section of the national fresh and fresh-cut produce industry.

The proposed agreement would have established a voluntary program that would have included mandatory compliance for its signatories under the authority of the Act. The agreement would have authorized the development and implementation of handling audit metrics consistent with the FDA's good production, handling, and manufacturing practices (GAPs, GHPs, and GMPs). Signatory handlers would have been required to only handle domestic and imported leafy green vegetables that met the audit requirements established under the agreement. The program would have been administered by a board appointed by the Secretary, would have operated under the oversight of AMS, and would have been financed by assessments collected from signatory first handlers. Proponents anticipated that the proposed agreement would help minimize the potential for microbial contamination in production and handling systems and improve consumer confidence in leafy green vegetables in the United States market.

A Notice of Public Hearing was published in the **Federal Register** on September 3, 2009, and was followed by a Notice of Additional Time for Public Hearing, which was published in the **Federal Register** on September 23, 2009.

The public hearing was held on: September 22 through 24, 2009, in Monterey, California; September 30 through October 1, 2009, in Jacksonville, Florida; October 6, 2009, in Columbus, Ohio; October 8, 2009, in Denver, Colorado; October 14 and 15, 2009, in Yuma, Arizona; October 20, 2009, in Syracuse, New York; and October 22, 2009, in Charlotte, North Carolina. At the conclusion of the hearing, the Administrative Law Judge set January 12, 2010, as the due date for interested persons to file proposed findings and conclusions or written arguments based on the evidence received at the hearing. The Administrative Law Judge issued an order extending this deadline through January 27, 2010.

A Recommended Decision and Opportunity to File Written Exceptions (recommended decision) was published in the **Federal Register** on April 29, 2011. Exceptions to the recommended decision were due by July 28, 2011. The recommended decision also announced AMS's intent to request approval of new information collection requirements to implement the agreement. Written comments on the proposed information collection requirements were also due by July 28, 2011. A total of 2,143 comments were received by USDA.

In January 2013, FDA published two proposed rules, ''Standards for Growing, Harvesting, Packing, and Holding of Produce for Human Consumption'' (78 FR 3504) and ''Current Good Manufacturing Practice and Hazard Analysis and Risk-Based Preventive Controls for Human Food'' (78 FR 3646), implementing sections of the Food Safety Modernization Act. This ongoing rulemaking may affect fundamental aspects of the proposed leafy green vegetable marketing agreement program. As a result, it is appropriate to terminate the leafy green vegetable marketing agreement rulemaking proceeding at this time.

Termination of this proceeding will remove ex parte communication prohibitions and allow USDA to engage

fully with all interested parties to discuss and consider the evolving needs of the industry and consumers going forward. Based on the above, USDA is terminating this rulemaking proceeding.

Regulatory Flexibility Act and Paperwork Reduction Act

As part of the proceedings conducted for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act of 1955 (Pub. L. 104–13) were considered. Because this action terminates the underlying rulemaking proceeding, the economic conditions of small entities are not changed as a result of this action, nor have any compliance requirements changed. Also, this action does not provide for any new or changed reporting and recordkeeping requirements. Accordingly, all supporting forms for the proposed program will be withdrawn.

Termination of Proceeding

In view of the foregoing, it is hereby determined that the proceeding proposing a national marketing agreement for the regulation of leafy green vegetables should be and is hereby terminated.

List of Subjects in 7 CFR Part 970

Marketing agreements, Reporting and recordkeeping requirements, Vegetables.

Authority: 7 U.S.C. 601–674.

Dated: November 26, 2013.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2013–28869 Filed 12–4–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 130403324–3376–01]

RIN 0648–BC94

Boundary Expansion of Thunder Bay National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Re-opening of public comment period.

SUMMARY: On June 14, 2013, NOAA published a proposed rule in the **Federal Register** to revise the regulations for the boundary of the Thunder Bay National Marine Sanctuary. This document re-opens the public comment period.

DATES: The comment period for the proposed rule published June 14, 2013 (78 FR 35776), extended August 15, 2013 (78 FR 49700) and October 28, 2013 (78 FR 64186), is reopened. NOAA will accept public comments through December 19, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA-NOS-2012-0077, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NOS-2012-0077,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Thunder Bay National Marine Sanctuary, 500 W. Fletcher, Alpena, Michigan 49707, Attn: Jeff Gray, Superintendent.

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

FOR FURTHER INFORMATION CONTACT: Jeff Gray, Superintendent, Thunder Bay National Marine Sanctuary at 989–356–8805 ext. 12 or *jeff.gray@noaa.gov.*

SUPPLEMENTARY INFORMATION: On June 14, 2013, NOAA published a proposed rule in the **Federal Register** to revise the regulations for the boundary of the Thunder Bay National Marine Sanctuary (78 FR 35776). An accompanying draft environmental impact statement (DEIS) was also published (78 FR 35928). Public comments on the proposed rule and DEIS were solicited. Three public meetings on the proposed action were held on July 15–17, 2013 in Michigan. The public comment period was extended until October 18, 2013 (78 FR 49700) then until November 27, 2013 (78 FR 64186) to gather more information on the applicability of U.S. Coast Guard and U.S. EPA regulations governing discharge of ballast water to the proposed expanded area. However, due to the need for further information from stakeholders, NOAA is re-opening the comment period for 14 days.

While the public is free to comment on any issue related to the proposed action, NOAA is particularly interested in receiving input on the following topics:

1. Please explain current ballast management practices. Identify, with specificity, all areas where ballast management occurs and under what circumstances.

2. Please explain how the proposed boundary expansion is expected to impact existing ballast management practices.

Dated: November 27, 2013.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2013–29058 Filed 12–4–13; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM13–12–000, RM13–14–000 and RM13–15–000]

Monitoring System Conditions—Transmission Operations Reliability Standards; Interconnection Reliability Operations and Coordination Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act (FPA), the Commission proposes to remand revisions to the Transmission Operations and Interconnection Reliability Operations and Coordination Reliability Standards, developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization responsible for developing and enforcing mandatory Reliability Standards. In addition, the Commission proposes to approve NERC's proposed revisions to Reliability Standard TOP–006–3.

DATES: Comments are due February 3, 2014.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

• Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• Mail/Hand Delivery: Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Michael Gandolfo (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6817, *Michael.Gandolfo@ferc.gov.*

Robert T. Stroh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8473, *Robert.Stroh@ferc.gov.*

SUPPLEMENTARY INFORMATION:

145 FERC ¶ 61,158

Notice of Proposed Rulemaking

(Issued November 21, 2013)

1. Pursuant to section 215(d) of the Federal Power Act (FPA),[1] the Commission proposes to remand revisions to the Transmission Operations (TOP) and Interconnection Reliability Operations and Coordination (IRO) Reliability Standards, developed by the North American Electric Reliability Corporation (NERC), which the Commission has certified as the Electric Reliability Organization (ERO) responsible for developing and enforcing mandatory Reliability Standards. In addition, the Commission proposes to approve NERC's proposed revision to Reliability Standard TOP–006–3 concerning the monitoring role and notification obligation of reliability coordinators, balancing authorities and transmission operators. The Commission seeks comments on its proposals.

2. NERC filed changes to the TOP Reliability Standards (Docket No. RM13–14–000) concurrently with its proposal to modify the IRO Reliability Standards (Docket No. RM13–15–000). NERC requests that the Commission process the two proposals together. In addition, NERC separately filed revisions to Reliability Standard TOP–006–3 (Docket No. RM13–12–000) that NERC proposes to become effective prior to the effective date of the revisions to the TOP Reliability Standards in Docket No. RM13–14–000. Because the proposed TOP and IRO Reliability Standards are interrelated, and because the proposed revisions to Reliability Standard TOP–006–3 involve similar issues raised in the TOP and IRO proposals concerning monitoring of the interconnected transmission network and notification of and by registered entities, the Commission addresses the three proposals together in this Notice of Proposed Rulemaking (NOPR).

3. NERC explains that the set of TOP Reliability Standards ''address the important reliability goal of ensuring that the transmission system is operating within operating limits.'' [2] The TOP Standards generally address real-time operations and planning for next-day operations, and apply primarily to the responsibilities of transmission operators. The set of IRO Standards apply to the responsibility and authority of reliability coordinators, the entities with the highest level of authority that are responsible for reliable operation of the bulk electric system, and have the wide-area view of the bulk electric system. The IRO Standards, which complement the TOP Standards, have the goal of ensuring that the bulk electric system is planned and operated in a coordinated manner to perform reliably under normal and abnormal conditions.[3] Thus, together, the TOP and IRO Reliability Standards address matters that are fundamental to grid reliability as they pertain to the coordinated efforts to operate the bulk electric system in a reliable manner during real-time operations.

4. Based on our review of the NERC petitions, it appears that the proposed TOP and IRO Reliability Standards contain some improvements over the current standards. Specifically, the revised standards include organizational and administrative improvements that reduce redundancy and clarify the delineation between applicable entities with regard to certain tasks. The Commission appreciates efforts to clarify standards and reduce redundancies.[4] However, we are concerned that the changes in the proposed standards create reliability gaps in the standards that are critical to reliable operation of the Bulk-Power System. While NERC indicates that the revised TOP Reliability Standards eliminate gaps and ambiguities in the currently-effective TOP requirements, we are concerned that NERC has removed critical reliability aspects that are included in the currently-effective standards without adequately addressing these aspects in the proposed standards. One area of concern is that, unlike the currently-effective TOP Reliability Standards, there is no requirement in the proposed standards for transmission operators to plan and operate within all System Operating Limits (SOLs).[5] The provisions in the proposed TOP Reliability Standards that require transmission operators to operate only within a subset of SOLs offset the potential improvements. The Commission believes that NERC's proposal for the treatment of SOLs adversely impacts multiple requirements in the proposed TOP Reliability Standards. Moreover, as discussed herein, the Commission identifies other concerns that may need to be addressed in order not to create further reliability gaps. Section 215(d)(4) requires that the Commission remand to the ERO for further consideration a Reliability Standard ''that the Commission disapproves in whole *or in part.''* [6] Thus, notwithstanding the improvements mentioned above, the concern regarding the treatment of SOLs, and potentially other concerns discussed below, leads us to propose to remand the proposed TOP standards. In addition, given the interrelationship between the TOP and IRO Reliability Standards and that NERC requests that both sets of standards be addressed together,[7] we believe a remand of the proposed IRO standards in addition to those of the TOP will enable NERC to more comprehensively consider modifications to the standards that would address the reliability concerns identified in this NOPR. This approach, in turn, should allow NERC more

[1] 16 U.S.C. 824o(d) (2012).

[2] NERC TOP Petition at 3.

[3] *See* NERC IRO Petition at 6.

[4] *Electric Reliability Organization Proposal to Retire Requirements in Reliability Standards,* Order No. 788, 145 FERC ¶ 61,147 (2013).

[5] NERC defines a SOL as ''[t]he value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. System Operating Limits [pre- and post-Contingency] are based upon certain operating criteria. . . .''

[6] 16 U.S.C. 824o(d)(4) (2012) (emphasis added).

[7] NERC TOP Petition at 2 (stating that ''simultaneous approval of both petitions by the Commission will help ensure a smooth transition and implementation of the proposed Reliability Standards for both the industry and the ERO.'').

flexibility in developing appropriate modifications that address our concerns since changes to the TOP standards might require, in some instances, commensurate changes to the IRO standards.

5. In addition to the concerns regarding the treatment of SOLs, the Commission has identified a reliability gap in the IRO Reliability Standards and accordingly proposes to direct that NERC develop modifications in these standards to ensure that reliability coordinators continue to develop and implement comprehensive generation and transmission outage coordination processes.

6. Further, we discuss below additional issues regarding the proposed TOP and IRO Reliability Standards that require clarification or further explanation and technical justification. Depending on the explanations provided by NERC and other interested entities in their comments to this NOPR, additional Commission action may be appropriate, including directives that NERC must address in response to a final rule in this proceeding.

I. Background

7. Section 215 of the FPA requires a Commission-certified ERO to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards are enforced by the ERO, subject to Commission oversight, or by the Commission independently. On March 16, 2007, the Commission issued Order No. 693, approving 83 of the 107 initial Reliability Standards filed by NERC, including the existing TOP and IRO Reliability Standards.[8] In addition, in Order No. 748, the Commission approved revisions to the IRO Reliability Standards; however, none of the standards approved in Order No. 748 are at issue in this NOPR.[9]

A. NERC's TOP Petition (Docket No. RM13–14–000)

On April 16, 2013, in Docket No. RM13–14–000, NERC submitted for Commission approval three revised TOP Reliability Standards: TOP–001–2 (Transmission Operations), TOP–002–3 (Operations Planning), TOP–003–2 (Operational Reliability Data), and one Protection Systems (PRC) Reliability Standard, PRC–001–2 (System Protection Coordination) to replace the eight currently-effective TOP standards.

NERC also seeks approval of the implementation plan for the proposed TOP Reliability Standards and approval of the retirement of eight TOP and one PER Reliability Standards,[10] and to retire Requirements R2, R5, and R6 of Reliability Standard PRC–001–1.

9. NERC states that the proposed TOP Reliability Standards represent significant revision and improvement to the current set of enforceable Reliability Standards by upgrading the overall quality of the standards, eliminating gaps in the requirements, ambiguity, redundancies, and addressing Order No. 693 directives. NERC adds that the proposed TOP Reliability Standards are also more efficient than the currently-effective standards because they incorporate the necessary requirements from today's standards into three cohesive, comprehensive Reliability Standards ''that are focused on achieving a specific result.'' [11] NERC states that the proposed TOP Reliability Standards, along with the proposed IRO Reliability Standards, will help to ensure better coordination for transmission operators and reliability coordinators to ''plan and operate the interconnected Bulk Electric System in a synchronized manner to perform reliably under normal and abnormal conditions.'' [12]

10. NERC states that the proposed TOP Reliability Standards are a significant improvement from the currently-effective TOP Reliability Standards in three ways. First, NERC explains that the proposed TOP Reliability Standards ''rais[e] the bar on system performance by mandating that all IROLs be resolved within the IROL T_v, which is a significant increase in performance over the existing Reliability Standards.'' [13] NERC indicates that the proposed TOP Reliability Standards adopt an approach ''for operating within a subset of SOLs that more closely aligns with the original NERC Operating Guidelines.'' [14] Second, NERC states that it improved the proposed Reliability Standards by designating requirements to apply solely to transmission operators and removing several of the requirements applicable to reliability coordinators. NERC explains that it added requirements applicable to reliability coordinators to the proposed IRO Reliability Standards. Third, NERC states it consolidated ''the necessary requirements from the eight existing TOP Reliability Standards into three cohesive, comprehensive Reliability Standards.'' [15] The specific revisions to the TOP Reliability Standards are as follows:

TOP–001–2 (Transmission Operations) [16]

11. In the TOP petition, NERC explains that the requirements of proposed Reliability Standard TOP–001–2 address the following matters: (1) Transmission operator ''Reliability Directives'' (proposed Requirements R1 and R2); (2) emergencies and emergency assistance (proposed Requirements R3–R6); and (3) IROLs and SOLs (proposed Requirements R7–R11). Proposed Requirements R1 and R2 state:

R1. Each Balancing Authority, Generator Operator, Distribution Provider, and Load-Serving Entity shall comply with each Reliability Directive issued and identified as such by its Transmission Operator(s), unless such action would violate safety, equipment, regulatory, or statutory requirements.

R2. Each Balancing Authority, Generator Operator, Distribution Provider, and Load-Serving Entity shall inform its Transmission Operator of its inability to perform an identified Reliability Directive issued by that Transmission Operator.

[8] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, 72 FR 16416 (Apr. 4, 2007), FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[9] *Mandatory Reliability Standards for Interconnection Reliability Operating Limits,* Order No. 748, 134 FERC ¶ 61,213 (2011).

[10] TOP–001–1a—(Reliability Responsibilities and Authorities); TOP–002–2.1b (Normal Operations Planning); TOP–003–1 (Planned Outage Coordination); TOP–004–2 (Transmission Operations); TOP–005–2a (Operational Reliability Information); TOP–006–2 (Monitoring System Conditions); TOP–007–0 (Reporting System Operating Limit and Interconnection Reliability Operating Limit Violations); TOP–008–1 (Response to Transmission Limit Violations); and on Personnel Performance, Training, and Qualifications (PER) Reliability Standard, PER–001–0.2 (Operating Personnel Responsibility and Authority).

[11] NERC TOP Petition at 4, 11, 42. NERC explains that the corresponding changes in proposed Reliability Standard PRC–001–2 are administrative in nature and are limited to removal of three requirements in currently-effective Reliability Standard PRC–001–1 that are now addressed in proposed Reliability Standard TOP–003–2.

[12] NERC TOP Petition at 9.

[13] NERC TOP Petition at 11. The Interconnection Reliability Operating Limit (IROL) T_v is defined in the NERC Glossary of Terms as: ''The maximum time that an Interconnection Reliability Operating Limit can be violated before the risk to the interconnection or other Reliability Coordinator Area(s) becomes greater than acceptable. Each Interconnection Reliability Operating Limit's T_v shall be less than or equal to 30 minutes.''

[14] NERC TOP Petition at 11. NERC states that ''[p]rior to becoming the ERO, NERC guidelines for power system operation and accreditation were referred to as the NERC Operating Guidelines, for which compliance was strongly encouraged yet ultimately voluntary.'' *Id.* at n.23.

[15] NERC TOP Petition at 11.

[16] The proposed TOP and IRO Reliability Standards are not attached to the NOPR. The complete text of the Reliability Standards is available on the Commission's eLibrary document retrieval system in Docket Nos. RM13–14 and RM13–15 and is posted on the ERO's Web site, *available at: http://www.nerc.com.*

NERC states that proposed Requirement R1 recognizes the reliability need to give transmission operators the ability to issue Reliability Directives to various entities, subject to limited exceptions in cases where such actions would violate safety, equipment, regulatory, or statutory requirements. NERC explains that Requirement R2 requires entities receiving the directive from the transmission operator to inform the transmission operator in situations where an identified Reliability Directive cannot be performed. NERC explains that these requirements give transmission operators the authority to issue Reliability Directives when needed, but also provide them the flexibility to take different action in those situations where an entity notifies its transmission operator of its inability to comply with a Reliability Directive.[17]

12. With regard to emergencies and emergency assistance, NERC proposes Requirements R3 through R6:

R3. Each Transmission Operator shall inform its Reliability Coordinator and Transmission Operator(s) that are known or expected to be affected by each actual and anticipated Emergency based on its assessment of its Operational Planning Analysis.

R4. Each Transmission Operator shall render emergency assistance to other Transmission Operators, as requested and available, provided that the requesting entity has implemented its comparable emergency procedures, unless such actions would violate safety, equipment, regulatory, or statutory requirements.

R5. Each Transmission Operator shall inform its Reliability Coordinator and other Transmission Operators of its operations known or expected to result in an Adverse Reliability Impact on those respective Transmission Operator Areas unless conditions do not permit such communications. Examples of such operations are relay or equipment failures, and changes in generation, Transmission, or Load.

R6. Each Balancing Authority and Transmission Operator shall notify its Reliability Coordinator and negatively impacted interconnected NERC registered entities of planned outages of telemetering equipment, control equipment and associated communication channels between the affected entities.

NERC states that proposed Requirements R3, R5, and R6 apply to the coordination aspects of interconnected operation. NERC explains that proposed Requirement R3 requires a transmission operator to inform its reliability coordinators and other transmission operators of actual and anticipated emergencies based on its assessment of its ''Operational Planning Analysis.''[18] NERC states that, in situations ''where emergency assistance is needed, proposed Requirement R4 requires that Transmission Operators render emergency assistance to other Transmission Operators when it is requested and available'' and that proposed Requirement R5 ''requires Transmission Operators to inform entities (Reliability Coordinators and other Transmission Operators) of operations that may adversely impact them.''[19] According to NERC, this proposed requirement addresses the Order No. 693 directive to consider the need for the transmission operator to notify the reliability coordinator or the balancing authority when facilities are removed from service.[20] NERC states that proposed Requirement R6 requires balancing authorities and transmission operators to notify the reliability coordinator and negatively impacted interconnected NERC registered entities of planned outages of telemetering equipment.

13. With respect to treatment of SOLs and IROLs, NERC explains that the standard drafting team examined the requirements for SOLs and IROLs in the currently-effective TOP Reliability Standards to ensure whether they adequately addressed the handling of these limits. In particular, the standard drafting team was concerned that the transition from the NERC Operating Guidelines to the Version 0 standards had resulted in an incorrect emphasis on non-IROL SOLs as opposed to IROLs. The standard drafting team noted a discrepancy among the three currently-effective SOL/IROL-related requirements.[21] According to NERC, in Reliability Standards TOP–002–2a, Requirement R10 and TOP–004–2, Requirement R1, applicable entities are expected to plan and operate to meet all SOLs and IROLs, while in TOP–007–0, R1, entities are only instructed to take action for IROLs. According to NERC, the standard drafting team concluded that the Version 0 standards did not accurately reflect what the operating policies stated. Nevertheless, the standard drafting team determined that non-IROL SOLs are still important. NERC explains that reliability risk to the system exists when the system is operating in conditions such that an IROL limit is exceeded for a time exceeding T_v. Consequently, NERC revised the requirements related to operating within limits by tying IROL actions to T_v. NERC proposes Requirements R7 through R11 to address the transmission operator's responsibilities over IROLs[22] or SOLs[23] that the transmission operator identifies as necessary to support reliability internal to its transmission operator area:

R7. Each Transmission Operator shall not operate outside any identified Interconnection Reliability Operating Limit (IROL) for a continuous duration exceeding its associated IROL T_v.

R8. Each Transmission Operator shall inform its Reliability Coordinator of each SOL which, while not an IROL, has been identified by the Transmission Operator as supporting reliability internal to its Transmission Operator Area based on its assessment of its Operational Planning Analysis.

R9. Each Transmission Operator shall not operate outside any System Operating Limit (SOL) identified in Requirement R8 for a continuous duration that would cause a violation of the Facility Rating or Stability criteria upon which it is based.

R10. Each Transmission Operator shall inform its Reliability Coordinator of its actions to return the system to within limits when an IROL, or an SOL identified in Requirement R8, has been exceeded.

R11. Each Transmission Operator shall act or direct others to act, to mitigate both the magnitude and duration of exceeding an IROL within the IROL's T_v, or of an SOL identified in Requirement R8.

NERC explains that the responsibility for monitoring and handling IROLs is primarily given to the reliability

[17] NERC TOP Petition at 12–13.

[18] NERC defines an Operational Planning Analysis as ''[a]n analysis of the expected system conditions for the next day's operation. (That analysis may be performed either a day ahead or as much as 12 months ahead.) Expected system conditions include things such as load forecast(s), generation output levels, and known system constraints (transmission facility outages, generator outages, equipment limitations, etc.).'' NERC Glossary of Terms at 47.

[19] NERC TOP Petition at 14.

[20] NERC TOP Petition at 14 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1588).

[21] TOP–002–2a, Requirement R10: Each Balancing Authority and Transmission Operator shall plan to meet all System Operating Limits (SOLs) and Interconnection Reliability Operating Limits (IROLs). TOP–004–2, Requirement R1: Each Transmission Operator shall operate within the Interconnection Reliability Operating Limits (IROLs) and System Operating Limits (SOLs). TOP–007–0, Requirement R2: Following a Contingency or other event that results in an IROL violation, the Transmission Operator shall return its transmission system to within IROL as soon as possible, but not longer than 30 minutes.

[22] NERC defines an IROL as ''[t]he value (such as MW, MVar, Amperes, Frequency or Volts) derived from, or a subset of the System Operating Limits, which if exceeded, could expose a widespread area of the Bulk Electric System to instability, uncontrolled separation(s) or cascading outages.''

[23] NERC defines a SOL as ''[t]he value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specified system configuration to ensure operation within acceptable reliability criteria. System Operating Limits [pre- and post-Contingency] are based upon certain operating criteria. . . .''

coordinator, but the transmission operator has the primary responsibility to designate any SOLs that require special attention. NERC indicates that the delineation in the proposed TOP Reliability Standards with respect to operating within an identified IROL and in designating important SOLs is an important distinction in the proposed TOP Reliability Standards that is necessary for reliability.

14. NERC adds that the proposed TOP Reliability Standards include a requirement that provides for ''the identification of a sub-set of non-IROL SOLs that are identified as important for local areas.'' [24] NERC indicates that the proposed requirements mandate exceedances of these non-IROL SOLs to be monitored and reported to the reliability coordinator, giving transmission operators ''the ability to ensure that any non-IROL SOLs that are of concern to the transmission operator will be monitored to ensure local consequences are managed.'' [25]

15. NERC states that the ''difference between non-IROL SOLs and IROLs is expressed in the difference between the consequences to the System (or impact to reliability) should unplanned perturbations of the System occur when the limit is being exceeded. For an IROL, the consequences are described as Cascading, uncontrolled separation, or instability.'' [26] NERC explains that the consequences of non-IROL SOLs are typically thought of in terms of equipment damage or total loss of an element and are restricted to a limited or local area. NERC states that the revised TOP requirements move the standards to where the NERC Operating Guidelines intended them to be and ensure that the reliability of the interconnected system will be maintained and even enhanced because system operators ''will not be distracted from true reliability issues by local system issues.'' [27] NERC states that the impact of exceeding a non-IROL SOL will not result in an Adverse Reliability Impact.[28]

16. According to NERC, transmission operators may also identify and communicate to their reliability coordinator any of the non-IROL SOLs that are believed or anticipated to have potential to develop into IROLs and, thus, to ensure that they too are monitored and managed. NERC also explains that, while non-IROL SOLs are similar to IROLs in that non-IROL SOLs must respect the ratings of equipment associated with the facilities to which the non-IROL SOL applies, there is no specific requirement established for a time exceedance similar to the T_v of an IROL. According to NERC, because T_v may be less than 30 minutes, T_v ''mandates a tighter time frame for action than the 30-minute time that is mandated in the currently-effective standards, thereby improving reliability of the bulk power system.'' [29]

Proposed TOP–002–3 (Operations Planning)

17. NERC states that proposed Reliability Standard TOP–002–3 Requirements R1 through R3 require transmission operators to perform Operational Planning Analyses to ensure operations within IROLs and SOLs. The requirements for proposed Reliability Standard TOP–002–3 are as follows:

R1. Each Transmission Operator shall have an Operational Planning Analysis that represents projected System conditions that will allow it to assess whether the planned operations for the next day within its Transmission Operator Area will exceed any of its Facility Ratings or Stability Limits during anticipated normal and Contingency event conditions.

R2. Each Transmission Operator shall develop a plan to operate within each Interconnection Reliability Operating Limit (IROL) and each System Operating Limit (SOL) which, while not an IROL, has been identified by the Transmission Operator as supporting reliability internal to its Transmission Operator Area, identified as a result of the Operational Planning Analysis performed in Requirement R1.

R3. Each Transmission Operator shall notify all NERC registered entities identified in the plan(s) cited in Requirement R2 as to their role in those plan(s).

NERC explains that Requirement R1 requires transmission operators to have an Operational Planning Analysis that will allow it to assess whether the planned operations for the next-day will exceed any of its facility ratings or stability limits during anticipated normal and contingency event conditions. NERC also explains that Requirement R2 requires transmission operators to develop a plan that will help ensure they do not operate in excess of limits identified in the Operational Planning Analysis. NERC indicates that Requirement R3 requires that entities be notified if they are identified in the transmission operator's plans and that the notification should inform entities of their role in the plans.

18. According to NERC, requiring transmission operators to perform Operational Planning Analyses that incorporate normal and contingency situations for next-day operations while assuring appropriate limits are not violated assures that the transmission operators ''will have a plan to follow during Real-time operations that accurately reflects the anticipated conditions of the day's operations, including the ability to deliver generation to Load.'' [30] NERC adds that Requirement R3 is similar to the coordination requirements established in proposed Reliability Standard TOP–001–2 by ensuring that all entities know their role in next-day operations.

Proposed TOP–003–2 (Operational Reliability Data)

19. NERC states that proposed Reliability Standard TOP–003–2, Requirements R1 through R5 were adapted for transmission operators and balancing authorities based on similar, Commission-approved requirements for reliability coordinators.[31] The proposed requirements include:

R1. Each Transmission Operator shall create a documented specification for the data necessary for it to perform its Operational Planning Analyses and Real-time monitoring. The specification shall include:

1.1. A list of data and information needed by the Transmission Operator to support its Operational Planning Analyses and Real-time monitoring.

1.2. A mutually-agreeable format.

1.3. A periodicity for providing data.

1.4. The deadline by which the respondent is to provide the indicated data.

R2. Each Balancing Authority shall create a documented specification for the data necessary for it to perform its analysis functions and Real-time monitoring . . .

R5. Each Transmission Operator, Balancing Authority, Generator Owner, Generator Operator, Interchange Authority, Load-Serving Entity, Transmission Owner, and Distribution Provider receiving a data specification . . . shall satisfy the obligations of the documented specifications for data.

NERC states that the proposed requirements emphasize the need for transmission operators and balancing authorities to obtain all of the data they need for reliability purposes and mandate that entities that have this data timely provide it to the transmission operator and balancing authority. According to NERC, lack of adequate data for real-time operations and modeling have contributed to system incidents in the past, and the data specification concept will eliminate this problem by allowing transmission operators and balancing authorities to

[24] NERC TOP Petition at 19.

[25] *Id.* at 19–20.

[26] *Id.* at 19.

[27] NERC TOP Petition at 18.

[28] NERC TOP Petition at 18–19.

[29] NERC TOP Petition at 18.

[30] NERC TOP Petition at 22.

[31] NERC TOP Petition at 23 (citing Reliability Standard IRO–010–1a.)

require entities to send them any required data.

NERC's Response to Order No. 693 Directives and Analysis of Southwest Outage Report

20. NERC indicates that its staff analyzed the recommendations from the report on the Arizona-Southern California Outages on September 8, 2011, Causes and Recommendations (''2011 Southwest Outage Blackout Report'') that apply to transmission operators and compared the recommendations to both the currently-effective TOP Reliability Standards and the proposed Reliability Standards.[32] The TOP Petition provides that, ''[b]ased on this analysis, NERC staff believes that if entities complied with the proposed TOP Reliability Standards, the likelihood of such an event occurring would be significantly diminished.'' [33] NERC includes as Exhibit H a detailed report on this analysis, including the relevant 2011 Southwest Outage Blackout Report recommendations with an explanation of how the relevant recommendations would be addressed in the proposed TOP Reliability Standards.

21. The NERC TOP Petition includes a summary of nine Order No. 693 directives related to the proposed TOP Reliability Standards and NERC's responses to those directives in Exhibit I. NERC also explains that, rather than addressing two directives from Order No. 693 relating to minimum analysis and monitoring capabilities in the proposed TOP Reliability Standards and proposed IRO Reliability Standards, the standard drafting team chose to have them addressed by the Project 2009–02 Standard Drafting Team.[34] According to NERC, it ''is developing a set of Reliability Standards in Project 2009–02, which is expected to be completed in 2014,'' that will establish requirements for the functionality, performance, and maintenance of real-time monitoring and analysis capabilities for reliability coordinators, transmission operators, generator operators, and balancing authorities for use by their system operators in support of reliable system operations.[35]

TOP Implementation Plan

22. NERC states that some of the proposed revisions to the TOP Reliability Standards are dependent on corresponding changes to proposed IRO Reliability Standards (IRO–001–3 and IRO–005–4) and to one Verification and Data Reporting of Generator Real and Reactive Power Capability Reliability Standard—MOD–025–2. NERC states that the proposed TOP Reliability Standards cannot be implemented until all three of the above standards have been implemented.

23. In its implementation plan, NERC also states that there ''are no new definitions in the proposed set of standards'' but the standard drafting teams for the TOP and IRO projects have coordinated on a common definition of ''Reliability Directive'' and agreed that the IRO standard drafting team ''would write the definition and post it for vetting by the industry.'' The definition is as follows:

> *Reliability Directive*—A communication initiated by a Reliability Coordinator, Transmission Operator, or Balancing Authority where action by the recipient is necessary to address an Emergency or Adverse Reliability Impacts.

Further, the IRO–014–2 implementation plan indicates that a revised definition for ''Adverse Reliability Impact'' was approved by the NERC Board of Trustees on August 4, 2011; however, the petition does not discuss the merits of this change.[36] In addition, NERC does not discuss the impact of this revised definition on the overall body of Reliability Standards.

24. NERC requests that all requirements except proposed Reliability Standard TOP–003–2, Requirements R1 and R2 become effective the first day of the first calendar quarter twelve months following applicable regulatory approval.[37] NERC also requests that Requirements R1 and R2 of proposed Reliability Standard TOP–003–2 become effective the first day of the first calendar quarter ten months following applicable regulatory approval. NERC explains that the twelve month period is to allow for entities to update processes and train operators on the revised requirements, and the two month differential for proposed Reliability Standard TOP–003–2, Requirements R1 and R2 is to provide time for recipients of a data specification to respond to the request for data.[38]

B. NERC's IRO Petition (Docket No. RM13–15–000)

25. Also on April 16, 2013, NERC submitted for Commission approval four revised IRO Reliability Standards: IRO–001–3 (Responsibilities and Authorities), IRO–002–3 (Analysis Tools), IRO–005–4 (Current Day Operations), and IRO–014–2 (Coordination Among Reliability Coordinators).[39] NERC also requests approval of the implementation plan for the proposed IRO Reliability Standards, and approval of the retirement of six currently-effective Reliability Standards, effective at midnight immediately prior to the first day of the first calendar quarter that is twelve months following the effective date of a final rule in this proceeding.[40] NERC indicates that its petition also addresses two Order No. 693 directives associated with Reliability Standard IRO–005–1, but that it does not address a directive associated with Reliability Standard IRO–002–1 because this directive falls under the scope of Real-Time Tools Best Practices Task Force.

26. NERC identifies two ''overall reliability benefits'' of the proposed IRO Reliability Standards: (1) Delineating a ''clean division of responsibilities'' between the reliability coordinator and transmission operator, giving the reliability coordinator authority to direct transmission operators to take actions to prevent or mitigate Interconnection Reliability Operating Limits (IROLs); and (2) ''raising the bar'' on IROL/SOL monitoring to focus on only those important to reliability. NERC also identifies four ''improvements'' reflected in the proposed IRO Reliability Standards, as follows:

- Interconnected bulk electric systems will be planned and operated in a coordinated manner to perform

[32] NERC TOP Petition at 6 and Exh. H.

[33] NERC TOP Petition at 6.

[34] One directive is applicable to Reliability Standard IRO–002 and is described in PP 905 and 906 of Order No. 693, and the second directive is applicable to Reliability Standard TOP–006 and is described in P 1660.

[35] NERC IRO Petition at 27.

[36] Adverse Reliability Impact (ARI)—Previous Definition—The impact of an event that results in frequency-related instability; unplanned tripping of load or generation; or uncontrolled separation or cascading outages that affects a widespread area of the Interconnection. ARI—Revised Definition—The impact of an event that results in the Bulk Electric System instability or Cascading.

[37] NERC also requests that the existing TOP Reliability Standards be retired at midnight of the day immediately prior to the first day of the first calendar quarter twelve months following applicable regulatory approval.

[38] NERC TOP Petition, Exh. C at 2.

[39] NERC states that the NERC Board of Trustees approved a proposed Reliability Standard IRO–001–2 Reliability Standard on August 4, 2011, that was subsequently revised before it was filed at the Commission. The revision is designated as Reliability Standard IRO–001–3, was approved by the Board on August 16, 2012, and is included in this petition for approval. NERC IRO Petition at 4 n.5.

[40] NERC proposes to retire Reliability Standards IRO–001–1.1 (Responsibilities and Authorities); IRO–002–2 (Facilities); IRO–005–3a (Current Day Operations); IRO–014–1 (Procedures, Processes, or Plans to Support Coordination Between Reliability Coordinators); IRO–015–1 (Notifications and Information Exchange Between Reliability Coordinators); IRO–016–1 (Coordination of Real-time Activities Between Reliability Coordinators).

reliably under normal and abnormal conditions.

• Personnel responsible for planning and operating interconnected bulk electric systems will be trained, qualified, and have the responsibility and authority to implement actions.

• The security of the interconnected bulk electric systems will be assessed, monitored and maintained on a wide-area basis.

• Plans for emergency operation and system restoration * * * will be developed, coordinated, maintained and implemented.[41]

IRO–001–3 (Responsibilities and Authorities)

27. NERC proposes to replace the nine currently-effective requirements of Reliability Standard IRO–001–1 with the following three requirements in proposed IRO–001–3:

R1. Each Reliability Coordinator shall have the authority to act or direct others to act (which could include issuing Reliability Directives) to prevent identified events or mitigate the magnitude or duration of actual events that result in an Emergency or Adverse Reliability Impact.

R2. Each Transmission Operator, Balancing Authority, Generator Operator, and Distribution Provider shall comply with its Reliability Coordinator's direction unless compliance with the direction cannot be physically implemented or unless such actions would violate safety, equipment, regulatory, or statutory requirements.

R3. Each Transmission Operator, Balancing Authority, Generator Operator, and Distribution Provider shall inform its Reliability Coordinator upon recognition of its inability to perform as directed in accordance with Requirement R2.

NERC states that these requirements ensure that reliability coordinators ''have the responsibility and authority to act or direct others to act (which could include issuing Reliability Directives) to prevent identified events or mitigate the magnitude or duration of actual events that result in an Emergency or Adverse Reliability Impact.''[42] According to NERC, these proposed requirements ''ensure that the responsibility and authority to act or direct others to act (which could include issuing Reliability Directives) to prevent identified events or mitigate the magnitude or duration of actual events that result in an Emergency or Adverse Reliability Impact is assigned to the Reliability Coordinator.''[43]

28. NERC states that the changes to the proposed Reliability Standard IRO–001–3 are a result of the proposed retirement of the currently-effective Reliability Standard IRO–001–1.1, Requirement R7, which is now covered in proposed Reliability Standard IRO–014–2.[44] According to NERC, Reliability Standard IRO–014–2 will continue to ensure that both coordination agreements are in place to require that IROLs and SOLs are managed, and that system conditions that could cause Adverse Reliability Impacts are mitigated.

IRO–002–3 (Analysis Tools)

29. NERC proposes two new requirements pertaining to analytical tools and to retire Requirements R1 through R7 of currently-effective Reliability Standard IRO–002–2. The two proposed requirements provide:

R1. Each Reliability Coordinator shall provide its System Operators with the authority to approve, deny or cancel planned outages of its own analysis tools.

R2. Each Reliability Coordinator shall have procedures in place to mitigate the effects of analysis tool outages.

30. NERC states that the currently-effective requirements contain redundancies, which the proposed revision are intended to eliminate. NERC states that it revised Requirement R8 and incorporated it into proposed Requirements R1 and R2 of Reliability Standard IRO–002–3. NERC also indicates that it is developing a set of Reliability Standards in Project 2009–02, that will establish requirements for the functionality, performance, and maintenance of real-time monitoring and analysis capabilities which affects Reliability Standard IRO–002.

IRO–005–4 (Current Day Operations)

31. NERC proposes the following two new requirements for proposed Reliability Standard IRO–005–4:

R1. When the results of an Operational Planning Analysis or Real-time Assessment indicate an anticipated or actual condition with Adverse Reliability Impacts within its Reliability Coordinator Area, each Reliability Coordinator shall notify all impacted Transmission Operators and Balancing Authorities in its Reliability Coordinator Area.

R2. Each Reliability Coordinator that identifies an anticipated or actual condition with Adverse Reliability Impacts within its Reliability Coordinator Area shall notify all impacted Transmission Operators and Balancing Authorities in its Reliability Coordinator Area when the problem has been mitigated.

32. NERC states that proposed Reliability Standard IRO–005–4 is a result of eliminating redundancies between existing and proposed standards. NERC also states that the requirements are to ''ensure that entities are notified when an expected or actual event with Adverse Reliability Impacts is identified.''[45]

IRO–014–2 (Coordination Among Reliability Coordinators)

33. NERC proposes the eight requirements of Reliability Standard IRO–014–2 to replace the currently-effective Reliability Standards IRO–014–1, IRO–015–1 and IRO–016–1. NERC states that proposed Reliability Standard IRO–014–2 ensures that each reliability coordinator's operations are coordinated to avoid an Adverse Reliability Impact on other reliability coordinator areas and to preserve the reliability benefits of interconnected operations. Proposed Reliability Standard IRO–014–2 provides in part:

IRO–014–2 R1. Each Reliability Coordinator shall have Operating Procedures, Operating Processes, or Operating Plans for activities that require notification, exchange of information or coordination of actions that may impact other Reliability Coordinator Areas to support Interconnection reliability. These Operating Procedures, Processes, or Plans shall collectively address the following:

1.1. Communications and notifications, including the mutually agreed to conditions under which one Reliability Coordinator notifies other Reliability Coordinators; the process to follow in making those notifications; and the data and information to be exchanged with other Reliability Coordinators.

1.2. Energy and capacity shortages.

1.3. Planned or unplanned outage information.

1.4. Control of voltage, including the coordination of reactive resources.

1.5. Coordination of information exchange to support reliability assessments.

1.6. Authority to act to prevent and mitigate system conditions which could cause Adverse Reliability Impacts to other Reliability Coordinator Areas.

1.7. Weekly conference calls.

R5. Each Reliability Coordinator, upon identification of an Adverse Reliability Impact, shall notify all other Reliability Coordinators.

R6. During each instance where Reliability Coordinators disagree on the existence of an Adverse Reliability Impact each impacted Reliability Coordinator shall operate as though the problem exists.

R7. During those instances where Reliability Coordinators disagree on the existence of an Adverse Reliability Impact,

[41] NERC IRO Petition at 11.

[42] NERC IRO Petition at 12.

[43] NERC IRO Petition at 12–13.

[44] Currently-effective Requirement R7 states: The Reliability Coordinator shall have clear, comprehensive coordination agreements with adjacent Reliability Coordinators to ensure that System Operating Limit or Interconnection Reliability Operating Limit violation mitigation requiring actions in adjacent Reliability Coordinator Areas are coordinated.

[45] NERC IRO Petition at 28.

the Reliability Coordinator that identified the Adverse Reliability Impact shall develop an action plan to resolve the Adverse Reliability Impact.

34. NERC states that Requirement R1 is the same as the currently-effective requirement except for the addition of Part 1.7, which requires reliability coordinators to have weekly conference calls. Additionally, while Requirement R1 of Reliability Standard IRO–014–1 addresses ''Operating Procedures, Operating Processes, or Operating Plans for activities that require notification, exchange of information or coordination of actions that may impact other Reliability Coordinator Areas to support Interconnection reliability,'' NERC states that proposed Requirement R1 defines specific information that is to be included in the procedures, processes, and plans.

IRO Implementation Plan

35. NERC proposes as the effective date for Reliability Standard IRO–001–3, the first day of the second calendar quarter beyond the date that the standard is approved by the Commission. NERC states that this time will allow applicable entities adequate time to develop the documentation and other evidence necessary to exhibit compliance with the requirements. NERC proposes as the effective date for Reliability Standards IRO–002–3 and IRO–005–4 the first day of the first calendar quarter following the effective date of a final rule because the revisions are ''to an existing mandatory and enforceable standard, applicable entities are already complying with the existing standard.'' [46]

36. For proposed Reliability Standard IRO–014–2, NERC proposes the first day of the first calendar quarter that is twelve months following the effective date of a final rule as the effective date. NERC states that, while the revisions to this Reliability Standard are to an existing mandatory and enforceable standard, ''applicable entities should only have to make minor revisions to their Operating Plans, Operating Processes or Operating Procedures to show compliance.'' [47]

NERC also proposes retirement of the six IRO Reliability Standards, effective at midnight immediately prior to the first day of the first calendar quarter that is twelve months following the effective date of a final rule.

C. Proposed Revisions to Reliability Standard TOP–006–3 (Docket No. RM13–12)

38. On April 4, 2013, NERC proposed revisions to Reliability Standard TOP–006–3 to divide the reporting responsibilities of balancing authorities and transmission operators into separate requirements. According to NERC, the proposed revisions clarify that transmission operators are responsible for monitoring and reporting available transmission resources, while balancing authorities are responsible for monitoring and reporting available generation resources. NERC states that this division is consistent with the roles and responsibilities of registered entities as set forth in NERC Reliability Functional Model.

39. NERC states that, as currently written, Requirement R1.2 could be interpreted as duplicating efforts to monitor and report the availability of generation and transmission resources. NERC explains that it specifically requires both transmission operators and balancing authorities to inform reliability coordinators and other affected transmission operators and balancing authorities of all transmission and generation resources available for use. To address these concerns, NERC revised Requirement R1.2 to limit a transmission operator's monitoring and notification obligations to transmission resources available for use. NERC created Requirement R1.3 to limit a balancing authority's monitoring and notification obligations to generation resources available for use. NERC explains that proposed Requirement R1.3 only requires balancing authorities to inform reliability coordinators of all generation resources available for use, and they are not required to report the availability of generation resources to transmission operators because transmission operators already receive this information from generator operators pursuant to currently effective Requirement R1.1. According to NERC, by defining the reporting channels from transmission operators and balancing authorities to reliability coordinators, reliability coordinators will receive necessary information in advance, as part of their operating tools, processes and procedures, to prevent and mitigate emergency operating situations in real and next day operations.

40. In addition, NERC proposes to modify currently-effective Requirement R3. According to NERC, while the currently-effective Requirement R3 requires reliability coordinators, transmission operators and balancing authorities to provide appropriate technical information concerning protective relays to their operating personnel, NERC states that it does not impose explicit geographical boundaries on the scope of this obligation. NERC indicates that revised Requirement R3 specifies that the relevant protective relays are those within these entities' respective reliability coordinator area, transmission operator area or balancing authority area.

41. NERC has proposed medium Violation Risk Factors (VRFs) for proposed TOP–006–3, Requirements R1.2, R1.3 and R3 because these three Requirements all ensure that critical reliability parameters are monitored in real-time. NERC also states that the proposed Violation Security Levels (VSLs) for Requirement R1.3 meet NERC's VSL guidelines. NERC requests that the revisions become effective on the first day of the first calendar quarter after applicable regulatory approval.

II. Discussion

42. Pursuant to section 215(d) of the FPA, we propose to remand NERC's proposed revisions to the TOP and IRO Reliability Standards (Docket Nos. RM13–14–000 and RM13–15–000). While we believe that NERC's approach of condensing the requirements and removing redundancies generally has merit, we are concerned that, unlike the currently-effective TOP Reliability Standards, there is no requirement in the proposed standards for transmission operators to plan and operate within all SOLs. Without a requirement to analyze and operate within all SOLs in the proposed standards and by limiting non-IROL SOLs to only those identified by the transmission operator internal to its area, system reliability is reduced and negative consequences can occur outside of the transmission operator's internal area. As described below, this was a problem during the Southwest Outage when the loss of a 500 kV line in Arizona Public Service's area overloaded equipment, which ultimately resulted in a cascade outage leaving approximately 2.7 million customers without power.[48] The provisions in the proposed TOP Reliability Standards that require transmission operators to operate only within a subset of SOLs offsets the potential benefits the proposed Reliability Standards may otherwise provide.

43. The Commission believes that NERC's proposal for the treatment of SOLs affects at least proposed Reliability Standard TOP–002–3, Requirements R1 and R2 as well as

[46] NERC IRO Petition, Exh. A at 8.

[47] NERC IRO Petition, Exh. A at 8–9.

[48] 2011 Southwest Outage Blackout Report at 1.

proposed Reliability Standard TOP–001–2, Requirements R8 through R11. Section 215(d)(4) requires that the Commission remand to the ERO for further consideration a Reliability Standard ''that the Commission disapproves in whole or in part.'' [49] Thus, notwithstanding the organizational and administrative improvements contained in other provisions of proposed TOP Reliability Standards, our concern regarding the treatment of SOLs provides us no option other than to propose to remand the entire Reliability Standards TOP–001–2 and TOP–002–3.

44. In addition to addressing the SOL issue in the TOP Reliability Standards, we also propose to direct that NERC, on remand, develop modifications to the IRO Reliability Standards to ensure that reliability coordinators continue to develop and implement comprehensive generation and transmission outage coordination processes.

45. Given that the SOL and outage coordination process issues pertain to numerous requirements across the proposed standards, the interrelationship among the TOP standards and between the TOP and IRO Reliability Standards, and that NERC requests that both sets of standards be addressed together, we propose to remand the entire set of TOP and IRO Reliability Standards.[50] This approach will give industry and NERC flexibility to develop modifications to the standards that address the concerns identified in this NOPR.

46. Further, the Commission discusses below certain provisions of NERC's proposal that require clarification or further technical explanation. Depending on the explanations provided by NERC and other interested entities in comments to this NOPR, additional Commission action may be appropriate, including the identification of additional issues that NERC must address on remand.

47. Finally, pursuant to section 215(d) of the FPA, we also propose to approve NERC's proposed revisions to Reliability Standard TOP–006–3. We find that proposed TOP–006–3 is sufficiently separate from the standards we propose to remand above. Below, we discuss: (A) The proposed TOP Standards; (B) the proposed IRO Standards; and (C) the proposed revisions to Reliability Standard TOP–006–3.

[49] 16 U.S.C. 824o(d)(4) (2012) (emphasis added).

[50] NERC TOP Petition at 1–2.

TOP Reliability Standards

Issue To Be Addressed

a. Plan and Operate Within All SOLs

NERC Petition

48. Currently-effective Reliability Standard TOP–002–2a, Requirement R10 requires the transmission operator to plan to meet all SOLs and IROLs. Similarly, currently-effective Reliability Standard TOP–004–2, Requirement R1 requires transmission operators to operate within all IROLs and SOLs.

49. Proposed Reliability Standard TOP–002–3, Requirement R2 provides that each transmission operator still plan to operate within all IROLs but within only a sub-set of SOLs. It states that each transmission operator ''shall develop a plan to operate within each [IROL] and each [SOL] which, while not an IROL, has been identified by the Transmission Operator as supporting reliability internal to its Transmission Operator area'' as a result of its Operational Planning Analysis performed in Reliability Standard TOP–002–3, Requirement R1.

50. NERC states that it is appropriate to limit Requirement R2 to a sub-set of ''non-IROL SOLs'' that are important to local areas and that the identified subset of non-IROL SOLs will be subject to the requirements of the proposed Reliability Standards. NERC states that non-IROL SOLs are typically thought of in terms of ''equipment damage or [element] loss of life'' and are restricted to a limited or local area.[51] According to NERC, the standard drafting team concluded that it is not necessary to monitor all non-IROL SOLs because the ''true reliability requirement is to operate within IROLs and that non-IROL SOLs are a local operating issue.'' [52] NERC explains that the ''difference between non-IROL SOLs and IROLs is expressed in the difference between the consequences to the System (or impact to reliability) should unplanned perturbations of the system occur when the limit is being exceeded.'' [53] According to NERC, the consequences of exceeding an IROL are described as cascading, uncontrolled separation, or instability.[54] NERC states that the impact of exceeding a non-IROL SOL will not result in an Adverse Reliability Impact.[55]

Commission Proposal

51. The Commission is concerned with NERC's proposal because, unlike the currently-effective TOP Reliability Standards, the proposed standards do not require the transmission operator to plan and operate within SOLs, only non-IROL SOLs that are identified by the transmission operator as supporting reliability internal to its area and identified as a result of an Operational Planning Analysis.[56] For example, non-IROL SOLs that appear to be excluded from the proposed standard are non-IROL SOLs that are in a transmission operator's area that impact another transmission operator's area or more than one transmission operator's area.

52. During deteriorating system conditions, an SOL can rapidly degrade into an IROL. Limiting the requirement for transmission operators to analyze and operate within SOLs only to non-IROL SOLs identified by the transmission operator for its internal area can reduce system reliability because operators have less situational awareness of the system and conditions. Even if we accept the argument that our rules for operating bulk electric facilities should not be concerned with ''equipment damage or [element] loss of life,'' NERC has not explained adequately why the only ''true reliability requirement is to operate within IROLs and that non-IROL SOLs are a local operating issue.'' Major cascading events including the Northeast Blackout of 2003 and the 2011 Southwest Outage were initiated by a non-IROL SOL exceedance, followed by a series of non-IROL SOLs exceedances until the system cascaded.[57] Thus, while non-IROL SOLs are essentially defined as not posing a risk of cascading outages, instability or uncontrolled separation if they are exceeded, experience indicates that operators do not always foresee the consequences of exceeding such SOLs and thus cannot be sure of preventing harm to reliability. The Commission believes that when any facility ratings or stability limits are exceeded or expected to be exceeded (i.e. causing a SOL or an expected SOL on jurisdictional facilities), these

[51] NERC states that the revised TOP requirements move the standards to where the NERC Operating Guidelines intended them to be and ensure that the reliability of the interconnected system will be maintained and even enhanced because system operators will not be distracted from true reliability issues by local system issues. NERC TOP Petition at 18.

[52] NERC TOP Petition, Exh. D, Consideration of Comments (Consideration of Comments on Second Draft of Standards for Real-Time Operations) at 23.

[53] NERC TOP Petition at 19.

[54] *Id.*

[55] NERC TOP Petition at 19.

[56] NERC's Functional Model states one of the tasks of transmission operations is to ''[d]evelop system limitations such as System Operating Limits. . .and operate within those limits.'' NERC's ''Reliability Functional Model Function Definitions and Functional Entities Version 5'' at 37 *available* at *www.nerc.com.*

[57] *See* 2003 Northeast Blackout Report at 74 and the 2011 Southwest Outage Blackout Report at 1.

conditions should be mitigated to avoid the possibility of further deteriorating system conditions and a cascade event.

53. We recognize that, if IROLs and non-IROL SOLs are determined accurately, the reliability consequences of an exceedance should usually be greater for the former than the latter. If NERC or commenters believe this probability warrants general exclusion of the latter from the TOP Reliability Standards (subject to an entity's specific inclusions), they should explain this view in more detail and present any information that may help us weigh its merit.

54. Moreover, we believe that proposed Reliability Standard TOP–002–3, Requirement R1 is flawed because the transmission operator should have an operational plan to operate within all Bulk-Power System IROLs and SOLs for all cases when facility ratings or stability limits are exceeded during anticipated normal and contingency event conditions. The operational plan is needed to ensure the transmission operator operates in, or can return its system to, a reliable operating state. For example, the 2011 Southwest Outage Blackout Report raised a similar concern, stating that transmission operators should ''ensure that post-contingency mitigation plans reflect the time necessary to take mitigating actions, including control actions, to return the system to secure N–1 state as soon as possible but no longer than 30 minutes following a single contingency.'' [58] We believe that the transmission operator should have operational or mitigation plans for all Bulk-Power System IROLs and SOLs that can be implemented within 30 minutes or less to return the system to a secure state. Absent such plans, system conditions can linger in an unsecure or emergency state exposing the system to cascading outages upon the next contingency. Thus, we are concerned that Requirement R1 is insufficient for the fundamental operation of the interconnected transmission network as proposed by NERC.

55. Similarly, proposed Reliability Standard TOP–001–2, Requirements R8 through R11 address transmission operator notification, operation and action with respect to IROLs and some SOLs based on the transmission operator's next-day Operational Planning Analysis. Because proposed Reliability Standard TOP–001–2, Requirement R8 requires a transmission operator's notification of only those SOLs identified in a next-day Operational Planning Analysis, the Commission believes it is possible for additional SOLs to develop or occur in the same-day or real-time operational time horizon. This could impose an operational risk to the interconnected transmission network. For example, if real-time system load levels are unexpectedly higher than forecasted load conditions used in the Operational Planning Analysis, this condition could result in real-time SOLs not identified in the Operational Planning Analysis because facility ratings and stability limits are now exceeded under high load levels whereas under the forecasted load levels (lower load levels), facility ratings and stability limits were not expected to be exceeded. Another example is if an unplanned outage of a transmission element or generator unit occurred after the completion of the next-day Operational Planning Analysis, this condition may result in real-time SOLs not identified in the Operational Planning Analysis because facility ratings and stability limits are now possibly exceeded due to the change in the system topology (i.e. transmission element outage) or generation dispatch (i.e. generator unit outage) that redirected the power flow on some portions of the interconnected transmission network.[59] Thus, there are various reasons why a SOL could occur in real-time operations due to the dynamic nature of the real-time interconnected transmission network and not be identified in the next-day Operational Planning Analysis. To assure that transmission operators are equipped to react to such situations, we believe that the Requirement R8 operational responsibilities and actions should pertain to all IROLs and all SOLs for all operating time horizons.

56. Accordingly, pursuant to section 215(d)(4) of the FPA, we propose to remand proposed Reliability Standards TOP–001–2 and TOP–002–3. Specifically, we propose to direct that NERC develop modifications to Reliability Standard TOP–002–3, Requirements R1 and R2 that address our concerns discussed above to ensure that transmission operators develop mitigation plans for all IROLs and SOLs expected to be exceeded. Similarly, for proposed Reliability Standard TOP–001–2, Requirement R8, we propose to direct that NERC develop modifications to require that transmission operator actions apply to all SOLs identified in all operational time horizons (operations planning, same-day operations and real-time operations). Further, for proposed Reliability Standard TOP–001–2, Requirements R9 through R11, we propose to direct that NERC develop modifications to require that transmission operator specified actions apply to all SOLs related responsibilities in the real-time operations time horizon. Our concerns discussed above apply to specific provisions of proposed TOP–001–2 and TOP–002–3. However, as explained above, we propose to remand proposed Reliability Standards TOP–001–2 and TOP–002–3. Moreover, as explained above, because the TOP standards are so interrelated, we also propose to remand Reliability Standard TOP–003–2 to give NERC and industry flexibility to address our concerns.

TOP Reliability Standards—Issues Requiring Clarification

a. System Models, Monitoring and Tools

NERC Petition

57. NERC proposes to retire TOP and IRO Reliability Standards that require reliability coordinators and transmission operators to maintain and use certain models and analysis capabilities and monitoring. NERC proposes to delete requirements for transmission operators to (1) ''maintain accurate computer models utilized for analyzing and planning system operations''; (2) ''use monitoring equipment to bring to the attention of operating personnel important deviations''; (3) ''use sufficient metering . . . to ensure accurate and timely monitoring''; and (4) ''have sufficient information and analysis tools to determine the cause(s) of SOL violations. . . .'' [60] NERC explains that these transmission operator requirements are unnecessary because transmission operators meet these requirements as part of NERC's certification process or are in other

[58] Southwest Outage Blackout Report (Recommendation 13 at 90). In addition, in Order No. 693 the Commission stated that operational plans for all IROLs should include the ''[i]dentification and communication of control actions [to system operators] that can be implemented within 30 minutes'' following a contingency to return the system to a reliable operating state. . . .'' Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1601.

[59] This condition was identified in the 2011 Southwest Outage Blackout Report, which found that Imperial Irrigation District did not perform a separate, updated next-day study and contingency analysis for September 8, 2011 and instead, referenced a previous study which was not valid because it did not match the load and generation dispatch for the day. 2011 Southwest Outage Blackout Report, Recommendation No. 1 at 66.

[60] *See* Reliability Standards TOP–002–2.1b, Requirement R19, TOP–006–2, Requirement R5, TOP–006–2, Requirement R6, and TOP–008–1, R4, respectively.

currently-effective or proposed standards.[61]

Similarly, NERC proposes to retire Reliability Standard IRO–002–2 Requirements R4, R5, R6, and R7, which address real-time monitoring and analysis capabilities and functions required to enable the reliability coordinator to perform its responsibilities. According to NERC, these requirements are unnecessary because they are inherent in the reliability coordinator's duty to maintain area control error or operate within IROLs/SOLs and can be verified in the certification process.[62] NERC also states that the Commission directives in Order No. 693 applicable to a minimum set of analytical tools and applicable to reliability coordinators and transmission operators will be addressed in Project 2009–02—Real-time Monitoring and Analysis Capabilities—that has a projected completion date of 2014. Further, NERC proposes to retire other requirements of currently-effective Reliability Standard TOP–006–2 which address real-time monitoring responsibilities of the transmission operator.

Commission Proposal

59. In Order No. 693, the Commission directed NERC to develop requirements for a minimum set of analytical tools (analysis and monitoring capabilities) to ensure that a reliability coordinator has the tools it needs to perform its functions.[63] In its TOP Petition, NERC discusses the importance of analytical tools and real-time monitoring noting that, ''[a]ccording to the August 2003 Blackout Report, a principal cause of the August 14, 2003 blackout was a lack of situational awareness, which was in turn the result of inadequate reliability tools.'' [64] We agree with NERC's statement and believe this is an area of reliability that requires vigilance. Moreover, our view is reinforced by the 2011 Southwest Outage Blackout Report, which found that ''[a]ffected TOP's real-time tools are not adequate or, in one case, operational to provide the situational awareness necessary to identify contingencies and reliably operate their systems'' and consequently recommended that ''TOPs should take measures to ensure that their real-time tools are adequate, operational, and run frequently enough to provide their operators the situational awareness necessary to identify and plan for contingencies and reliably operate their systems.'' [65]

Monitoring and analysis capabilities are essential in establishing and maintaining situational awareness. While NERC indicates that these functions are assured through the certification process,[66] we are not convinced that NERC's certification process is a suitable substitute for a mandatory Reliability Standard. Monitoring and assessment capabilities must adapt to assess changing topography and system conditions so that operators can continually maintain an adequate level of situational awareness. In contrast, certification is a one-time process that may not adequately assure continual operational responsibility would occur if these requirements were in a Reliability Standard.

In addition, as discussed above, NERC indicates that Standards Project 2009–02, Real-time Monitoring and Analysis Capabilities, will address the Commission directives in Order No. 693 that address a minimum set of analytical tools. According to NERC, this project has a projected completion date of 2014. NERC's retiring of current IRO and TOP requirements that address monitoring and analysis capabilities warrants expedition in the completion of Project 2009–02. The retirement of the current IRO and TOP requirements that address monitoring and analysis capabilities should not occur until the completion and implementation of Project 2009–02.[67] Thus, in its NOPR comments NERC should propose a schedule that it will follow to ensure it completes and implements Project 2009–02 prior to any retirement of the standard such that there would be no gap.

b. Compliance With Reliability Directives

NERC Petition

62. Currently-effective Reliability Standard TOP–001–1, Requirements R3 and R4 require applicable entities to comply with transmission operators' and reliability coordinators' ''reliability directives,'' which currently is an undefined term. NERC proposes Reliability Standard TOP–001–2, Requirement R1 which requires applicable entities to comply with transmission operators' ''Reliability Directives,'' which NERC proposes to define as ''[a] communication initiated by a Reliability Coordinator, Transmission Operator, or Balancing Authority where action by the recipient is necessary to address an Emergency or Adverse Reliability Impacts.'' [68]

In its implementation plan, NERC states that it is not proposing any new definitions but that the TOP standard drafting team coordinated with the IRO drafting team to develop a definition of ''Reliability Directive.'' This definition is included in the IRO implementation plan.

Commission Proposal

64. The currently-effective TOP Reliability Standards use ''reliability directive,'' which, as an undefined term, does not appear to be limited to a specific set of circumstances. Also IRO Reliability Standards use the term ''reliability directive'' in the same manner as an undefined term.[69] In contrast, application of the proposed definition of ''Reliability Directive'' appears to require compliance with transmission operator directives only in emergencies, not normal or pre-emergency times. We believe that directives from a reliability coordinator or transmission operator should be mandatory at all times, and not just during emergencies (unless contrary to safety, equipment, regulatory or statutory requirements). For example, mandatory compliance with directives in non-emergency situations is important when a decision is made to

[61] NERC TOP Petition, Exhibit J at 22, 34, 35, and 38.

[62] Section 500 of NERC's Rules of Procedure provide for an organization certification program that is intended to ensure that the an applicant to be a reliability coordinator, balancing authority or transmission operator ''has the tools, processes, training, and procedures to demonstrate their ability to meet the Requirements/sub-Requirements of all of the Reliability Standards applicable to the function(s) for which it is applying thereby demonstrating the ability to become certified and then operational.'' NERC Rules of Procedure at 44.

[63] Order No. 693, FERC Stats. & Regs. ¶ 31,242, at PP 905, 906, 1660.

[64] NERC TOP Petition at 10. NERC also states that ''the failure of control computers and alarm systems, incomplete tool sets, and the failure to supply network analysis tools with correct System data on August 14, contributed directly to this lack of situational awareness. Also, the need for improved visualization capabilities over a wide geographic area has been a recurrent theme in blackout investigations.''

[65] 2011 Southwest Outage Blackout Report at 88 and Finding 12. In addition, the 2011 Southwest Outage Blackout Report, Finding 27 (at 111) states that ''[a] TOP did not have tools in place to determine the phase angle difference between two terminals of its 500 kV line after it tripped.''

[66] NERC TOP Petition, Exh. J at 33.

[67] NERC's ''Standards Independent Experts Review Project'' (Industry Experts Report) identifies one aspect of Project 2009–02 as a ''high priority'' gap. Industry Experts Report at Appendix F. The Industry Experts Report (App. F) identifies a high priority gap for Project 2009–02 to define the requirements for EMS RTCA models or performance expectations of the models; the Report also says proposed TOP–002 should incorporate current requirement for tools to determine cause of SOL violations.

[68] NERC's proposed definition of Reliability Directive does not appear in the TOP Petition. Rather, NERC proposes the definition in the IRO Petition, Exhibit C at 1 (IRO Implementation Plan).

[69] *See* Reliability Standard IRO–002–2, Requirement R8.

alter or maintain the state of an element on the interconnected transmission network. NERC staff has noted in the context of how to communicate such directives that operating practices for such directives should be consistent, no matter what type of operating condition (normal, alert, emergency) exists.[70] Moreover, the transition from normal to emergency operation can be sudden and indistinguishable until recognized, often after the damage is done.[71]

65. NERC's TOP and IRO petitions do not explain the proposed, defined term ''Reliability Directive,'' or why compliance with a transmission operator's directives should be required only during emergencies (if this is the intent). Accordingly, we seek from NERC and other interested entities clarification and technical explanation regarding the scope and intent of the defined term, as well as the anticipated reliability benefits and/or drawbacks of the proposed term.

66. In addition, while NERC has included the proposed definition in its implementation plan, NERC has not explained or justified its request for approval of the revised definition. The Commission has held that definitions are standards.[72] Therefore, we cannot approve the definition without a technical justification.

c. Consideration of External Networks and sub-100 kV Facilities and Contingencies in Operational Planning Analysis

NERC Petition

67. In proposed Reliability Standard TOP–002–3, Requirement R1, NERC proposes to require transmission operators to prepare an Operational Planning Analysis, i.e., next day study, which represents ''projected System conditions'' to determine if their planned operations will exceed facility ratings and stability limits for normal and contingency conditions. NERC does not indicate whether this includes external networks or sub-100 kV facilities.

Commission Proposal

68. It is unclear whether NERC's proposal would require transmission operators to include updated external networks to reflect operating conditions external to their systems and (internal and external) sub-100 kV facilities in their operational planning analyses. In Order No. 693, the Commission directed a modification to planned outage coordination to require consideration of facilities below 100 kV that, in the opinion of the registered entity (such as a transmission operator) ''will have a direct impact on the reliability of the Bulk-Power System. . . .'' [73] The 2011 Southwest Outage Blackout Report includes similar recommendations that transmission operators should ensure their next-day studies include updated external networks and internal and external facilities (including those below 100 kV) that can impact Bulk-Power System reliability.[74] Although proposed Reliability Standard TOP–002–3, Requirement R1 requires the transmission operator to consider ''projected System conditions,'' it is unclear whether ''projected System conditions'' include the relevant updated external networks and (internal and external) sub-100 kV facilities.

69. The Commission seeks clarification and technical explanation from NERC whether the term ''projected System conditions'' in proposed Reliability Standard TOP–002–3 Requirement R1 includes updated external networks to reflect operating conditions external to their systems and sub-100 kV facilities (internal and external) in their operational planning analyses. If not, the Commission seeks comment on the associated reliability risks and, whether it is appropriate to include updated external networks to reflect operating conditions and external and sub-100 kV facilities (internal and external) in the operational planning analyses.

d. Operating To Respect the Most Severe Single Contingency in Real-Time Operations and Unknown Operating States

NERC Petition

70. NERC proposes to delete Reliability Standard TOP–004–2, Requirement R2, which provides that each transmission operator ''shall operate so that instability, uncontrolled separation, or cascading outages will not occur as a result of the most severe single contingency.'' NERC's Petition does not provide an explanation for the deletion. However, the NERC ''mapping document,'' which is included as an exhibit to the TOP Petition indicates that NERC intends that Requirement R2 be replaced by proposed Reliability Standards TOP–001–2, Requirements R7 and R9.[75] Proposed Requirement R7 requires each transmission operator to not operate outside any identified IROL ''for a continuous duration exceeding its associated IROL T_v.'' Proposed Requirement R9 states each transmission operator shall not operate outside any SOL identified in Requirement R8 ''for a continuous duration that could cause a violation of the Facility Rating or Stability criteria upon which it is based.'' Further, NERC proposes to replace Reliability Standard TOP–008–1, Requirement R4 with multiple proposed requirements from proposed Reliability Standards TOP–001–2, TOP–002–3, and TOP–003–2. Reliability Standard TOP–008–1, Requirement R4 requires that the transmission operator have information and analysis tools to determine the causes of SOL violations, such as a most severe single contingency event, and conduct this analysis in all operating timeframes.

71. With regard to unknown operating states, currently-effective Reliability Standard TOP–004–2, Requirement R4 states that, if a transmission operator ''enters an unknown operating state (i.e. any state for which valid operating limits have not been determined), it will be considered to be in an emergency and shall restore operations to respect proven reliable power system limits within 30 minutes.'' [76] Order No. 693 directed NERC to modify Requirement R4 to restore the system ''to respect proven reliable power system limits as soon as possible and in no longer than 30 minutes.'' [77]

72. In the TOP Petition, NERC proposes to replace Requirement R4 with proposed Reliability Standard TOP–001–2, Requirements R7 through R11. Requirements R7 through 11 address the transmission operator's responsibilities over IROLs or SOLs that have been identified by the transmission operator as necessary to support reliability internal to its transmission operator area. NERC explains that the proposed requirements ''do not include an explicit reference to 'unknown state' since system limits can and should be determined and conditions can be

[70] *See* COM–003–1, Operations Communications Protocols White Paper, May 2012 at 12, *available* at *nerc.com.*

[71] *See* NERC staff's letter to ''Project 2009–22 Interpretation of COM–002–2 R2 for IRC Drafting Team'' dated November 18, 2011, at 1, *available* at *nerc.com.*

[72] As with Reliability Standards, the Commission reviews and approves revisions to the NERC glossary pursuant to FPA section 215(d)(2). Further, the Commission may direct a modification to address a specific matter identified by the Commission pursuant to section 215(d)(5). *See also* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 1893–98.

[73] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1624.

[74] 2011 Southwest Outage Blackout Report, Recommendations Nos. 2 and 3.

[75] NERC TOP Petition, Exhibit J at 25.

[76] Reliability Standard TOP–004–2, Requirement R4.

[77] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1636.

monitored to know when they have been exceeded.'' [78] NERC also states that unknown operating states ''cannot exist because valid operating limits have been determined for all facilities in a TOP's footprint.'' [79] In addition, NERC states that the proposed requirements ''prohibit operations outside of IROLs, or SOLs identified in TOP–001–2. . . .'' [80] Further, NERC explains that proposed Reliability Standard EOP–001–2, which applies to emergency operations planning, covers the general intent of being prepared to react to ''Emergencies.'' [81]

Commission Proposal

73. NERC has proposed to retire three key rules here, i.e., the requirements to be ready for the single largest contingency, to move quickly from an ''unknown operating state'' to within proven limits, and to determine the cause of SOL violations in all time-frames, including real-time. We believe these three rules represent the bedrock core of real-time operating rules and practices, and it is therefore incumbent upon NERC to provide a more thorough and comprehensive explanation of how the proposed replacement standards compare in meeting the same objectives as the current standards. We request comment on these concerns, as elaborated below.[82]

74. In particular, NERC should address whether its proposal would allow a different approach to real-time operational assessments and operation to the most severe single contingencies and, if so, NERC should explain and technically support the nature and associated reliability effects of any different approaches.[83] How are the proposed requirements to not exceed IROLs or certain SOLs for more than the specified times are the functional or implicit equivalent of the current rules? For example, do the proposed rules allow reliance on post-contingency mitigation at times when the current rules would require pre-contingency mitigation? If so, is the difference significant for reliability purposes? Do both the current and proposed rules prohibit an entity from operating for more than 30 minutes in a state where loss of a particular line would cause the loss of enough resources or load to risk cascading outages or instability? Or, if the entity is not yet operating beyond the pre-determined ratings of the particular line, would the proposed rules allow doing so while the current rules do not? Should all transmission operators be required to run a real-time contingency analysis (RTCA) frequently, since the lack of such analysis can impair situational awareness substantially? Or is the value of such information outweighed for smaller entities with such limited facilities and operations that they generally can maintain similar reliability based on operator experience and judgment without any extra staffing and procedures needed to ensure that the RTCA's informational inputs and modeling are valid and useful?

75. With regard to mitigation of unknown operating states, while NERC asserts that ''unknown states'' cannot exist, a transmission provider could have valid operating limits for all facilities but lack situational awareness when valid limits are exceeded. In addition, a transmission operator could operate in an unanalyzed or unstudied state (as a result of loss of EMS facilities that meter and report voltage, MW flow and other key system indicators). For example, the 2011 Southwest Outage Blackout Report found that Western Area Power Administration-Lower Colorado was operating in an ''unknown state'' when it lost its real-time contingency analysis capabilities and, at the same time, did not notify its reliability coordinator to assist with situational awareness.[84] In light of this concern, the Commission seeks comment and technical explanation from NERC and other interested entities on the proposed retirement. As above, our main question is whether the proposed rules are comparable to the current rules for reliability purposes and, if not, whether the difference is reasonable.

e. System Protection Coordination

NERC Petition

76. NERC proposes to replace currently-effective Requirements R2, R5 and R6 in Reliability Standard PRC–001–1, with proposed Reliability Standard TOP–003–2, Requirement R5.[85] Currently-effective Reliability Standard PRC–001–1, Requirement R2 requires generator operators and transmission operators to notify affected entities of relay or equipment failures and if the failure reduces system reliability, take corrective action as soon as possible. Requirement R5 requires generator operators and transmission operators to coordinate changes in generation, transmission, load or operating conditions with appropriate advance notice that could require changes in the protection systems of others. Requirement R6 obligates transmission operators and balancing authorities to monitor the status of each special protection system in their area and to notify affected transmission operators and balancing authorities of a change in status.

77. Proposed Reliability Standard TOP–003–2, Requirement R5 states that entities ''receiving a data specification in Requirement R3 or R4 shall satisfy the obligations of the documented specifications for data.'' In the standard development process, the standard drafting team explained that a ''data specification'' is required to contain all of the information that a transmission operator and balancing authority needs to fulfill its obligations.[86] In addition, the standard drafting team stated that the transmission operator and balancing authority ''are the best ones to determine the contents of the data specification and that any attempt to provide a minimal list or other guidance

[78] NERC TOP Petition, Exhibit H at 5.

[79] NERC TOP Petition, Exhibit I at 4.

[80] NERC TOP Petition, Exhibit H at 5.

[81] NERC TOP Petition, Exhibit I (Resolution of Order No. 693 directives) at 4.

[82] The 2011 Southwest Outage Blackout Report indicated that the September 8, 2011 cascade event ''showed that the system was not being operated in a secure N–1 state'' and that ''[NERC's] mandatory Reliability Standards . . . require that the BES be operated so that it generally remains in a reliable condition, without instability, uncontrolled separation or cascading, even with the occurrence of any single contingency.'' 2011 Southwest Outage Blackout Report at 5.

[83] Currently-effective Reliability Standard IRO–008–1, Requirement R2 requires that ''[e]ach Reliability Coordinator shall perform a Real-Time Assessment at least once every 30 minutes to determine if its Wide Area is exceeding any IROLs or is expected to exceed any IROLs.''

[84] 2011 Southwest Outage Blackout Report, Recommendation 15, at 95 states that ''[a]n entity should never be operating in an unknown state, as WALC [Western Area Power Administration-Lower Colorado] was when it lacked functional RTCA [real-time contingency analysis] and State Estimator, and did not ask any other entity to assist it with situational awareness.'' *Cf.* NERC Compliance Filing, Docket No. RM06–16–000 (Oct. 31, 2008) at 7 (''the Reliability Coordinators in the West operate only to study conditions and note that they do not operate in IROL conditions, only SOLs, unless there are one or more unanticipated outages. In these cases, when an IROL condition is experienced, the Reliability Coordinators must restore the system to a known operating state within 20 minutes for stability concerns and 30 minutes for thermal concerns.'').

[85] NERC TOP Petition, Exhibit J at 40 and 41. According to NERC (petition at 4), the ''corresponding changes in proposed PRC–001–2 are administrative in nature and are limited to removal of three requirements in currently-effective PRC–001–1 that are now addressed in proposed TOP–003–2, included herein for approval.''

[86] *E.g.,* NERC TOP Petition, Exh. D, Consideration of Comments (Consideration of Comments on the 7th Draft) at 72. Southwest Power Pool Regional Entity stated that it ''does not believe TOP–003–2 addresses the requirements in PRC–001.'' Exh. D at 73. Texas Reliability Entity states that ''Requirements R2, R5 and R6 of PRC–001–1, which are proposed to be deleted, are not actually replaced by any new or revised requirements in other standards, resulting in reliability gaps.'' Exh. D at 89.

would be short-sighted and possibly misleading.'' [87] The standard drafting team indicated that ''an auditor can only question what is contained in the requirements and in this case that would include only the existence of the data specification and not its contents. Any omissions of data will be caught up in failures to adhere to other standards.'' [88]

Commission Proposal

78. The Commission seeks comment and technical explanation from NERC and other interested entities on how current Reliability Standard PRC–001–1 Requirement R2's requirement for corrective action (i.e., return a system to a stable state) is addressed in its proposal.[89] Further, the Commission proposes that NERC issue guidance on data needed for protection system coordination that addresses the applicable Order No. 693 directives and the proposed retirement of the Reliability Standard PRC–001–1 requirements.[90]

f. Notification of Emergencies

NERC Petition

79. Currently-effective TOP Reliability Standard TOP–001–1a requires each transmission operator to inform its reliability coordinator and other potentially affected transmission operators ''of real time or anticipated emergency conditions, and take actions to avoid, when possible, or mitigate the emergency.'' [91] In its petition, NERC proposes to retire Reliability Standard TOP–001–1a and proposes as replacements Requirements R3–R6 of Reliability Standard TOP–001–2. In particular, Requirement R3 provides ''[e]ach Transmission Operator shall inform its Reliability Coordinator and Transmission Operator(s) that are known or expected to be affected by each actual and anticipated Emergency based on its assessment of its Operational Planning Analysis.'' [92] In addition, Requirement R3 has a time horizon of ''Operations Planning,'' which NERC describes as the ''operating and resource plans from day-ahead up to and including seasonal'' and does not include same-day operations or real-time operations.[93]

Commission Proposal

80. NERC's proposed revisions warrant clarification. Read one way, proposed Requirement R3 is less comprehensive than the currently-effective requirements pertaining to notification of emergencies. Yet, it also contains provisions that, read another way, could require TOPs to notify others of all emergencies, not just day-ahead.[94] Indeed, during the standard development process, similar concerns were expressed.[95]

81. Similarly, it is not clear whether proposed Reliability Standard TOP–001–2, Requirement R5 would address same-day and real-time operating emergencies not covered by TOP–001–2, Requirement R3. Proposed TOP–001–2, Requirement R5, states that ''[e]ach [TOP] shall inform its [RC] and other [TOPs] of its operations known or expected to result in an Adverse Reliability Impact on those respective Transmission Operator Areas. . . .'' The definition of Adverse Reliability Impact in NERC's TOP filing is ''[t]he impact of an event that results in frequency related instability; unplanned tripping of load or generation; or uncontrolled separation or cascading outages that affects a widespread area of the Interconnection.'' [96] In contrast, NERC defines Emergency as ''[a]ny abnormal system condition that requires automatic or immediate manual action to prevent or limit the failure of transmission facilities or generation supply that could adversely affect the reliability of the Bulk Electric System.'' An Adverse Reliability Impact is an event that results in instability, or cascade conditions, while an Emergency includes conditions that could be a precursor to an Adverse Reliability Impact. Thus, the notification provisions of Requirement R5 do not cure the possible ambiguity in proposed Requirement R3.

82. While NERC states that the obligation to notify for real-time emergency conditions was replaced by proposed Requirement R3, NERC does not indicate in its petition that the real-time or same-day obligation was purposely deleted or offer an explanation for the deletion.[97] We believe that, consistent with the currently-effective TOP Reliability Standards, the notification requirement of proposed Reliability Standard TOP–001–2 should apply to all emergencies, including real-time and same day emergencies. The Commission seeks comment from NERC and other interested entities regarding (1) the proper understanding of the scope of the notification provisions in the proposed requirements and (2) if the notification does not include all operational time horizons, technical justification for why transmission operators should not be required to notify reliability coordinators and other affected transmission operators of all emergencies in all operating time horizons.

83. In addition, as noted above, NERC uses two different definitions of Adverse Reliability Impact in the TOP and IRO Petitions. NERC has not explained the intent or effect of the two definitions, and the term is used in several provisions of the proposed TOP and IRO Reliability Standards. The

[87] NERC TOP Petition, Consideration of Comments (Consideration of Comments on the 7th Draft) at 79. Southwest Power Pool Standards Review Group states that ''[t]o be sure that all the bases are covered, we would suggest that the SDT provide a guideline which incorporates the types of data and information they envisioned when drafting these requirements.'' *Id.*

[88] NERC TOP Petition, Consideration of Comments (Consideration of Comments on the 7th Draft) at 88. Southwest Power Pool Standards Review Group states that ''incorporating protective relay information in the data specifications of R1 and R2 raises the potential for auditors to question the contents of an entity's specification.'' *Id.* at 79.

[89] In Order No. 693, the Commission required changes to Requirement R2 of Reliability Standard PRC–001–1 to clarify ''corrective action'' (i.e., return a system to a stable state), specify time limit for notification, and require corrective action as soon as possible but no longer than 30 minutes. Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 1441, 1445 and 1449.

[90] In Order No. 693, the Commission directed NERC to develop a modification to Reliability Standard TOP–006–1 to clarify ''the meaning of 'appropriate technical information' concerning protective relays'' so that ''operators can make better informed decisions. An example of such information would be the allowable reclosing angle set in the existing relays and the maximum angle at specific points in the Bulk-Power System that would be acceptable to allow closing of lines during system restoration.'' Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1663 and P 1665.

[91] Reliability Standard TOP–001–1a, Requirement R5.

[92] The NERC Glossary defines Operational Planning Analysis as ''[a]n analysis of the expected system conditions for the next day's operation . . . (That analysis may be performed either a day ahead or as much as 12 months ahead.). Expected system conditions include things such as load forecast(s), generation output levels, and known system constraints.''

[93] *See* NERC Time Horizons at 1, *available* at *http://www.nerc.com/pa/Stand/Resources/Documents/TimeHorizons.pdf* at 1.

[94] An ''anticipated'' emergency should apply to all operational time horizons: Operations planning, same-day, and real-time. Further, an ''actual'' emergency could only occur during the real-time operational time horizon.

[95] NERC TOP Petition, Exh. D, Consideration of Comments (Consideration of Comments on the 7th Draft) at 21: ''R3 seems to be missing some words . . . it is not clear if this requirement is supposed to be about planning (''expected to be affected by anticipated Emergencies'') or real-time operations (''known to be affected by actual Emergencies'') or both. If the latter is intended, the Time Horizon should include Real-Time Operations and Same Day Operations. . . .'' The standard drafting team responded that ''it is clear as to what needs to be communicated.'' *Id.* at 23.

[96] NERC TOP Petition at 19. In the IRO Petition, NERC cites a different definition of Adverse Reliability Impact: ''[t]he impact of an event that results in Bulk Electric System instability or cascading.'' NERC IRO Petition at 3, n20.

[97] NERC TOP Petition, Exhibit C at 3.

Commission seeks clarification and a technical explanation from NERC and other interested entities regarding the two definitions, including if it is proposing a revised definition, which definition it is proposing. In addition, if the definition NERC is proposing no longer includes the phrase ''uncontrolled separation'' NERC should explain the removal of the statutory phrase ''uncontrolled separation.''

g. Primary Decision-Making Authority for Mitigation of IROLs/SOLs

84. NERC's proposal contains a potential overlap in authority between the transmission operator and reliability coordinator with regard to the provisions pertaining to mitigation of IROLs and SOLs as set forth in the proposed TOP and IRO Standards.

85. NERC states in its TOP Petition that ''[t]he responsibility for monitoring and handling IROLs is primarily given to the Reliability Coordinator, but the Transmission Operator has the primary responsibility to designate any SOLs that require special attention.'' [98] Likewise, NERC also states that an improvement resulting from the changes to the IRO Reliability Standards is that they delineate a clean division of responsibilities between the reliability coordinator and transmission operators to ''help to ensure that the Reliability Coordinator is responsible for identifying and controlling operations associated with IROLs and the Transmission Operator is responsible for identifying and controlling operations associated with SOLs.'' [99] Proposed Reliability Standard IRO–001–3, Requirement R1, provides that each reliability coordinator ''shall have the authority to act or direct others to act (which could include issuing Reliability Directives) to prevent identified events or mitigate the magnitude or duration of actual events that result in an Emergency or Adverse Reliability Impact.'' Further, currently-effective Reliability Standard IRO–009–1, Requirement R4 states that ''[w]hen actual system conditions show that there is an instance of exceeding an IROL in its Reliability Coordinator Area, the Reliability Coordinator shall, without delay, act or direct others to act to mitigate the magnitude and duration of the instance of exceeding that IROL within the IROL's T_v.'' [100]

86. However, proposed Reliability Standard TOP–001–2, Requirement R11 provides similar authority for the transmission operator with respect to IROLs. NERC proposes that each transmission operator ''shall act or direct others to act, to mitigate both the magnitude and duration of exceeding an IROL within the IROL's T_v, or of an SOL identified in Requirement R8.'' [101]

87. NERC's proposal with respect to mitigating IROLs appears to give both the transmission operator and reliability coordinator authority to act.[102] Therefore, we seek clarification and technical explanation whether the reliability coordinator or the transmission operator has primary responsibility for IROLs.

B. IRO Reliability Standards

88. As discussed above, because of the interrelationship of the TOP and IRO Reliability Standards, the Commission proposes to remand proposed IRO Reliability Standards: IRO–001–3, IRO–002–3; IRO–005–4; and IRO–014–2. In addition, as discussed below, as part of the remand, the Commission proposes to direct that NERC develop modifications with regard to planned outage coordination. We also seek comment from NERC and other interested entities regarding several proposed provisions of the IRO Reliability Standards. Depending on the responses in the NOPR comments, the Commissions may issue further directives in the final rule in this proceeding.

1. Issues To Be Addressed

a. Planned Outage Coordination

NERC Petition

89. In its IRO petition, NERC proposes to retire Reliability Standard IRO–005–3.1a, Requirement R6, which requires reliability coordinators to ''coordinate pending generation and transmission maintenance outages with Transmission Operators, Balancing Authorities and Generator Operators as needed in both the real-time and next-day reliability analysis timeframes.'' [103] NERC states that the ''coordination aspects of this part of Requirement R6 are addressed in the requirements of currently-effective IRO–008–1,[104] Requirement R3, and IRO–010–1a, Requirement R3,'' which provide:

> IRO–008–1, R3. When a Reliability Coordinator determines that the results of an Operational Planning Analysis or Real-Time Assessment indicates the need for specific operational actions to prevent or mitigate an instance of exceeding an IROL, the Reliability Coordinator shall share its results with those entities that are expected to take those actions.
>
> IRO–010–1a, R3. Each Balancing Authority, Generator Owner, Generator Operator, Interchange Authority, Load-serving Entity, Reliability Coordinator, Transmission Operator, and Transmission Owner shall provide data and information, as specified, to the Reliability Coordinator(s) with which it has a reliability relationship.

Commission Proposal

90. The Commission is concerned with NERC's proposal because Reliability Standards IRO–008–1, Requirement R3 and IRO–010–1a do not require coordination of outages. Outage coordination is a critical reliability function that should be performed by the reliability coordinator. Outage coordination is an integral part of the operational planning process with generation outages being scheduled from three to five years in advance and transmission maintenance and construction outages being scheduled one to three years in advance. Outages that have been planned well in advance still must go through a month-ahead, week-ahead, and sometimes even a day-ahead approval process depending on system topography and system conditions that may change as the scheduled maintenance outage approaches. For instance, forced outages often disrupt planned outage schedules. Therefore, the Commission believes it is essential that, as the functional entity with the wide-area view, the reliability coordinator coordinates this critical area of operational planning.[105]

91. Because outage coordination is critical to operations planning and the reliability coordinator has the needed wide-area view for operations planning, on remand, the Commission proposes to

[98] NERC TOP Petition at 15.

[99] NERC IRO Petition at 5–7.

[100] Reliability Standard IRO–009–1, Requirement R4.

[101] NERC's TOP Petition (at 15) states that ''the delineation in the proposed TOP Reliability Standards with respect to operating within an identified IROL . . . is an important distinction in the proposed TOP Reliability Standards that is necessary for reliability.''

[102] NERC in its 2009 filing to revise and add new IRO standards (RM10–15–000 petition at 8) states that under its ''Functional Model, the reliability coordinator is the functional entity with the highest level of responsibility and authority for the real-time reliability of the bulk power system.''

[103] NERC IRO Petition at 33–34.

[104] NERC IRO Petition at 34.

[105] The Independent Experts Report identifies outage coordination as one of the key areas where risk to the Bulk-Power System is not adequately mitigated. Industry Experts Report at 15. The Independent Experts Report proposes (Appendix H) to fill this gap ''by giving the Reliability Coordinator the authority and responsibility to develop and implement a generation and transmission outage coordination process across Transmission Operators and Balancing Authorities in their footprint'' and ''between its adjacent Reliability Coordinators.'' Industry Experts Report at 31. This outage coordination process ''shall cover the time period from the current operating hour out through at least 36 months.'' In addition, The 2011 Southwest Outage Blackout Report (at 67) found a problem with Imperial Irrigation District's lack of awareness of another entity's planned generation outage.

direct NERC to develop modifications to the IRO Reliability Standards that would require the reliability coordinator to have the authority and responsibility to develop and implement a generation and transmission outage coordination and planning process across transmission operators and balancing authorities in its footprint and between its adjacent reliability coordinators for the operations planning timeframe.[106]

2. IRO Reliability Standards—Issues Requiring Clarification

a. Use of a Secure Data Network

NERC Petition

92. Currently-effective Reliability Standard IRO–002–2, Requirement R2, requires that the data exchange between the reliability coordinator, transmission operator, and balancing authority be accomplished ''via a secure network.'' According to NERC, the requirement to provide information via a ''secure network'' is now addressed in NERC Rules of Procedure, Section 1002 (Reliability Support Services).[107] NERC also indicates that Requirement R2 is now addressed in proposed Reliability Standard IRO–014–2, Requirements R1, R2, and R3.

Commission Proposal

93. Although NERC cites Section 1002 of the Rules of Procedure and proposed Reliability Standard IRO–014–2 as providing for the use of a secured data network, NERC does not explain how secured networks are covered in those sections. While Section 1002 of the NERC Rules and Reliability Standard IRO–014–2, Requirements R1, R2, and R3 address notification and exchange of information and data and coordination of actions, no language in these provisions appears to require the data exchange or notifications to be conducted in a secure mode.

94. A secure network is essential to prevent unauthorized access to or modification of information that is critical for interconnected transmission network reliability functions performed by reliability coordinators. Therefore, we seek comment and technical explanation from NERC and other interested parties regarding how the identified section in the Rules of Procedure and Reliability Standard IRO–014–2, Requirements R1, R2, and R3 ensure that the data exchange and notifications will be conducted using a secure mode in a secure environment.

b. Reliability Coordinator Monitoring of SOLs and IROLs

NERC Petition

95. NERC proposes to retire Reliability Standard IRO–002–2, Requirements R4 through R7, which require reliability coordinators to monitor IROLs and SOLs. Requirement R5 requires reliability coordinators to monitor bulk electric system elements that could result in SOL or IROL violations. NERC argues that it is appropriate to retire these requirements because: (1) An SOL is unlikely to have an impact on the wide-area reliability of the Bulk-Power System as it will generally not have an impact outside the affected transmission operator's area and (2) Requirement R4 is redundant with the requirements contained in existing Reliability Standards IRO–010–1a, and EOP–008–1.[108] NERC also asserts that these requirements are redundant with proposed Reliability Standard TOP–001–2, Requirements R8 through R11.

Commission Proposal

96. Although NERC's petition focuses on the appropriate entity to identify SOLs, it does not adequately explain the proposed retirement of the currently-effective Reliability Standard IRO–002–2 that establishes the obligation for reliability coordinators to monitor SOLs. With regard to NERC's explanation that Reliability Standard IRO–002–2 Requirement R4 is redundant with the requirements contained in IRO–010–1a and EOP–008–1, neither of these Reliability Standards requires the reliability coordinator to monitor SOLs.

97. The reliability coordinator's monitoring function is important to ensure that the reliability coordinator can identify, assess and take appropriate action so that elements of the system do not operate outside established limits causing cascading outages or blackouts. Thus, monitoring is not simply a support function but a major reliability activity necessary to maintain situational awareness and ensure reliable operation of the interconnected transmission network. As we explain above, the reliability coordinator's obligation to monitor SOLs is important to reliability because an SOL can evolve into an IROL during deteriorating system conditions, and for potential system conditions such as this, the reliability coordinator's monitoring of SOLs provides a necessary backup function to the transmission operator.

98. Notwithstanding these concerns, currently-effective Reliability Standard IRO–003–2, Requirements R1 and R2 address the concern over monitoring of SOLs and IROLs, which provide:

> R1. Each Reliability Coordinator shall monitor all Bulk Electric System facilities, which may include sub-transmission information, within its Reliability Coordinator Area and adjacent Reliability Coordinator Areas, as necessary to ensure that, at any time, regardless of prior planned or unplanned events, the Reliability Coordinator is able to determine any potential System Operating Limit and Interconnection Reliability Operating Limit violations within its Reliability Coordinator Area.
>
> R2. Each Reliability Coordinator shall know the current status of all critical facilities whose failure, degradation or disconnection could result in an SOL or IROL violation. Reliability Coordinators shall also know the status of any facilities that may be required to assist area restoration objectives.

Thus, the Commission seeks comment on whether the currently-effective Reliability Standard IRO–003–2 Requirements R1 and R2 require reliability coordinators to monitor all SOLs and IROLs.

C. Proposed Revisions to Reliability Standard TOP–006–3

99. Pursuant to section 215(d)(5) of the FPA, we propose to approve NERC's proposed revisions to Reliability Standard TOP–006–3 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We believe that the proposed revisions reasonably clarify that transmission operators are responsible for monitoring and reporting available transmission resources and that balancing authorities are responsible for monitoring and reporting available generation resources is reasonable. Further, NERC's proposed revision to TOP–006–3 is consistent with the Commission's approval of NERC's approach to ensure that reliability entities have clear decision-making authority and capabilities to take appropriate actions with a clear division of responsibility with respect to

[106] This proposed directive is consistent with the Order No. 693 directive for NERC to modify Reliability Standard TOP–003–1, Planned Outage Coordination, to require communication of scheduled outages to affected entities well in advance. Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1620 through P 1624. In addition, the Commission has a similar concern with proposed Reliability Standard TOP–003–2 because it is not clear whether it addresses planned outage coordination.

[107] NERC IRO Petition at 16, quoting section 1002 of the NERC Rules of Procedure which states in part that ''NERC may assist in the development of tools and other support services for the benefit of Reliability Coordinators and other system operators to enhance reliability, operations and planning. NERC states that it will work with the industry to identify new tools, collaboratively develop requirements, support development, provide an incubation period, and at the end of that period, transition the tool or service to another group or owner for long term operation of the tool or provision of the service.''

[108] NERC IRO Petition at 19–24.

balancing authority and transmission operator responsibilities during a system emergency.[109]

III. Information Collection Statement

100. The Commission's information collection requirements are typically subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[110] However, by remanding the TOP and IRO Reliability Standards, any information collection requirements are unchanged. With regard to proposed Reliability Standard TOP–006–3, the Commission estimates that the information collection burden will not change as compared to the currently-effective standard. The reporting requirements for transmission operators and balancing authorities remain unchanged because the new requirements clarify the existing standard that the transmission operators report transmission information, while the balancing authorities report generation information.

IV. Environmental Analysis

101. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[111] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[112] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Certification

102. The Regulatory Flexibility Act of 1980 (RFA)[113] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[114] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[115] The RFA is not implicated by this NOPR because the Commission is proposing to remand the TOP and IRO Reliability Standards and not proposing any modifications to the existing burden or reporting requirements. With no changes to the TOP and IRO Reliability Standards as approved, the Commission certifies that this NOPR will not have a significant economic impact on a substantial number of small entities.

103. In addition, for proposed Reliability Standard TOP–006–3, the Commission estimates that there will be no material change in burden for all small entities because the effect of the changes merely clarify that transmission operators are responsible for reporting transmission information while balancing authorities are responsible for reporting generation information.

VI. Comment Procedures

104. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 3, 2014. Comments must refer to Docket No. RM13–15–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

105. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

106. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

107. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

108. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

109. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

110. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

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[109] *Electric Reliability Organization Interpretation of Transmission Operations Reliability Standard,* 136 FERC ¶ 61,176 (2011).

[110] 44 U.S.C. 3507(d) (2012).

[111] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[112] 18 CFR 380.4(a)(2)(ii).

[113] 5 U.S.C. 601–612.

[114] 13 CFR 121.201.

[115] *Id.* n.22.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120282–10]

RIN 1545–BJ56

Dividend Equivalents From Sources Within the United States

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking, notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document provides guidance to nonresident alien individuals and foreign corporations that hold certain financial products providing for payments that are contingent upon or determined by reference to U.S. source dividend payments and to withholding agents. It withdraws proposed regulations under section 871(m) that were published in the **Federal Register** on January 23, 2012 (77 FR 3202). This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 5, 2014. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for April, 11, 2014, at 10 a.m., must be received by March 5, 2014.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–120282–10), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–120282–10), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–120282–10). The public hearing will be held in the auditorium, beginning at 10 a.m., at the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, D. Peter Merkel or Karen Walny at (202) 317–6938 (not a toll-free number); concerning submission of comments, the hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, Publications and Regulations Branch Specialist, at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Office for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 3, 2014. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this notice of proposed rulemaking are in §§ 1.871–15(j) and (o), and are an increase in the total annual burden in the current regulations under §§ 1.1441–1 through 1.1441–9, 1.1461–1 and 1.1474–1. Under § 1.871–15(o), a broker, dealer, or short party is required to provide information relating to a potential section 871(m) transaction in a commercially reasonable fashion. The information may include whether the transaction is a section 871(m) transaction, the delta of the transaction, estimates of dividends, and the amount of the dividend equivalents. This information is required to establish whether a payment is treated as a U.S. source dividend for purposes of section 871(m). This information will be used for audit and examination purposes. The likely respondents are businesses and other for-profit institutions.

Estimated total annual reporting burden is 240,000 hours.

Estimated average annual burden per respondent is 8 hours.

Estimated average burden per response is 4 minutes.

Estimated number of respondents is 30,000.

Estimated total annual frequency of responses is 4,000,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 23, 2012, the **Federal Register** published temporary regulations (TD 9572) at 77 FR 3108 (2012 temporary regulations) and a notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing at 77 FR 3202 (2012 proposed regulations, and together with the 2012 temporary regulations, 2012 section 871(m) regulations) under section 871(m) of the Internal Revenue Code (Code). The 2012 section 871(m) regulations related to dividend equivalents from sources within the United States paid to nonresident alien individuals and foreign corporations. Corrections to the 2012 temporary regulations were published on February 6, 2012, and March 8, 2012, in the **Federal Register** at 77 FR 5700 and 77 FR 13969, respectively. A correcting amendment to the 2012 temporary regulations was also published on August 31, 2012, in the **Federal Register** at 77 FR 53141. The Treasury Department and the IRS received written comments on the 2012 proposed regulations, which are available at *www.regulations.gov*. A public hearing was held on April 27, 2012.

This document withdraws the 2012 proposed regulations and provides new proposed regulations (2013 proposed regulations). Based on comments received on the 2012 proposed regulations, the Treasury Department and the IRS believe that the 2013 proposed regulations better identify (1) when a notional principal contract (NPC) ''is of a type which does not have the potential for tax avoidance'' and (2) other payments that are dividend equivalents because they are substantially similar to specified NPC payments and substitute dividend payments.

This preamble discusses section 871(m), describes the 2012 section 871(m) regulations, summarizes the comments received on the 2012 section 871(m) regulations, and explains the 2013 proposed regulations.

1. Section 871(m)

Congress enacted section 871(m) (originally designated as section 871(l)) on March 18, 2010, in section 541 of the Hiring Incentives to Restore Employment Act (HIRE Act), Public Law 111–147 (124 Stat. 71). Section 871(m) treats a dividend equivalent as a

dividend from sources within the United States for purposes of sections 871(a), 881, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 871(m) applies to any dividend equivalent paid on or after September 14, 2010. Section 871(m)(5) provides that the term payment includes any gross amount that is used in computing any net payment that is transferred to or from the taxpayer.

Section 871(m)(2) defines a dividend equivalent as (1) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon or determined by reference to the payment of a dividend from sources within the United States, (2) any payment made pursuant to a specified NPC that (directly or indirectly) is contingent upon or determined by reference to the payment of a dividend from sources within the United States, or (3) any other payment that the Secretary determines is ''substantially similar'' to a specified NPC payment or substitute dividend payment.

Section 871(m)(3) defines the term specified NPC. For payments made on or after September 14, 2010, and on or before March 18, 2012, section 871(m)(3)(A) defines a specified NPC as any NPC if (1) the long party transferred the underlying security to the short party in connection with entering into the NPC, (2) the short party transferred the underlying security to the long party in connection with the termination of the NPC, (3) the underlying security is not readily tradable on an established securities market, (4) the short party posted the underlying security as collateral with the long party, or (5) the NPC is identified by the Secretary as a specified NPC. For payments made after March 18, 2012, section 871(m)(3)(B) provides that any NPC is a specified NPC unless the Secretary determines that the NPC is of a type that does not have the potential for tax avoidance.

2. 2012 Section 871(m) Regulations

The 2012 section 871(m) regulations provided guidance regarding dividend equivalents under section 871(m). Generally, the 2012 section 871(m) regulations defined the terms specified NPC and substantially similar payment, addressed certain issues regarding withholding of tax with respect to the payment of a dividend equivalent, and provided other rules relating to dividend equivalents.

Section 1.871–15(c) of the 2012 proposed regulations provided that a dividend equivalent included any gross amount used to compute any net amount transferred to or from the taxpayer, even if the taxpayer made a net payment or no payment was made because the net amount was zero. A dividend equivalent, however, did not include any amount determined by reference to an estimate of an expected (but not yet announced) dividend. This exception did not apply if the estimate adjusted to reflect the amount of the actual dividend.

Section 1.871–16 of the 2012 section 871(m) regulations defined the term specified NPC with respect to payments made after March 18, 2012. For payments made prior to January 1, 2014, the 2012 temporary regulations (as amended by the correcting amendment published at 77 FR 53141) defined a specified NPC using substantially the same definition as provided in section 871(m)(3)(A). For payments made on or after January 1, 2014, the 2012 proposed regulations defined a specified NPC as an NPC that meets one or more of the following factors: (1) The long party is ''in the market'' on the same day that the parties priced or terminated the NPC; (2) the underlying security is not regularly traded on a qualified exchange; (3) the short party posts the underlying security as collateral and the underlying security represents more than ten percent of the collateral posted by the short party; (4) the actual term of the NPC is fewer than 90 days; (5) the long party controls the short party's hedge; (6) the notional principal amount is greater than five percent of the total public float of the underlying security or greater than 20 percent of the 30-day daily average trading volume; or (7) the NPC is entered into on or after the announcement of a special dividend and prior to the ex-dividend date.

Section 1.871–15(d) of the 2012 proposed regulations described payments that are substantially similar to substitute dividends made pursuant to securities lending and sale-repurchase transactions and to payments made pursuant to specified NPCs. A substantially similar payment was any (1) gross-up amount paid by a short party in satisfaction of the long party's tax liability with respect to a dividend equivalent, or (2) payment made pursuant to an equity-linked instrument (ELI) that was calculated by reference to a dividend from sources within the United States if the ELI satisfied one or more of the specified NPC factors.

The 2012 proposed regulations provided that certain indices referenced by an NPC or ELI would not be underlying securities, and therefore, would not be subject to section 871(m). Section 1.871–16(f)(1) of the 2012 proposed regulations provided that each component security of a customized index would be treated as an underlying security in a separate NPC. Section 1.871–16(f)(3) of the 2012 proposed regulations defined a customized index as (1) a ''narrow-based index,'' which was generally defined based on the Securities Exchange Act of 1934, section 3(a)(55)(B); or (2) any other index unless futures contracts or options contracts referencing the index trade on a qualified board or exchange.

The 2012 section 871(m) regulations provided rules under section 1441 to require a withholding agent to withhold tax owed with respect to a dividend equivalent. Many of these amendments and proposals simply coordinated the rules in § 1.871–16T of the 2012 temporary regulations and §§ 1.871–15 and 1.871–16 of the 2012 proposed regulations with the withholding rules in chapter 3 of the Code. Section 1.1441–3(h)(2) of the 2012 proposed regulations explained the procedures for withholding when an NPC became a specified NPC after the date that the parties entered into the NPC. The proposed regulations provided that the term dividend equivalent included any payment that was made prior to the date the NPC became a specified NPC and that was (directly or indirectly) contingent upon or determined by reference to the payment of a dividend from sources within the United States.

3. Summary of Comments on the 2012 Section 871(m) Regulations

The Treasury Department and the IRS received numerous comments regarding the 2012 section 871(m) regulations. The major concerns raised in the comments related to (1) the definition of a specified NPC, (2) the definition of an ELI, (3) withholding issues that arise regarding the payment of a dividend equivalent, (4) the potential for over-withholding in a chain of transactions, (5) the treatment of indices, and (6) the effective date of the 2012 proposed regulations.

A. Definition of Specified NPC

Several comments on the 2012 proposed regulations stated that the seven-factor approach to defining a specified NPC would not accurately identify tax avoidance transactions. These comments asserted that the factors could treat a contract as a specified NPC even when the contract was not entered into primarily to avoid withholding. Similarly, comments noted that some tax-motivated transactions would not be subject to tax under section 871(m) because the transaction would not meet any of the seven factors. These comments generally

recommended substantial modification to the factors used in the 2012 proposed regulations.

Comments stated that the term of a contract does not indicate the potential for tax avoidance. Comments noted that the term rule could result in retroactive withholding obligations and that it would be difficult for withholding agents to design systems to monitor withholding obligations that may arise after a payment has been made. Other comments asserted that 90 days was not the appropriate threshold for a minimum term and suggested eliminating the 90-day term factor or reducing the minimum term. Another comment acknowledged that the length of the term may indicate that a contract has a tax avoidance motive; however, this comment recommended adding an exception for termination events that are beyond the control of the parties to the transaction.

Comments asserted that withholding agents and taxpayers would have difficulty applying the ''in the market'' factor. Those comments recommended that a long party should be treated as being ''in the market'' only when the long party sold or purchased the underlying security ''in connection with'' entering into or terminating an NPC. In addition, several comments indicated that withholding agents would have difficulty determining whether a long party was ''in the market'' and would have to rely on representations from the long party to the withholding agent.

B. Definition of ELI

Comments stated that the definition of specified ELI in the 2012 proposed regulations was overly broad because numerous types of ELIs do not give rise to the policy concerns underlying section 871(m). The comments requested that the final regulations limit the scope of the term ELI to contracts that provide delta-one or near-delta-one exposure to the underlying equity. One comment explained that the delta of an instrument reflects the change in the value of the instrument relative to a change in the value of the underlying security. These comments asserted that non-delta-one derivatives do not provide investors with a substitute for physical ownership of the underlying security. One comment, however, disagreed that a delta-based standard is the appropriate criteria for ELIs. This comment stated that a delta-based standard would provide non-delta-one financial instruments with a competitive advantage over delta-one products because non-delta-one financial instruments would be subject to more favorable tax treatment.

Another comment suggested that the term ELI should not include single stock futures contracts (SSFs) unless the SSF is an ''exchange future for physical'' (EFP). That comment described an EFP as a transaction in which an investor (1) sold stock and purchased an SSF for future delivery of the same stock or (2) purchased stock and sold an SSF to deliver the same stock in the future. The comment maintained that an SSF, other than an EFP, should not be treated as an ELI because SSFs trade on a regulated exchange, unlike bilateral over-the-counter contracts. The comment also asserted that an adjustment to the settlement price of an SSF is not a payment upon which withholding may be applied.

Similarly, several comments recommended that the final regulations provide an exception to the term ELI for exchange-traded options because many of these options do not provide close economic substitutes for owning stock. These comments explained that two of the seven specified NPC factors will apply to many standard exchange-traded options. First, the majority of exchange-traded options have an initial term of less than 90 days. Second, when an investor exercises an exchange-traded call option, the investor acquires the underlying securities because the terms of the transaction require physical settlement. If exchange-traded options continue to be treated as ELIs, these comments recommended that the final regulations account for the differences between over-the-counter and exchange-traded options.

C. Withholding Issues

Comments requested clarification on how the 2012 proposed regulations would interact with the withholding rules of chapter 3. Comments asserted that the 2012 proposed regulations did not clearly address whether intermediaries, custodians, clearing organizations, and members of clearing organizations are withholding agents. Due to the large volume of transactions cleared by exchanges on a daily basis, one comment noted that it would be impractical to treat an exchange as a withholding agent. Other comments stated that the 2012 proposed regulations would impose an undue burden on broker-dealers with non-U.S. customers because the broker-dealers would have to develop complicated systems to determine whether an instrument is an ELI and the amount of any dividend equivalent.

Other comments suggested limiting a withholding agent's liability for withholding tax with respect to dividend equivalents. Comments stated that a withholding agent should not be liable for U.S. tax when the withholding agent lacks the information necessary to determine whether a transaction constitutes a specified NPC. For instance, comments noted that a withholding agent may not know whether a long party is selling or purchasing underlying securities on the same day that a specified NPC or ELI is entered into or terminated. A comment asserted that withholding for U.S. tax would be complicated and impractical if the final regulations do not limit a withholding agent's knowledge to the information available to the withholding agent at the trading unit level.

Comments also questioned the rule in § 1.1441–3(h)(2) of the 2012 proposed regulations treating all payments as dividend equivalents if a contract became a specified NPC only as a result of the long party acquiring physical shares upon termination (''crossing out''). Comments stated that the 2012 proposed regulations unfairly would have required a withholding agent to withhold for U.S. tax on all payments made pursuant to a contract that would be treated as dividend equivalents when the contract only became a specified NPC because of a ''cross out'' at the end of the contract. Other comments recommended that this rule prescribing retroactive treatment of a payment as a dividend equivalent should apply only to NPCs that are specified NPCs because they meet the ''in the market'' or the 90-day factor.

D. Chain of Transactions

Several comments stated that a chain of equity derivatives could result in the collection of cascading U.S. tax, for example, when each transaction in a chain of back-to-back equity derivatives referencing the same underlying security is subject to U.S. withholding tax. Some comments recommended that the final regulations incorporate specified NPCs into the qualified securities lender and credit forward regimes described in Notice 2010–46, 2010–24 I.R.B. 757, which outlines a framework for limiting the amount of U.S. tax withheld in a chain of securities lending or sale-repurchase transactions. See § 601.601(d)(2)(ii)(*b*). Other comments recommended that certain transactions be exempt from section 871(m), such as transactions entered into by a non-U.S. dealer as a long party in the ordinary course of business with customers. Comments explained that these transactions should be exempt from section 871(m) because the non-U.S. dealer does not enter into

the transaction to avoid U.S. tax and U.S. tax would be paid on any dividend equivalent paid to the customers of the non-U.S. dealer.

E. Indices

Comments recommended several changes to the definition of the terms narrow-based index and customized index. One comment questioned the definition of narrow-based index and suggested that the final regulations incorporate the exceptions to that term provided in section 3(a)(55) of the Securities Exchange Act of 1934.

Several comments suggested changes that would narrow the scope of the term customized index. For example, comments suggested that the term customized index be revised to apply only to a narrow-based index or any index offered by a publisher that is not a ''recognized independent index publisher.'' Another comment recommended that the definition of a customized index exclude an index if an exchange-traded fund, exchanged-traded note, or other exchange-traded derivative tracked that index. One comment suggested that the final regulations provide that a customized index does not include any index with respect to which U.S. equity securities comprise less than 20 percent of the notional value.

Other comments suggested that the final regulations broaden the definition of customized index because the definition in the 2012 proposed regulation may have permitted certain transactions designed to avoid U.S. tax. For example, one comment suggested that a customized index should include any index that uses dividend yield as the primary criteria for inclusion in the index. Another comment noted that a partnership may function in the same manner as a customized index if the partnership was formed to hold a small basket of U.S. securities.

F. Effective Dates

The 2012 proposed regulations provided that the rules would apply to payments made on or after the date of publication of the Treasury decision adopting those rules as final regulations. Comments expressed concern about the potentially retroactive effect of the regulations. With respect to ELIs, comments recommended that the final regulations should apply only to those transactions entered into after the effective date (rather than payments made after the effective date) because taxpayers and withholding agents did not foresee that these contracts would be subject to U.S. tax. Comments also recommended that the effective date of the final regulations be delayed because market participants will be required to make systems modifications and operational adjustments to comply with the final regulations.

4. Explanation of Provisions

After consideration of the comments, the Treasury Department and the IRS agree that the proposed seven-factor approach to identify a specified NPC does not provide the best framework for evaluating whether an NPC ''is of a type which does not have the potential for tax avoidance'' and that the seven-factor approach would be difficult to administer, both for the IRS and withholding agents. Accordingly, the Treasury Department and the IRS are withdrawing the 2012 proposed regulations and proposing new regulations based on the objective measurement of a derivative's delta to determine whether a contract is subject to tax under section 871(m). The delta of an NPC or ELI is the ratio of the change in the fair market value of the contract to the change in the fair market value of the property referenced by the contract. This approach is consistent with comments suggesting that the delta of an option be used to determine whether the option is a specified ELI.

The Treasury Department and the IRS believe that this delta-based standard will prevent taxpayers from avoiding withholding tax by electing derivative exposure to U.S. equities rather than physical ownership.

A transaction has the ''potential for tax avoidance'' if it approximates the economics of owning an underlying security without incurring the tax liability associated with owning that security. In many cases, a long party is indifferent as to whether to invest in a derivative or a physical position because the derivative and the physical position provide comparable economic returns. Furthermore, the short party will often hedge an NPC or ELI by acquiring physical securities in proportion to the delta of the derivative to which it is exposed. When dividends paid on physical securities are subject to tax while dividend equivalents with respect to economically comparable derivatives are not, those derivatives have a potential for tax avoidance regardless of whether a long party is using the derivative in a particular case to avoid tax. Accordingly, the Treasury Department and the IRS favor a delta approach that objectively identifies transactions in which the long party is able to sufficiently approximate the economic returns associated with an underlying security.

In addition, the Treasury Department and the IRS believe that the delta-based standard of the 2013 proposed regulations provides a simpler and more administrable framework than the seven-factor test of the 2012 proposed regulations. Using the delta of an NPC or ELI to determine the application of section 871(m) employs a single standard for NPCs and ELIs, although the regulations have different applicability dates for specified NPCs and specified ELIs. Therefore, for both equity swaps and other equity derivatives, the determination of whether a transaction may give rise to a dividend equivalent will generally depend only on the determination of a single objective measurement at the time the transaction is acquired.

This notice of proposed rulemaking should not be construed as providing guidance with respect to any other section of the Code. For example, this notice should not be used as a basis for applying the delta standard to interpret other Code sections.

A. In General

Section 1.871–15(b) of the 2013 proposed regulations treats a dividend equivalent as a dividend from sources within the United States for purposes of sections 871(a), 881, 892, 894, and 4948(a), and chapters 3 and 4 of subtitle A of the Code. Section 1.871–15(c) provides that a dividend equivalent is (1) any payment of a substitute dividend made pursuant to a securities lending or sale-repurchase transaction that references a U.S. source dividend payment, (2) any payment made pursuant to a specified NPC that references a U.S. source dividend payment, (3) any payment made pursuant to a specified ELI that references a U.S. source dividend payment, or (4) any other substantially similar payment. A payment references a U.S. source dividend payment if the payment is directly or indirectly contingent upon or determined by reference to the payment of a dividend from sources within the United States.

Certain transactions typically provide for dividend equivalents to be paid at the time a dividend is paid, and in an amount equal to that dividend payment, on a referenced stock. Stock loans, equity sale-repurchase transactions, and total return swaps referencing stock are the most common types of equity-linked transactions that provide the long party with either a dividend or a dividend equivalent equal to the dividend paid on the referenced stock.

Other transactions that are linked to U.S. equities may also provide for dividend equivalents. The Treasury

Department and the IRS believe that an ELI that has economic terms that are substantially similar to a payment made pursuant to a securities lending or sale-repurchase transaction, or a specified NPC, creates the same potential for avoidance of U.S. withholding tax as those transactions. Section 1.871–15(a)(4) of the 2013 proposed regulations defines an ELI as any financial transaction (other than a securities lending or sale-repurchase transaction or an NPC) that references the value of one or more underlying securities. The term ELI includes instruments such as forward contracts, futures contracts, options, debt instruments convertible into underlying securities, and debt instruments with payments linked to underlying securities. The long party with respect to an ELI is the counterparty that holds a long position with respect to an underlying security, such as the purchaser of a call option or the writer of a put option.

Section 1.871–15(f) of the 2013 proposed regulations provides that another substantially similar payment is a gross-up amount paid by a short party in satisfaction of the long party's tax liability with respect to a dividend equivalent. The Treasury Department and the IRS request comments regarding whether other payments should be treated as substantially similar payments, such as a payment made by a seller of stock to the purchaser of the stock pursuant to an agreement to deliver a pending U.S. source dividend after the record date (for example, a due bill).

The definition of an underlying security has also been revised. The 2013 proposed regulations define an underlying security as any interest in an entity taxable as a corporation for Federal tax purposes if a payment with respect to that interest may give rise to a U.S. source dividend. If a transaction references more than one such entity (including a reference to an index that is not a qualified index), each interest is treated as a separate underlying security. If a transaction references a qualified index, the qualified index is treated as a single security that is not an underlying security.

The 2013 proposed regulations also revise the rules pertaining to indices. In general, a qualified index is any index that (1) references 25 or more underlying securities; (2) references only long positions in underlying securities; (3) contains no underlying security that represents more than 10 percent of the index's weighting; (4) rebalances based on objective rules at set intervals; (5) does not provide for a high dividend yield; and (6) is referenced by futures or option contracts that trade on a national securities exchange or a domestic board of trade.

B. Section 871(m) Transactions and Delta

The 2013 proposed regulations define a section 871(m) transaction as any securities lending or sale-repurchase transaction, specified NPC, or specified ELI. Section 1.871–15(a)(10) of the 2013 proposed regulations defines a securities lending transaction and sale-repurchase transaction by reference to § 1.861–3(a)(6) and includes substantially similar transactions.

As noted above, to determine whether a transaction is a specified NPC or specified ELI, the 2013 proposed regulations replace the seven-factor test in the 2012 proposed regulations with a single-factor test. Section 1.871–15(d)(2) provides that, with respect to payments made on or after January 1, 2016, a specified NPC is any NPC that has a delta of 0.70 or greater when the long party acquires the transaction. Similarly, § 1.871–15(e) provides that a specified ELI is any ELI that has a delta of 0.70 or greater when the long party acquires the transaction. If a transaction references more than one underlying security, the taxpayer must determine whether the transaction is a section 871(m) transaction with respect to each underlying security. A transaction, therefore, may be a section 871(m) transaction with respect to one or more underlying securities referenced in the transaction, but may not be treated as a section 871(m) transaction with respect to other underlying securities referenced by that same transaction.

Section 1.871–15(g)(1) of the 2013 proposed regulations provides that the delta of an NPC or an ELI is the ratio of the change in the fair market value of the NPC or ELI to the change in the fair market value of the property referenced by the NPC or ELI. For purposes of the 2013 proposed regulations, the delta of a transaction must be determined in a commercially reasonable manner. If a taxpayer calculates delta for non-tax business purposes, that delta ordinarily is treated as the delta for purposes of this section. For example, to determine whether an option is a specified ELI, a dealer may use the delta that it calculates to determine the number of shares needed to balance its position on the option (even though that number of shares may not correspond to the dealer's actual hedge). If an NPC or ELI contains more than one reference to a single underlying security, all references to that underlying security are taken into account in determining the delta. If an NPC or an ELI references more than one underlying security or other property or liability, a separate delta must be determined with respect to each underlying security without taking into account any other underlying security or other property or liability referenced in the transaction. Section 1.871–15(g)(2) provides that if the delta of an NPC or ELI is not reasonably expected to vary during the term of the transaction, the NPC or ELI has a constant delta and the delta is treated as 1.0. If a transaction would not have a delta of 1.0 but for the rule in § 1.871–15(g)(2), the number of shares of the underlying security is adjusted to reflect the constant delta of 1.0. This rule is intended to prevent taxpayers from avoiding the application of the 2013 proposed regulations by using transactions that reduce delta while retaining the economics of owning a set amount of shares. For example, a transaction that provides 50 percent of the appreciation, dividends, and depreciation on 200 shares of stock X throughout the term of the transaction (and therefore has a delta of 0.5) will be treated as a contract that provides 100 percent of the same exposure on 100 shares of stock X (and therefore has a delta of 1.0). The Treasury Department and the IRS request comments regarding whether taxpayers could avoid the constant delta rule by structuring transactions with the potential for de minimis delta variability and whether such transactions should be deemed to have a constant delta.

The Treasury Department and the IRS understand that a long party may enter into multiple transactions referencing the same underlying security to substantially replicate the economics of owning the underlying security. For example, a taxpayer may purchase a call option and sell a put option referencing the same underlying security that individually have a delta below 0.70 but together have a delta that exceeds 0.70. If section 871(m) were to apply to each transaction separately, neither transaction would be a section 871(m) transaction even though the economics of the positions when considered together are the same as another transaction that would be a section 871(m) transaction. Therefore, § 1.871–15(l) of the 2013 proposed regulations treats multiple transactions as a single transaction for purposes of determining if the transactions are a section 871(m) transaction with respect to an underlying security when a long party (or a related person) enters into two or more transactions that reference the same underlying security and the

transactions were entered into in connection with each other. These rules apply only to combine transactions in which the taxpayer is the long party. Section 1.871–15(l) does not combine transactions when a taxpayer is the long party with respect to an underlying security in one transaction and the short party with respect to the same underlying security in another transaction. Transactions that are combined for purposes of determining whether there is a section 871(m) transaction are treated as separate transactions for all other purposes of this section, including for purposes of determining the amount of a dividend equivalent with respect to each transaction. A withholding agent, however, is not required to withhold on a dividend equivalent paid pursuant to a transaction that has been combined with one or more other transactions unless the withholding agent knows that the long party (or a related person) entered into the potential section 871(m) transactions in connection with each other.

The Treasury Department and the IRS request comments regarding whether (and, if applicable, how) the rules for combining separate transactions to determine whether the transactions are section 871(m) transactions should apply in other situations, such as when a taxpayer holds both long and short positions with respect to the same underlying security. Comments also are requested regarding whether (and, if applicable, how) the remaining transaction (or transactions) should be retested when a long party terminates one or more, but not all, of the transactions that make up a combined position.

C. Amount of Dividend Equivalent

Section 1.871–15(h) of the 2013 proposed regulations provides rules for identifying a payment of a dividend equivalent. A payment includes any gross amount that references a U.S. source dividend and that is used to compute any net amount transferred to or from the long party even if the long party makes a net payment to the short party or the net payment is zero. For purposes of section 871(m), a payment is treated as made on the date the amount of the dividend equivalent is fixed even if it is paid or otherwise taken into account on a later date.

The 2012 proposed regulations provided that estimates of expected dividends were not dividend equivalents unless the estimate was adjusted to reflect actual dividend payments. The 2013 proposed regulations eliminate this exception and explicitly treat estimated dividend payments as dividend equivalents because the economic benefit of a dividend is present in contracts that use estimated dividends in much the same way as a contract that adjusts for actual dividends. Moreover, the Treasury Department and the IRS are concerned that taxpayers may inappropriately avoid section 871(m) if estimated dividends are not treated as dividend equivalents.

In the 2013 proposed regulations, a dividend equivalent includes any amount that references the payment of a U.S. source dividend. In addition to an actual payment of dividends and an estimated payment of dividends, a dividend equivalent includes any other contractual term of a potential section 871(m) transaction that is calculated based on an actual or estimated dividend. For example, when a long party enters into an NPC that provides for payments based on the appreciation in the value of an underlying security but does not explicitly entitle the long party to receive payments based on regular dividends (a price return swap), the 2013 proposed regulations treat the price return swap as a transaction that provides for the payment of a dividend equivalent because the anticipated dividend payments are presumed to be taken into account in determining other terms of the NPC, such as in the payments that the long party is required to make to the short party or in setting the price of the underlying securities referenced in the price return swap.

The 2013 proposed regulations also provide rules for calculating the amount of a dividend equivalent. For a securities lending or sale-repurchase transaction, § 1.871–15(i) provides that the amount of a dividend equivalent for each underlying security equals the actual per share dividend amount paid on the underlying security multiplied by the number of shares of the underlying security transferred pursuant to the transaction. For a specified NPC or specified ELI, the amount of a dividend equivalent equals the per share dividend amount with respect to the underlying security multiplied by the number of shares of the underlying security referenced in the contract (subject to adjustment) multiplied by the delta of the transaction with respect to the underlying security at the time that the amount of the dividend equivalent is determined.

If a transaction provides for a payment based on an estimated dividend (including an implicit estimated dividend), § 1.871–15(h)(2)(i) and (iii) of the 2013 proposed regulations require that the actual amount of the dividend payment is used to calculate the amount of the dividend equivalent unless the short party identifies a reasonable estimated dividend amount in writing at the inception of the transaction. Prop. Treas. Reg. § 1.871–15(h)(2)(i) and (iii). If a transaction that provides for payment based on estimated dividends is supported by the required documentation, the per share dividend amount used to compute the amount of a dividend equivalent is the lesser of the amount of the estimated dividend and the amount of the actual dividend paid.

The delta used to determine whether a potential section 871(m) transaction is a section 871(m) transaction may differ from the delta used to determine the amount of the dividend equivalent of a section 871(m) transaction. Whereas the delta of a transaction at the time the long party acquires a potential section 871(m) transaction is used to determine whether the transaction is a section 871(m) transaction, the delta of the section 871(m) transaction at the time that the amount of the dividend equivalent is determined is used to calculate the amount of the dividend equivalent. Because the delta of a transaction may vary over time, the delta of the transaction at the time of acquisition may differ from the delta of the transaction at the time the amount of the dividend equivalent is determined. Under § 1.871–15(i)(1)(ii)(C)(*1*) of the 2013 proposed regulations, the delta used to calculate the amount of a dividend equivalent is not used to re-test whether a transaction is a section 871(m) transaction; a long party's section 871(m) transaction continues to be subject to tax even if the delta of the section 871(m) transaction is below 0.70 at the time the amount of the dividend equivalent is determined. Similarly, a long party that acquires a potential section 871(m) transaction that has a delta below 0.70 at the time of acquisition will not have a section 871(m) transaction even if the delta increases to be above 0.70 during the time the long party holds the transaction.

Under the 2013 proposed regulations, the amount of the dividend equivalent generally is determined on the earlier of the ex-dividend date or the record date for the dividend. However, if a section 871(m) transaction has a term of one year or less, the amount of the dividend equivalent is determined when the long party disposes of the transaction. Therefore, a long party that acquires an option with a term of one year or less that is a specified ELI will not incur a withholding tax if the option lapses.

D. Other Rules

In response to comments, § 1.871–15(j) of the 2013 proposed regulations provides exceptions to the definition of a section 871(m) transaction for two types of potential section 871(m) transactions that have little potential for tax avoidance. The first exception applies when a qualified dealer enters into a transaction as the long party in its capacity as a dealer. A qualified dealer is any dealer in securities within the meaning of section 475 that is subject to regulatory supervision by a governmental authority in the jurisdiction in which it was created or organized. In addition, the dealer must certify to the short party that it is a qualified dealer acting in its capacity as a dealer in securities and that it will withhold and deposit any tax imposed by section 871(m) with respect to a section 871(m) transaction that it enters into as a short party in its capacity as a dealer. The second exception applies when a taxpayer enters into a transaction as part of a plan pursuant to which one or more persons (including the taxpayer) are obligated to acquire 50 percent or more of the entity issuing the underlying securities.

A comment to the 2012 proposed regulations stated that an NPC may reference a partnership interest and that the partnership could be formed to hold a small basket of U.S. equity securities. Noting that a partnership may function like a customized index, the comment recommended that regulations treat an NPC that references a partnership interest as a separate NPC with respect to each underlying security held by the partnership. To address the concern noted in the comment, § 1.871–15(m) of the 2013 proposed regulations treats a transaction that references an interest in an entity that is not a C corporation for Federal tax purposes as referencing the allocable portion of any underlying securities and potential section 871(m) contracts held directly or indirectly by that entity. The 2013 proposed regulations provide an exception for a transaction that references an interest in an entity that is not a C corporation if underlying securities and potential section 871(m) transactions represent, in the aggregate, 10 percent or less of the value of the interest in the referenced entity at the time the transaction is entered into.

Section 1.871–15(n) of the 2013 proposed regulations provides that the Commissioner may treat any payment made with respect to a transaction as a dividend equivalent if the taxpayer acquires a transaction with a principal purpose of avoiding the application of these rules. The Treasury Department and the IRS will continue to closely scrutinize other transactions that are not covered by section 871(m) and that may be used to avoid U.S. taxation and U.S. withholding. In addition, the IRS may challenge the U.S. tax results claimed in connection with transactions that are designed to avoid the application of section 871(m) using all available statutory provisions and judicial doctrines (including the substance over form doctrine, the economic substance doctrine under section 7701(o), the step transaction doctrine, and tax ownership principles) as appropriate. For example, nothing in section 871(m) precludes the IRS from asserting that a contract labeled as an NPC or other equity derivative is in fact an ownership interest in the equity referenced in the contract.

The 2013 proposed regulations also make a number of conforming changes to reporting and withholding requirements. Most equity-linked transactions involve a financial institution acting as a broker, dealer, or intermediary. A financial institution is usually in the best position to undertake the responsibility to report the tax consequences of a potential section 871(m) transaction. Accordingly, § 1.871–15(o) of the 2013 proposed regulations provides that when a broker or dealer is a party to a potential section 871(m) transaction, the broker or dealer is required to determine whether the transaction is a section 871(m) transaction, and if so, the amounts of the dividend equivalents. If a broker or dealer is not a party to the transaction or both parties are brokers or dealers, the short party must determine whether the transaction is a section 871(m) transaction and the amounts of the dividend equivalents. Determinations made by the broker, dealer, or short party are binding on the parties to the section 871(m) transaction unless the other person knows or has reason to know that the information is incorrect; the determinations are not binding on the IRS. In addition, certain persons described in § 1.871–15(o)(3)(ii) of the 2013 proposed regulations are permitted to request information from certain parties to a potential section 871(m) transaction who are described in § 1.871–15(o)(1) when the information is necessary to satisfy their withholding or information reporting obligations, or to determine their tax liability. If a withholding agent reasonably relies on information received, it will not be liable for underwithholding; however, the party to the transaction who failed to properly determine the amount will be liable for the underwithholding. The Treasury Department and the IRS solicit comments with respect to these reporting rules, including comments regarding the parties that should be required to report and the extent of information that is appropriate.

The 2013 proposed regulations include amendments to chapter 3 specifically addressing dividend equivalents. The 2013 proposed regulations describe how the exception to withholding where no money or property is paid applies to a dividend equivalent. Section 1.1441–2(d)(5) of the 2013 proposed regulations provides that a withholding agent is not obligated to withhold on a dividend equivalent until the later of: (1) The time that the amount of the dividend equivalent is determined and (2) the time at which any of the following to has occurred: (a) Money or other property is paid pursuant to a section 871(m) transaction, (b) the withholding agent has custody or control of money or other property of the long party at any time on or after the amount of the dividend equivalent is determined, or (c) there is an upfront payment or a prepayment of the purchase price. Although § 1.1441–2(d)(5) of the 2013 proposed regulations relieves a withholding agent of liability to withhold when the withholding agent does not have control of money or other property of the long party, the long party remains liable for U.S. tax on the dividend equivalent pursuant to section 871(m) and Prop. Treas. Reg. § 1.871–15.

E. Certain Contingent Interest

Generally, section 871(h)(4) provides that U.S. source portfolio interest received by a nonresident alien individual is not subject to the 30-percent U.S. tax imposed under section 871(a)(1). Certain contingent interest payments, however, are excluded from the definition of portfolio interest. Section 871(h)(4)(A)(ii) grants the Secretary authority to impose tax on contingent interest when necessary to prevent the avoidance of Federal income tax. Most contingent debt instruments are either referenced to a qualified index, have an embedded option with a delta below 0.7, or both. A debt obligation that is a specified ELI and provides for a contingent interest payment determined by reference to a U.S. source dividend payment has the potential to be used by a nonresident alien individual or foreign corporation to avoid section 871(m). Therefore, § 1.871–14(h) of the 2013 proposed regulations provide that any contingent interest will not qualify for the portfolio interest exemption to the extent that the

contingent interest payment is a dividend equivalent.

F. Effective/Applicability Date

The 2013 proposed regulations generally will apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations. Certain provisions in the 2013 proposed regulations, however, apply at different dates. For example, the definition of a specified NPC in the 2013 proposed regulations will apply to payments made pursuant to a specified NPC on or after January 1, 2016. For payments made before January 1, 2016, the definition of a specified NPC is provided in section 871(m)(3)(A), § 1.871–16T(b) of the 2012 temporary regulations, and § 1.871–15(d)(1) of the final regulations in the Rules and Regulations section of this issue of the **Federal Register**. For specified ELIs, the rules of the 2013 proposed regulations will apply to payments made on or after January 1, 2016, but only with respect to an ELI that was acquired by the long party on or after March 5, 2014.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect multinational financial institutions, which tend to be larger businesses, and foreign entities. Moreover the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 11, 2013, beginning at 10 a.m. in the auditorium of the Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The rules of § 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 5, 2014 and an outline of the topics to be discussed and the time to be devoted to each topic by March 5, 2014. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are D. Peter Merkel and Karen Walny of the Office of Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS also participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–120282–10) that was published in the **Federal Register** on Monday, January 23, 2012, (77 FR 3202) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.871–14(h) also issued under 26 U.S.C. 871(h) and 871(m). * * *

§ 1.871–15 also issued under 26 U.S.C. 871(m). * * *

■ **Par. 2.** Section 1.871–14 is amended by:

■ 1. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively.

■ 2. Adding new paragraphs (h) and (j)(3).

The additions read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(h) *Portfolio interest not to include certain contingent interest*—(1) *Dividend equivalents.* Contingent interest does not qualify as portfolio interest to the extent that the interest is a dividend equivalent within the meaning of section 871(m).

(2) *Amount of dividend equivalent that is not portfolio interest.* The amount that does not qualify as portfolio interest because it is a dividend equivalent equals the amount of the dividend equivalent determined pursuant to § 1.871–15(i). Unless otherwise excluded pursuant to section 871(h), any other interest paid on an obligation that is not a dividend equivalent may qualify as portfolio interest.

* * * * *

(j) * * *

(3) *Effective/applicability date.* The rules of paragraph (h) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 3.** Section 1.871–15 is added to read as follows:

§ 1.871–15 Treatment of dividend equivalents.

(a) *Definitions.* For purposes of this section, the following terms have the meanings described in this paragraph (a).

(1) *Acquire.* To *acquire* means to enter into, purchase, accept by transfer, by exchange, or by conversion, or otherwise acquire a potential section 871(m) transaction.

(2) *Dealer.* A *dealer* is a dealer in securities within the meaning of section 475(c)(1).

(3) *Dividend.* A *dividend* means a dividend as described in section 316.

(4) *Equity-linked instrument.* An *equity-linked instrument* (*ELI*) is a financial transaction, other than a securities lending or sale-repurchase transaction or an NPC, that references the value of one or more underlying securities. For example, a futures contract, forward contract, option, debt instrument, or other contractual arrangement that references the value of one or more underlying securities is an ELI.

(5) *Notional principal contract.* A *notional principal contract* (*NPC*) is a notional principal contract as defined in § 1.446–3(c).

(6) *Option.* An *option* includes an option embedded in any debt instrument, forward contract, NPC, or other potential section 871(m) transaction.

(7) *Parties to a transaction*—(i) *Long party.* A *long party* is the party to a potential section 871(m) transaction with respect to an underlying security that is entitled to a dividend equivalent described in paragraph (c) of this section.

(ii) *Short party.* A *short party* is the party to a potential section 871(m) transaction with respect to an underlying security that is liable for a dividend equivalent described in paragraph (c) of this section.

(iii) *Party to a transaction.* A *party to a transaction* is any person that is a long party or a short party to a potential section 871(m) transaction.

(iv) *Party to a transaction that is both a long party and a short party*—(A) *In general.* If a potential section 871(m) transaction references more than one underlying security, the long party and short party are determined separately with respect to each underlying security. A party to a potential section 871(m) transaction is both a long party and a short party when the potential section 871(m) transaction entitles the party to receive a payment that references a dividend payment on an underlying security and obligates the same party to make a payment that references a dividend payment on another underlying security.

(B) *Example.* The following example illustrates the definitions in paragraph (a)(7) of this section:

Example. (i) Stock X and stock Y are underlying securities within the meaning of paragraph (a)(11) of this section. Corporations A and B enter into an NPC. The NPC entitles A to receive payments from B based on any appreciation in the value of Stock X and dividends paid on Stock X during the term of the contract and obligates A to make payments to B based on any depreciation in the value of Stock X during the term of the contract. In return, the NPC entitles B to receive payments from A based on any appreciation in the value of Stock Y and dividends paid on Stock Y during the term of the contract and obligates B to make payments to A based on any depreciation in the value of Stock Y during the term of the contract.

(ii) A is the long party with respect to dividend equivalents it receives based on Stock X. A is the short party with respect to dividend equivalents it makes based on Stock Y. B is the long party with respect to divided equivalents it receives based on Stock Y. B is the short party with respect to dividend equivalents it makes based on Stock X.

(8) *Reference. Reference* means to be contingent upon or determined by reference to, directly or indirectly, whether in whole or in part.

(9) *Section 871(m) transaction.* A *section 871(m) transaction* is any securities lending or sale-repurchase transaction, specified NPC, or specified ELI. A *potential section 871(m) transaction* is any securities lending or sale-repurchase transaction, NPC, or ELI that references one or more underlying securities.

(10) *Securities lending or sale-repurchase transaction.* A *securities lending or sale-repurchase transaction* is any securities lending transaction, sale-repurchase transaction, or substantially similar transaction. *Securities lending transaction* and *sale-repurchase transaction* have the same meaning as provided in § 1.861–3(a)(6).

(11) *Underlying security.* An *underlying security* is any interest in an entity taxable as a C corporation (within the meaning of section 1361(a)(2)) if a payment with respect to that interest could give rise to a U.S. source dividend pursuant to § 1.861–3. If a potential section 871(m) transaction references an interest in more than one entity described in the preceding sentence (including a reference to an index that is not a qualified index described in paragraph (k) of this section) or different interests in the same entity, each referenced interest is a separate underlying security for purposes of applying the rules of this section.

(b) *Source of a dividend equivalent.* A dividend equivalent is treated as a dividend from sources within the United States for purposes of sections 871(a), 881, 892, 894, and 4948(a), and chapters 3 and 4 of subtitle A of the Code.

(c) *Dividend equivalent*—(1) *In general.* Except as provided in paragraph (2), *dividend equivalent* means—

(i) Any payment (as described in paragraph (h) of this section) pursuant to a securities lending or sale-repurchase transaction that references the payment of a dividend from an underlying security;

(ii) Any payment (as described in paragraph (h) of this section) pursuant to a specified NPC described in paragraph (d) of this section (*specified NPC*) that references the payment of a dividend from an underlying security;

(iii) Any payment (as described in paragraph (h) of this section) pursuant to a specified ELI described in paragraph (e) of this section (*specified ELI*) that references the payment of a dividend from an underlying security; and

(iv) Any other substantially similar payment as described in paragraph (f) of this section.

(2) *Exceptions*—(i) *Not a dividend.* A payment pursuant to a section 871(m) transaction that references a distribution with respect to an underlying security is not a dividend equivalent to the extent that the distribution would not be subject to tax pursuant to sections 871 or 881, or withholding under chapters 3 or 4, if the long party owned the underlying security referenced by the section 871(m) transaction. For example, if a specified NPC references stock in a regulated investment company that pays a capital gains dividend described in section 852(b)(3)(C) that would not be subject to withholding tax if paid directly to the long party, then an NPC payment determined by reference to the capital gains dividend is not a dividend equivalent.

(ii) *Section 305 coordination.* A payment pursuant to a section 871(m) transaction is not a dividend equivalent to the extent that the payment is treated as a distribution taxable as a dividend pursuant to section 305.

(d) *Specified NPCs*—(1) [Reserved]

(2) *Specified NPC on or after January 1, 2016.* With respect to payments made on or after January 1, 2016, a specified NPC is any NPC that has a delta of 0.70 or greater with respect to an underlying security at the time that the long party acquires the NPC. If an NPC references more than one underlying security, the NPC is a specified NPC only with respect to underlying securities for which the NPC has a delta of 0.70 or greater at the time that the long party acquires the NPC. For example, if an NPC references underlying security A and underlying security B, and it has a delta of 1.0 with respect to A and 1.0 with respect to B, the NPC is a specified NPC with respect to A and B.

(e) *Specified ELIs.* With respect to payments made on or after January 1, 2016, a specified ELI is any ELI acquired by the long party on or after March 5, 2014 that has a delta of 0.70 or greater

with respect to an underlying security at the time that the long party acquires the ELI. If an ELI references more than one underlying security, the ELI is a specified ELI only with respect to underlying securities for which the ELI has a delta of 0.70 or greater at the time that the long party acquires the ELI. For example, if an ELI references underlying security A and underlying security B, and it has a delta of 0.90 with respect to A and 0.30 with respect to B, the ELI is a specified ELI with respect to A and is not a specified ELI with respect to B.

(f) *Other substantially similar payments.* For purposes of this section, the following payments are substantially similar payments:

(1) *Payment of a tax liability.* Any payment (as described in paragraph (h) of this section) in satisfaction of a tax liability with respect to a dividend equivalent made by a withholding agent is a dividend equivalent received by the long party in an amount determined under the gross-up formula provided in § 1.1441–3(f)(1); and

(2) *Due bill.* [Reserved].

(g) *Delta*—(1) *Determination of delta.* Delta is the ratio of the change in the fair market value of an NPC or ELI to the change in the fair market value of the property referenced by the NPC or ELI. If an NPC or ELI contains more than one reference to a single underlying security, all references to that underlying security are taken into account in determining the delta with respect to that underlying security. If an NPC or ELI references more than one underlying security, a separate delta must be determined with respect to each underlying security without taking into account any other underlying security or other property or liability. For purposes of this section, the delta of an NPC or ELI must be determined in a commercially reasonable manner. If a taxpayer calculates delta for non-tax business purposes, that delta ordinarily is the delta used for purposes of this section.

(2) *Constant delta.* An NPC or ELI is treated as having a delta of one (1.0) with respect to an underlying security when it has a constant delta with respect to the underlying security at the time it is acquired by the long party. An NPC or ELI has a constant delta with respect to an underlying security if the NPC or ELI has a delta that is not reasonably expected to vary during the term of the transaction with respect to that underlying security. If a transaction would not have a delta of one with respect to an underlying security without this paragraph, the number of shares of the underlying security of an NPC or ELI that has a constant delta is adjusted as described in paragraph (i)(1)(ii)(B)(*2*) of this section.

(3) *Examples.* The following examples illustrate the rules of paragraph (g) of this section. For purposes of these examples, Stock X and Stock Y are common stock of domestic corporations X and Y. LP is the long party to the transaction.

Example 1. The terms of an NPC require LP to pay the short party an amount equal to all of the depreciation in the value of 100 shares of Stock X and an interest-rate based return. In return, the NPC requires the short party to pay LP an amount equal to all of the appreciation in the value of 100 shares of Stock X and any dividends paid by X on those shares. The value of the NPC will change by $1 for each $0.01 change in the price of a share of Stock X. The NPC therefore has a delta of 1.0 ($1.00/($0.01 × 100)).

Example 2. LP acquires a call option that references 100 shares of Stock X. At the time LP purchases the call option, the value of the option is expected to change by $0.30 for a $0.01 change in the price of a share of Stock X. The call option has a delta of 0.3 ($0.30/($0.01 × 100)) when LP acquired it.

Example 3. (i) LP acquires an NPC that entitles LP to receive 50 percent of the appreciation and dividends on 100 shares of Stock X in return for the obligation to pay the short party 50 percent of the depreciation on 100 shares of Stock X and an interest based return. The value of the NPC is expected to change by $0.50 for each $0.01 change in the price of a share of Stock X. The delta is expected to remain constant during the term of the transaction.

(ii) Pursuant to the terms of the NPC and the amount of referenced underlying securities, the NPC has a delta of 0.5 ($0.50/($0.01 × 100)) on the date that LP acquired the transaction. The delta of the NPC, however, is not expected to vary during the term of the transaction. Therefore, the NPC has a constant delta and is treated as having a delta equal to 1.0 on 50 shares of Stock X after the adjustments described in § 1.871–15(i)(1)(ii)(B)(*2*).

(h) *Payment of a dividend equivalent*—(1) *Payments determined on gross basis.* For purposes of this section, a payment includes any gross amount that references the payment of a dividend and that is used in computing any net amount transferred to or from the long party even if the long party makes a net payment to the short party or no payment is made because the net amount is zero.

(2) *Actual and estimated dividends*—(i) *In general.* A payment includes any amount that references an actual or estimated payment of dividends, whether the reference is explicit or implicit. If a potential section 871(m) transaction provides for a payment based on an estimated dividend that adjusts to account for the amount of an actual dividend paid, the payment is treated as referencing the actual dividend amount and not an estimated dividend amount.

(ii) *Implicit dividends.* A payment includes an actual or estimated dividend payment that is implicitly taken into account in computing one or more of the terms of a potential section 871(m) transaction, including interest rate, notional amount, purchase price, premium, upfront payment, strike price, or any other amount paid or received pursuant to the potential section 871(m) transaction.

(iii) *Actual dividend presumption.* A section 871(m) transaction is treated as paying a per share dividend amount equal to the actual dividend amount unless the short party to the section 871(m) transaction identifies a reasonable estimated dividend amount in writing at the inception of the transaction. For this purpose, a reasonable estimated dividend amount stated in an offering document or the documents governing the terms of the transaction will establish the estimated dividend amount in writing at the inception of the transaction. To qualify as an estimated dividend amount, the written estimated dividend amount must separately state the amount estimated for each anticipated dividend or state a formula that allows each dividend to be determined. If a stock is not expected to pay a dividend, a reasonable estimate of the dividend amount may be zero.

(iv) *Limitation on estimated payments.* When a section 871(m) transaction provides for one or more payments based on estimated dividends supported by documentation described in paragraph (h)(2)(iii) of this section, the per share dividend amount used to calculate the amount of the dividend equivalent is the lesser of the estimated dividend amount and the actual dividend amount paid on the stock while the long party was a party to the section 871(m) transaction. If a section 871(m) transaction provides for any payment determined by reference to a dividend in addition to the estimated dividends (for example, a special dividend), the actual dividend amount paid on the stock is used for the additional dividend payment.

(3) *Deferred payments.* A payment occurs when the amount of a dividend equivalent is fixed pursuant to the terms of the transaction, even if paid or otherwise taken into account on a later date. For example, if a specified NPC provides for a payment at settlement that takes into account an earlier dividend payment, the dividend equivalent is treated as paid on the date that the amount of the dividend

equivalent is fixed pursuant to the terms of the contract.

(4) *Examples.* The following examples illustrate the rules of paragraph (h) of this section. For purposes of these examples, Stock X is common stock of Corporation X, a domestic corporation, that historically pays quarterly dividends on Stock X. The parties anticipate that Corporation X will continue to pay the quarterly dividends.

Example 1. Forward contract to purchase domestic stock. (i) When Stock X is trading at $50 per share, Foreign Investor enters into a forward contract to purchase 100 shares of Stock X in one year. Reasonable estimates of the quarterly dividend are specified in the transaction documents. The price in the forward contract is determined by multiplying the number of shares referenced in the contract by the current price of the shares and an interest rate, and subtracting the future value of any dividends expected to be paid during the term of the contract. Assuming that the forward contract is priced using an interest rate of 4 percent and estimated dividends with a future value of $1 per share during the term of the forward contract, the purchase price set in the forward contract is $5,100 (100 shares × $50 per share × 1.04 − ($1 × 100)).

(ii) Subject to paragraph (h)(2)(iv), the estimated dividend amount is the per share dividend amount because the estimate is reasonable and specified in accordance with paragraph (h)(2)(iii) of this section. Those estimated per share dividend amounts are dividend equivalents for purposes of this section.

Example 2. Price return only swap contract. (i) Foreign Investor enters into a price return swap contract that entitles Foreign Investor to receive payments based on the appreciation in the value of 100 shares of Stock X and requires Foreign Investor to pay an amount based on LIBOR plus any depreciation in the value of Stock X. The swap contract does not explicitly entitle Foreign Investor to payments based on dividends paid on Stock X during the term of the contract and the swap contract does not contain any reference to an estimated dividend amount. The LIBOR rate on the swap contract, however, is reduced to reflect expected annual dividends on Stock X.

(ii) Because the LIBOR leg of the swap contract is reduced to reflect estimated dividends and the estimated dividend amount is not specified, Foreign Investor is treated as receiving the actual dividend amount in accordance with paragraph (h)(2) of this section. Those actual per share dividend amounts are dividend equivalents for purposes of this section.

(i) *Amount of dividend equivalent*—(1) *Calculation of the amount of a dividend equivalent*—(i) *Securities lending or sale-repurchase transactions.* For a securities lending or sale-repurchase transaction, the amount of the dividend equivalent for each underlying security equals the amount of the actual per share dividend paid on the underlying security multiplied by the number of shares of the underlying security transferred pursuant to the securities lending or sale-repurchase transaction.

(ii) *Specified NPCs and specified ELIs*—(A) *In general.* For a specified NPC or a specified ELI, the amount of the dividend equivalent for each underlying security equals:

(*1*) The amount of the per share dividend (as determined under paragraph (h) of this section) with respect to the underlying security multiplied by;

(*2*) The number of shares of the underlying security as calculated pursuant to paragraph (i)(1)(ii)(B) of this section multiplied by;

(*3*) The delta of the section 871(m) transaction with respect to the underlying security at the time that the amount of the dividend equivalent is determined.

(B) *Calculation of the number of shares*—(*1*) *In general.* Except as provided in paragraph (i)(1)(ii)(B)(*2*) of this section, the number of shares of an underlying security for purposes of this section is the number of shares of the underlying security referenced in the section 871(m) transaction.

(*2*) *Adjustments.* When a section 871(m) transaction multiplies the number of shares of an underlying security by a factor or fraction, or otherwise alters the amount of a payment, the number of shares of a section 871(m) transaction is adjusted to take into account the factor, fraction, or other alteration provided by the section 871(m) transaction. For example, if a total return swap entitles a long party to receive a payment based on the appreciation and dividend amount on 100 shares of an underlying security multiplied by a factor of 1.50, the number of shares of the underlying security is 150 shares.

(C) *Delta at the time the amount of the dividend equivalent is determined*—(*1*) *In general.* The delta of a section 871(m) transaction at the time that the amount of the dividend equivalent is determined is the delta of the section 871(m) transaction determined at the time specified in paragraph (i)(2) of this section. This delta is used solely for purposes of determining the amount of the dividend equivalent at that time, and the transaction is not retested to determine if it is a section 871(m) transaction. For example, if a transaction had a delta of 0.80 when acquired by the long party and was a section 871(m) transaction, the transaction remains a section 871(m) transaction even if the delta is below 0.70 at the time the amount of the dividend equivalent is determined.

(*2*) *Delta of an option at lapse.* The delta of an option when it lapses is treated as zero.

(*3*) *Delta of an option at exercise.* The delta of an option when it is exercised is treated as one (1.0).

(iii) *Other substantially similar payments.* In addition to any amount determined pursuant to paragraph (i)(1)(i) or (ii), the amount of a dividend equivalent includes the amount of any payment described in paragraph (f) of this section.

(2) *Time for determining the amount of a dividend equivalent*—(i) *In general.* Except as provided in paragraph (i)(2)(ii) of this section, the amount of a dividend equivalent is determined on the earlier of the date that the underlying security becomes ex-dividend with respect to the dividend and the record date of the dividend. For example, if a specified NPC provides for a payment at settlement that takes into account an earlier dividend payment, the amount of a dividend equivalent is determined on the earlier of the ex-dividend date or the record date for that dividend.

(ii) *Specified NPCs and specified ELIs with a term of one year or less.* For a specified NPC or specified ELI with a term of one year or less when acquired by the long party, the amount of a dividend equivalent is determined when the long party disposes of the section 871(m) transaction. For purposes of this paragraph, to *dispose of* means to sell, exercise, terminate, allow to lapse or expire, transfer, settle (whether in cash or otherwise), cancel, exchange, convert, surrender, forfeit, or otherwise dispose of or allow to expire.

(iii) *Term.* For purposes of this section, if a transaction does not specify a term, the transaction is treated as having a term of more than one year. If a transaction permits extensions, the term of the transaction is the maximum term permitted by the transaction.

(j) *Limitation on the treatment of certain transactions as section 871(m) transactions*—(1) *Dealers*—(i) *In general.* A potential section 871(m) transaction is not a section 871(m) transaction if the potential section 871(m) transaction is entered into by a qualified dealer in its capacity as a dealer in securities and the dealer is the long party with respect to the underlying security. This paragraph does not apply with respect to any proprietary position held by a dealer in securities.

(ii) *Qualified dealer.* A qualified dealer is any dealer that:

(A) Is subject to regulatory supervision by a governmental authority in the jurisdiction in which it was created or organized; and

(B) furnishes a written certification to the short party confirming that the dealer is a qualified dealer acting in its capacity as a dealer in securities and that the dealer will withhold and deposit any tax imposed by section 871(m) with respect to any section 871(m) transactions that the dealer enters into as a short party in its capacity as a dealer in securities.

(2) *Corporate acquisitions.* A potential section 871(m) transaction is not a section 871(m) transaction with respect to an underlying security if the transaction obligates the long party to acquire ownership of the underlying security as part of a plan pursuant to which one or more persons (including the long party) are obligated to acquire underlying securities representing more than 50 percent of the value of the entity issuing the underlying securities. To qualify for the exception provided in this paragraph, the long party must furnish a written certification, provided under penalties of perjury, to the short party that it satisfies the requirements of this paragraph (j)(2).

(k) *Rules relating to indices*—(1) *Qualified index not treated as an underlying security.* For purposes of this section, a qualified index is treated as a single security that is not an underlying security. The determination of whether an index is a qualified index is made at the time that a long party acquires a potential section 871(m) transaction and is determinative only with respect to that transaction. Therefore, an index can be a qualified index with respect to a transaction entered into on one day and not be a qualified index with respect to a transaction entered into on another day.

(2) *Qualified index.* A *qualified index* means an index that:

(i) References 25 or more component underlying securities;

(ii) References only long positions in component underlying securities;

(iii) Contains no component underlying security that represents more than 10 percent of the weighting of the underlying securities in the index;

(iv) Is modified or rebalanced only according to predefined objective rules at set dates or intervals;

(v) Does not provide a dividend yield from component underlying securities that is greater than 1.5 times the current dividend yield of the S&P 500 Index as reported for the month immediately preceding the date the long party acquires the potential section 871(m) transaction; and

(vi) Futures contracts or option contracts on the index (whether the contracts provide price only or total return exposure to the index) trade on a national securities exchange that is registered with the Securities and Exchange Commission or a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission.

(3) *Safe harbor for indices that primarily reference assets other than underlying securities.* Notwithstanding paragraph (k)(2) of this section, an index is a qualified index if the index is comprised solely of long positions in assets and the referenced component underlying securities in the aggregate comprise 10 percent or less of the index's weighting.

(4) *Weighting of component underlying securities.* For purposes of paragraph (k) of this section, the weighting of a component underlying security of an index is the percentage of the index's value represented, or accounted for, by the component underlying security.

(5) *Indices with components other than underlying securities.* Any component of an index that is not an underlying security is not taken into account for purposes of determining whether an index is a qualified index, except for purposes of paragraph (k)(3) of this section.

(6) *Transactions that reference a qualified index and one or more underlying securities or indices.* If a potential section 871(m) transaction references a qualified index and one or more underlying securities or indices, the qualified index will remain a qualified index only if the potential section 871(m) transaction does not reference a short position in any referenced component underlying security of the qualified index, other than a short position with respect to the entire qualified index (for example, a cap or floor). If, in connection with a potential section 871(m) transaction that references a qualified index, a taxpayer (or a related person within the meaning of section 267(b) or 707(b)) enters into one or more transactions that reduce exposure to any referenced component underlying security of the index, other than transactions that reduce exposure to the entire index, then the potential section 871(m) transaction is not treated as referencing a qualified index.

(l) *Combined transactions*—(1) *In general.* For purposes of determining whether a potential section 871(m) transaction is a section 871(m) transaction, two or more potential section 871(m) transactions are treated as a single transaction with respect to an underlying security when:

(i) A person (or a related person within the meaning of section 267(b) or 707(b)) is the long party with respect to the underlying security for each potential section 871(m) transaction;

(ii) The potential section 871(m) transactions reference the same underlying security; and

(iii) The potential section 871(m) transactions are entered into in connection with each other (regardless of whether the transactions are entered into simultaneously or with the same counterparty).

(2) *Time and delta for testing.* Combined transactions are tested each time the long party (or a related person) acquires a potential section 871(m) transaction to which paragraph (l)(1) of this section applies. The deltas used to determine whether the combined transactions are section 871(m) transactions pursuant to paragraph (l)(1) of this section are the deltas of each of the combined transactions at that time. For example, if a taxpayer buys a call option on day 1 and sells a put option on day 10 on the same underlying security and the two transactions are entered into in connection with each other, the call option is tested on day 1 to determine whether it is a section 871(m) transaction, and the combined single transaction is tested on day 10 based on the deltas of the call option and put option at that time.

(3) *Section 871(m) transactions.* If a potential section 871(m) transaction is a section 871(m) transaction, either by itself or as a result of a combination, it does not cease to be a section 871(m) transaction as a result of applying paragraph (l) of this section.

(4) *More than one underlying security referenced.* If potential section 871(m) transactions reference more than one underlying security, paragraph (l)(1) of this section applies separately with respect to each underlying security.

(5) *Separate transactions for all other purposes.* Potential section 871(m) transactions that are combined for purposes of determining whether there is a section 871(m) transaction with respect to an underlying security are treated as separate transactions for all other purposes of this section, including separately determining the amount of a dividend equivalent with respect to each transaction. For withholding obligations with respect to combined transactions, see § 1.1441–1(b)(4)(xxiii).

(6) *Example.* The following examples illustrate the rules of paragraph (l) of this section. For purposes of this paragraph (l)(6), Foreign Investor (FI) is a nonresident alien individual and

Stock X is common stock of Corporation X, a domestic corporation.

Example 1. (i) FI purchases a call option with a term of six months that references 100 shares of Stock X, and simultaneously sells a six month put option on 100 shares of Stock X. The delta of the call option is 0.45 and the delta of the put option is 0.40 at the time FI acquired each option.

(ii) Because the purchased call option and the sold put option are entered into simultaneously by FI and reference the same underlying security, the facts and circumstances indicate that the call option and the put option are entered into in connection with each other and are treated as a combined transaction under paragraph (l)(1) of this section. Accordingly, the call option and the put option are treated as a combined transaction to compute delta for purposes of paragraph (e) of this section. The delta of the combined purchased call option and written put option is 0.85 (0.45 + 0.40). The combined transaction is therefore a specified ELI.

Example 2. (i) FI purchases a call option with a term of six months that references 100 shares of Stock X. At the time, the delta of the call option is 0.45. Three months later, FI re-evaluates FI's position in Stock X and writes a three month put option on 100 shares of Stock X. At the time FI writes the put option, the delta of the call option is 0.65 and the delta of the put is 0.25.

(ii) FI's purchased call option and sold put option reference the same underlying security. Because FI wrote the put option referencing Stock X to adjust FI's economic position associated with the call option referencing Stock X, these options are entered into in connection with each other and treated as a combined transaction under paragraph (l)(1) of this section. Because the delta of the combined transaction is tested on the date that FI entered into the additional transaction, the delta of the combined purchased call option and sold put option is 0.90 (0.65 + 0.25). The combined transaction is a specified ELI.

Example 3. (i) FI purchases a call option with a term of one month that references 100 shares of Stock X. At the time, the delta of the call option is 0.75. Two weeks later, FI re-evaluates FI's position in Stock X and writes a two week put option on 100 shares of Stock X. At the time FI writes the put option, the delta of the call option is 0.35 and the delta of the put is 0.25.

(ii) FI's purchased call option has an initial delta of .75 and therefore is a specified ELI and a section 871(m) transaction. FI's purchased call option and sold put option reference the same underlying security. Because FI sold the put option referencing Stock X to adjust FI's economic position associated with the call option referencing Stock X, these options are entered into in connection with each other and treated as a combined transaction under paragraph (l)(1) of this section. Because the delta of the combined transaction is tested on the date that FI entered into the additional transaction, the delta of the combined purchased call option and sold put option is 0.6 (0.35 + 0.25). The combined transaction is not a specified ELI; however, the purchased call option remains a specified ELI.

(m) *Rules relating to interests in entities that are not taxable as corporations*—(1) *In general.* Except as provided in paragraph (m)(2) of this section, if a transaction references an interest in an entity that is not a C corporation (within the meaning of section 1361(a)(2)), the transaction references the allocable portion of any underlying security or potential section 871(m) transaction held, directly or indirectly (including through one or more other entities that are not C corporations), by the referenced entity. When a transaction references any underlying security as a result of the application of this paragraph, the transaction also references the payment of any dividends from those underlying securities and has a dividend equivalent equal to the allocable portion of any dividend or dividend equivalent received, directly or indirectly (including through one or more other entities that are not C corporations), by the referenced entity.

(2) *Exception.* A transaction is not treated as referencing underlying securities as a result of applying paragraph (m)(1) of this section if the underlying securities held directly or indirectly by the referenced entity and the underlying securities referenced by any potential section 871(m) transaction held directly or indirectly by the referenced entity represent, in the aggregate, 10 percent or less of the value of the referenced interest in the entity at the time the long party acquires the transaction and there is no plan or intention for acquisitions or dispositions (within the meaning of paragraph (i)(2)(ii) of this section) that would cause underlying securities to represent more than 10 percent of the value of the referenced interest. For example, if actively-traded Partnership A owns a pro rata interest in Partnership B that represents 10 percent of the value of an interest in Partnership A, and Partnership B owns an interest in Underlying Security X that represents 20 percent of the value of an interest in Partnership B, then Underlying Security X represents two percent of the value of a pro rata interest in Partnership A. Accordingly, a pro rata interest in Partnership A qualifies for the exception in paragraph (m)(2) of this section and Underlying Security X is not treated as referenced by a transaction that references a pro rata interest in Partnership A pursuant to paragraph (m)(1) of this section.

(n) *Anti-abuse rule.* If a taxpayer (directly or through the use of a related person) acquires a transaction or transactions with a principal purpose of avoiding the application of this section, the Commissioner may treat any payment (as described in paragraph (h) of this section) made with respect to any transaction as a dividend equivalent to the extent necessary to prevent the avoidance of this section. Therefore, notwithstanding any other provision of this section, the Commissioner may adjust the delta of a transaction, change the number of shares, adjust an estimated dividend amount, adjust the timing of payments, combine, separate, or disregard transactions, indices, or components of indices to reflect the substance of the transaction or transactions, or otherwise depart from the rules of this section as necessary to determine whether the transaction includes a dividend equivalent or the amount or timing of a dividend equivalent.

(o) *Information required to be reported regarding a potential section 871(m) transaction*—(1) *In general.* If a broker or dealer is a party to a potential section 871(m) transaction with a counterparty or customer that is not a broker or dealer, the broker or dealer is required to determine whether the potential section 871(m) transaction is a section 871(m) transaction. If both parties to the potential section 871(m) transaction are brokers or dealers, or neither party to the potential section 871(m) transaction is a broker or dealer, the short party must determine whether the potential section 871(m) transaction is a section 871(m) transaction. The party to the transaction that is required to determine whether a transaction is a section 871(m) transaction must also determine and report to the counterparty or customer the timing and amount of any dividend equivalent (as described in paragraphs (h) and (i) of this section). The party required to make the determinations described in this paragraph is required to exercise reasonable diligence to determine whether a transaction is a section 871(m) transaction, any dividend equivalents, and any other information necessary to apply the rules of this section. The information must be provided in the manner prescribed in paragraphs (o)(2) and (o)(3) of this section. The determinations required by paragraph (o) of this section are binding on the parties to the potential section 871(m) transaction and on any person who is a withholding agent with respect to the potential section 871(m) transaction, unless the person has actual knowledge or reason to know that the

information received is incorrect, but are not binding on the IRS.

(2) *Reporting requirements.* For rules regarding reporting requirements with respect to dividend equivalents described in this section, see §§ 1.1461–1(b) and (c), and 1.1474–1(c) and (d).

(3) *Additional information on potential section 871(m) transactions*—(i) *In general.* Upon request by any person described in paragraph (o)(3)(ii) of this section, the party required to provide information pursuant to paragraph (o)(1) must provide the requester with information regarding the amount of each dividend equivalent, the delta of the potential section 871(m) transaction, the amount of any tax withheld and deposited, the estimated dividend amount if specified in accordance with paragraph (h)(2)(iii), and any other information necessary to apply the rules of this section. With respect to the delta, the party must provide the delta when the transaction is acquired, at the time the amount of each dividend equivalent is determined, and at any other time delta information is necessary to apply the rules of this section. The information requested must be provided within a reasonable time, not to exceed 14 calendar days, and communicated in one or more of the following ways:

(A) By telephone, and confirmed in writing;

(B) By written statement sent by first class mail to the address provided by the requesting party;

(C) By electronic publication available to all persons entitled to request information; or

(D) By any other method agreed to by the parties, and confirmed in writing.

(ii) *Persons entitled to request information.* The following persons may request the information specified in paragraph (o) of this section with respect to a potential section 871(m) transaction from the party required by paragraph (o)(3)(i) of this section to provide the information—

(A) A broker who holds the potential section 871(m) transaction as an agent or nominee to any party to the transaction as described in paragraph (a)(7) of this section;

(B) A person who is required to make an information return under § 1.1461–1(c) and paragraph (o)(2) of this section and who acts as an agent or nominee to any party to the transaction as described in paragraph (a)(7) of this section; or

(C) Any party to the transaction as described in paragraph (a)(7) of this section.

(iii) *Reliance on information received.* A person described in paragraph (o)(1) or (o)(3)(ii) of this section that receives information described in paragraph (o)(1) or (o)(3)(i) of this section (first recipient) may rely on that information to provide information to any other person unless the first recipient has actual knowledge or reason to know that the information received is incorrect. When the first recipient has actual knowledge or reason to know that the information received is incorrect, the first recipient must make a reasonable effort to determine and provide the information described in paragraph (o)(1) or (o)(3)(i) of this section to any person described in paragraph (o)(1) or (o)(3)(ii) of this section that requests information from the first recipient.

(4) *Recordkeeping rules.* For rules regarding recordkeeping requirements sufficient to establish the amount of gross income treated as a dividend equivalent, see § 1.6001–1.

(p) *Effective/applicability date.* This section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, except for paragraph (d)(1) of this section, which applies to payments made on or after January 23, 2012.

■ **Par. 4.** Section 1.1441–1 is amended by:

■ 1. Adding paragraphs (b)(4)(xxii) and (xxiii).

■ 2. Adding paragraph (f)(3).

The additions read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(b) * * *

(4) * * *

(xxii) Amounts paid with respect to a notional principal contract described in § 1.871–15(a)(5), an equity-linked instrument described in § 1.871–15(a)(4), or a securities lending or sale-repurchase transaction described in § 1.871–15(a)(10) are exempt from withholding under section 1441(a) as dividend equivalents under section 871(m) if the transaction is not a section 871(m) transaction within the meaning of § 1.871–15(a)(9) or is subject to an exception described in § 1.871–15(j). However, the amounts may be subject to withholding under section 1441(a) if they are subject to tax under any section other than section 871(m). For purposes of this withholding exemption, it is not necessary to provide documentation establishing that a notional principal contract or equity-linked instrument has a delta that is less than 0.70 at the time it was acquired by the long party. For purposes of the withholding exemption for qualified dealers described in this paragraph, § 1.871–15(j)(1) applies only if the long party furnishes to the withholding agent the documentation described in § 1.871–15(j)(1). For purposes of the withholding exemption regarding corporate acquisitions described in this paragraph, the exemption only applies if the long party furnishes to the withholding agent the documentation described in § 1.871–15(j)(2).

(xxiii) If a potential section 871(m) transaction is only a section 871(m) transaction as a result of applying § 1.871–15(l) (combined transactions) and the withholding agent did not know that the long party (or a related person) entered into the potential section 871(m) transaction in connection with any other potential section 871(m) transactions, the potential section 871(m) transaction is exempt from withholding under section 1441(a).

* * * * *

(f) * * *

(3) *Effective/applicability date.* Paragraphs (b)(xxii) and (xxiii) of this section apply to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 5.** Section 1.1441–2 is amended by adding paragraph (d)(5) and adding a sentence to the end of paragraph (f) to read as follows:

§ 1.1441–2 Amounts subject to withholding.

* * * * *

(d) * * *

(5) *Payments of dividend equivalents.* A withholding agent is not obligated to withhold until the later of—

(i) The time that the amount of a dividend equivalent is determined as provided in § 1.871–15(i)(2), and

(ii) The time that the withholding agent is deemed to have control over money or other property of the long party because—

(A) Money or other property is paid to or from the long party,

(B) The withholding agent has custody or control over money or other property of the long party at any time on or after the amount of a dividend equivalent is determined as provided in § 1.871–15(i)(2), or

(C) The section 871(m) transaction provides for an upfront payment or pre-payment of the purchase price even though an actual payment has not been made at the time the amount of a dividend equivalent is determined as provided in § 1.871–15(i)(2).

* * * * *

(f) *Effective/applicability date.* * * * Paragraph (d)(5) of this section applies to payments made on or after the date

of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

■ **Par. 6.** Section 1.1441–3 is amended by:

■ 1. Adding a second sentence to paragraph (h)(1).

■ 2. Redesignating paragraph (h)(2) as (h)(3) and revising paragraph (h)(3).

■ 3. Adding new paragraph (h)(2).

The additions and revisions read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

(h) * * * (1) * * * Withholding is required on the amount of the dividend equivalent calculated under § 1.871–15(i).

(2) *Reliance by withholding agent on reasonable determinations.* For purposes of determining whether a payment is a dividend equivalent and the amount of a dividend equivalent described in § 1.871–15, a withholding agent may rely on the information received from the party to the transaction that is required to determine whether a transaction is a section 871(m) transaction as provided in § 1.871–15(o), unless the withholding agent has actual knowledge or reason to know that the information received is incorrect. When a withholding agent fails to withhold the required amount because the party described in § 1.871–15(o) fails to reasonably determine or timely provide whether a transaction is a section 871(m) transaction, the amount of any dividend equivalent, or any other information required to be provided pursuant to § 1.871–15(o) and the withholding agent reasonably relied on that party's determination, then the failure to withhold is imputed to the party required to make the determinations described in § 1.871–15(o). In that case, the IRS may collect any underwithheld amount from the party to the transaction that is required to make the determinations described in § 1.871–15(o) and subject that party to applicable interest and penalties as a withholding agent.

(3) *Effective/applicability date.* Except for the first sentence of paragraph (h)(1), this paragraph (h) applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. The first sentence of paragraph (h)(1) applies to payments made on or after January 23, 2012.

* * * * *

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

■ 1. Adding entry for *Example 7* in paragraph (a)(3).

■ 2. Adding a second sentence to paragraph (a)(4).

The additions read as follows:

§ 1.1441–7 General provisions relating to withholding agents.

(a) * * *

(3) * * *

Example 7. CO is a domestic clearing organization. CO serves as a central counterparty clearing and settlement service provider for derivatives exchanges in the U.S. CB is a broker organized in Foreign Country X and a clearing member of CO. CB is a nonqualified intermediary, as defined in § 1.1441–1(c)(14). FC is a foreign corporation that has an investment account with CB. FC instructs CB to purchase a call option that is a specified ELI (as described in § 1.871–15(e)). CB effects the trade for FC. The exchange matches FC's order with an order for a written call option with the same terms. The exchange then sends the matched trade to CO, which clears the trade. CB and the clearing member representing the call option seller settle the trade with CO. Upon receiving the matched trade, the option contracts are novated and CO becomes the counterparty to CB and the counterparty to the clearing member representing the call option seller. To the extent that there is a dividend equivalent with respect to the call option, both CO and CB are withholding agents as described in paragraph (a)(1) of this section.

(4) *Effective/applicability date. Example 7* of paragraph (a)(3) of this section applies to payments made on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–28932 Filed 12–4–13; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Negotiated Rulemaking Committee, Notice of Additional Committee Meeting—Title IV Federal Student Aid Programs, Gainful Employment in a Recognized Occupation

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to establish negotiated rulemaking committee.

SUMMARY: On June 12, 2013, we announced our intention to establish a negotiated rulemaking committee to prepare proposed regulations to establish standards for programs that prepare students for gainful employment in a recognized occupation. We also announced the schedule for two sessions of committee meetings. We now announce the addition of a third session consisting of a one-day committee meeting.

DATES: The date, times, and location of the third committee meeting are set out in the *Schedule for Negotiations* section under **SUPPLEMENTARY INFORMATION,** below.

FOR FURTHER INFORMATION CONTACT: For information about the content of this notice, including information about the negotiated rulemaking process, contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8017, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *wendy.macias@ed.gov.*

For general information about the negotiated rulemaking process, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

If you use a telecommunications device for the deaf or text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On June 12, 2013, we published a notice in the **Federal Register** (78 FR 35179) announcing our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA) (title IV Federal Student Aid programs) that would establish standards for programs that prepare students for gainful employment in a recognized occupation. In that notice, we set a schedule for two sessions of committee meetings and requested nominations for individual negotiators who represent key stakeholder constituencies for the issues to be negotiated to serve on the committee.

Because of the shutdown of the Federal Government due to the lapse in appropriations for fiscal year 2014, on November 7, 2013, we announced in the **Federal Register** (78 FR 66865) that we were rescheduling the second session of committee meetings from October 21–23, 2013, to November 18–20, 2013, with the meeting on the final day running from 9:00 a.m. to 5:00 p.m.

We now announce the addition of a third session consisting of one committee meeting to take place December 13, 2013. The meeting will run from 9:00 a.m. to 5:00 p.m. The schedule for the third session follows.

Schedule for Negotiations: The committee will meet for its third and final session on December 13, 2013. The meeting will run from 9:00 a.m. to 5:00 p.m.

The meeting will be held at the U.S. Department of Education at: 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1098a.

Dated: December 2, 2013.

Brenda Dann-Messier,

Acting Assistant Secretary for the Office of Postsecondary Education.

[FR Doc. 2013–29072 Filed 12–2–13; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–SM–2013–N259; FXFR13350700640–145–FF07J00000]

Subsistence Management Program for Public Lands in Alaska; Western Interior Alaska Federal Subsistence Regional Advisory Council Meeting

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting (teleconference).

SUMMARY: This document informs the public that the Western Interior Alaska Federal Subsistence Regional Advisory Council (Council) will hold a public meeting by teleconference on December 11, 2013. The public is invited to participate and to provide oral testimony. The purpose of the Council is to provide recommendations and information to the Federal Subsistence Board, to review policies and management plans, and to provide a public forum for subsistence issues.

DATES: The teleconference will take place on December 11, 2013, at 8:30 a.m. (AKST). For information on how to participate, please see **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Gene Peltola, Office of Subsistence Management; (907) 786–3888; or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461; or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3111–3126) sets forth the provisions of the Federal Subsistence Management Program. This program provides a priority for taking of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. The Federal Subsistence Board, which includes public and private members, administers the program supported by Federal Subsistence Regional Advisory Councils, which represent 10 subsistence resource regions in Alaska. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Board will engage in outreach efforts for this notice to Tribes and Alaska Native corporations to ensure they are advised of the mechanisms by which they can participate.

In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., the Western Interior Alaska Federal Subsistence Regional Advisory Council will meet to review State and Federal wildlife proposals and fisheries resource monitoring plans and to form other recommendations on fish and wildlife issues. This meeting is a follow-up to the Council's November 6–8, 2013, meeting, which did not achieve a required quorum, to make recommendations on changes to the regulations for the subsistence taking of wildlife to the Federal Subsistence Board and to address subsistence issues concerning the region. To participate, call toll free 1–877–638–8165. When prompted, enter the following passcode: 9060609.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: November 22, 2013.

Gene Peltola,

Assistant Regional Director, U.S. Fish and Wildlife Service, Acting Chair, Federal Subsistence Board.

Dated: November 25, 2013.

Steve Kessler,

Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 2013–29152 Filed 12–4–13; 8:45 am]

BILLING CODE 3410–11–4310–55–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 17

[WT Docket Nos. 13–238, 13–32; WC Docket No. 11–59; FCC 13–122]

Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on potential measures to expedite the environmental and historic preservation review of new wireless facilities and on rules to implement statutory provisions governing State and local review of wireless siting proposals. By this action, the Commission seeks to promote the deployment of infrastructure that is necessary to provide the public with advanced wireless broadband services, consistent with governing law and the public interest.

DATES: Submit comments on or before February 3, 2014. Submit reply comments on or before March 5, 2014.

ADDRESSES: You may submit comments, identified by WT Docket No. 13–238; WC Docket No. 11–59; WT Docket No. 13–32, by the following methods:

■ *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

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

For detailed instructions for submitting comments, including instructions for submitting comments by mail, and additional information on the rulemaking process, see the Supplementary Information section of this document.

FOR FURTHER INFORMATION CONTACT: Peter Trachtenberg, at (202) 418–7369, or by email at *Peter.Trachtenberg@fcc.gov,* or Mania Baghdadi, at (202) 418–2133, or by email at *Mania.Baghdadi@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 13–122, adopted and released on September 26, 2013. The full text of the NPRM is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com.* Copies of the NPRM also may be obtained via the Commission's Electronic Comment Filing System (ECFS) at *http://fjallfoss.fcc.gov/ecfs2/,* using the ''Search for Filings'' function and entering the proceeding number 13–238.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

I. Introduction and Executive Summary

1. In this Notice of Proposed Rulemaking (NPRM), the Commission explores opportunities to promote the deployment of infrastructure that is necessary to provide the public with advanced wireless broadband services, consistent with governing law and the public interest. In the Telecommunications Act of 1996, Congress directed the Commission to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans by working to remove barriers to infrastructure investment in a manner consistent with the public interest, convenience, and necessity. The Commission has made significant progress in recent years in expanding high-speed Internet access and promoting broadband availability, but the Commission must continue to examine and address impediments to broadband investment, including impediments that may be presented by unnecessary or unclear regulatory requirements and processes. This NPRM addresses potential measures to expedite the environmental and historic preservation review of new wireless facilities, as well as rules to implement statutory provisions governing State and local review of wireless siting proposals.

2. In the last few years, the Commission has taken a number of significant steps to reduce barriers to wireless infrastructure investment. In 2009, the Commission released a Declaratory Ruling establishing presumptive timeframes for State and local processing of wireless tower and antenna siting requests (*2009 Declaratory Ruling,* 74 FR 67871, December 21, 2009). In 2011, the Commission released a Notice of Inquiry on Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting (*NOI*). In the *NOI,* the Commission sought to develop a record on the nature and scope of both wireline and wireless broadband deployment issues, including best practices that have promoted deployment as well as practices that have resulted in delays, and further sought comment on specific steps that could be taken to identify and reduce unnecessary obstacles to obtaining access to rights-of-way and siting wireless facilities.

3. With this NPRM, the Commission now addresses four major issues regarding the regulation of wireless facility siting and construction, including issues raised by commenters in the *NOI* proceeding, with the goal of reducing, where appropriate, the cost and delay associated with the deployment of such infrastructure. First, the Commission seeks comment on expediting its environmental review process, including review for effects on historic properties, in connection with proposed deployments of small cells, Distributed Antenna Systems (DAS), and other small-scale wireless

technologies that may have minimal effects on the environment. While cellular service has traditionally been provided by antennas on large communications towers, these newer technologies can be deployed on utility poles, street lamps, water towers, or rooftops. Through these deployments, providers can enhance the wireless capacity available to mobile users for advanced broadband applications or fill in coverage gaps in areas where it is not possible or economically justifiable to put in additional large towers. They can also deploy these cells inside buildings to enhance indoor signal strength.

4. Deployment of such technologies is therefore becoming increasingly common as one measure to meet growing consumer demand, and the Commission finds it may be appropriate to update its environmental review requirements to reflect this development. These requirements are intended to ensure that the Commission considers the environmental effects of new wireless infrastructure deployments, including effects on historic properties. While the Commission has acted in the past to tailor its environmental review for the deployment of wireless infrastructure, those processes were largely developed long before small cell technologies became prevalent, and for the most part reflect the scale and level of environmental concern presented by traditional deployments on tall structures. Accordingly, the Commission seeks comment on whether to expedite or tailor its environmental review process for technologies such as DAS and small cells.

5. Second, in response to a petition filed by CTIA—The Wireless Association (CTIA) filed on December 21, 2012 (''Temporary Towers Petition''), and based on the associated record, the Commission proposes to adopt a narrow exemption from the Commission's pre-construction environmental notification requirements for certain temporary towers. Under the current notification requirements, before a party can register with the Commission a proposed communications tower that requires registration under part 17 of its rules, and thus begin to construct or deploy the tower in question, it must complete a process of local and national notice, which helps to facilitate public involvement in the Commission's consideration of the proposed deployment's potential to create significant environmental effects. Temporary towers are often needed with very little advance warning, however, making the notification process impracticable. Under the proposed exemption, eligible towers must meet specified criteria, including very short duration, height limits, minimal or no associated excavation, and absence of lighting, which should ensure a minimal potential for significant environmental effects. The Commission therefore tentatively finds that the proposed exemption will serve the public interest by enabling providers to deploy these temporary facilities on a timely basis in response to unanticipated short term needs without undermining the purposes of the notification process.

6. Third, the Commission seeks comment on rules to clarify and implement the requirements of section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Under section 6409(a), a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Eligible facilities requests include collocation requests, as well as requests for removal or replacement of existing equipment. Collocation, which involves placing wireless equipment on pre-existing structures rather than constructing new support structures, is often the most efficient, rapid, and economical means of expanding wireless coverage and capacity, and also reduces the environmental and other impacts of new wireless facilities deployment. By requiring timely approval of eligible collocations, section 6409(a) will help providers meet the nation's growing demand for wireless broadband service and may be critical to the deployment of the nationwide public safety broadband network mandated by the Spectrum Act. Because most of the terms of the provision are undefined, however, the Commission is concerned that disputes over its interpretation may significantly delay these benefits. The Commission therefore proposes to adopt rules clarifying the provision's meaning to assist all parties in implementing its requirements. The Commission also seeks comment on how to encourage efforts to develop best practices for applying section 6409(a) and what role they might play in interpreting or implementing the provision.

7. Finally, the Commission seeks comment on whether it should address certain disputes or questions that have arisen about how to apply its *2009 Declaratory Ruling* in four specific circumstances. The Commission also seeks comment on one additional issue of interpretation arising under section 332(c)(7)(B)(i)(I), a provision of section 332(c)(7) that was not addressed by the *2009 Declaratory Ruling.* The Commission notes that the presumptive timeframes the Commission established under section 332(c)(7) in the *2009 Declaratory Ruling* govern many wireless facilities siting applications that are not covered by section 6409(a).

II. Expediting Environmental Compliance for Distributed Antenna Systems and Small Cells

8. Many wireless technologies now connect to mobile users using small antennas that are placed on short structures such as poles or inside buildings and that, individually, provide coverage over a much smaller area than a traditional cell. The Commission's environmental rules were largely written prior to these developments, however, and primarily reflect the environmental concerns presented by traditional macrocell deployments on tall structures. Further, because Distributed Antenna Systems (DAS) and small cell deployments often require a large number of antennas or base stations to provide coverage to an area comparable to a single macrocell, they may implicate dramatically greater environmental compliance costs under the existing site-by-site review process. Given these factors, and the increasing reliance on these new technologies to meet ever increasing demand for wireless services, including broadband, the Commission finds that it should consider whether further tailoring of its environmental rules is appropriate for technologies such as DAS and small cells, and, if so, how such tailoring can be accomplished.

A. NEPA Review

9. The Commission first addresses whether and how it should expedite its National Environmental Policy Act of 1969 (NEPA) compliance process for DAS and small cells, and in particular whether to adopt a categorical exclusion to relieve all or some subset of such deployments from routine NEPA review. The Commission addresses a possible exclusion for historic preservation review under section 106 of the National Historic Preservation Act of 1966 (NHPA) separately below.

10. *Updating the NEPA Exclusion for Collocations in Note 1* to § 1.1306. The Commission first seeks comment on whether to adopt Verizon's proposal that the Commission amend the first sentence in Note 1 to § 1.1306 of the Commission's rules, which currently excludes collocations on an existing building or antenna tower from

environmental review except for review for RF emissions exposure and effects on historic properties. Verizon proposes that the exclusion should also apply to collocations on other structures, including structures such as utility poles, water tanks, light poles, and road signs. For the reasons discussed below, the Commission proposes a rule change to implement this suggestion and seeks comment.

11. As noted above, the exclusion under the first part of Note 1 to § 1.1306 already applies to the mounting of antennas on existing towers and buildings, reflecting a determination that such collocations individually and cumulatively are unlikely to have significant environmental effects. The Commission tentatively concludes that the same determination applies with regard to collocations on structures like water towers and poles. In addition, the Commission has previously recognized that the ability to use structures such as utility poles is vitally important to the deployment of wireless and wireline services, including broadband. In particular, DAS and small cell facilities, which are critical to satisfying demand for ubiquitous mobile voice and broadband services, often use such structures. Accordingly, to expedite environmental processing for DAS and small cell deployments and to update its environmental rules to reflect current industry practices and technologies, the Commission proposes to amend Note 1 to § 1.1306 to provide that the categorical exclusion in the first sentence also applies to antennas mounted on existing structures other than buildings and antenna towers, including structures on which equipment associated with emerging technologies such as DAS facilities is sited. To accomplish such a change, the Commission proposes to modify sentence 1 of the note to change the phrase ''existing building or antenna tower'' to ''existing building, antenna tower, or other structure.''

12. The Commission seeks comment on this proposal and on whether the proposed language requires any further definition or qualification. For example, the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement) and the Nationwide Programmatic Agreement Regarding the section 106 National Historic Preservation Act Review Process (NPA) do not distinguish between buildings and other non-tower structures in applying exclusions from section 106 review. The Commission believes this supports its tentative view that there is no basis to subject collocations on structures such as utility poles to greater environmental review than collocations on buildings. The Commission seeks comment on this analysis. Are collocations on structures other than towers and buildings any more likely to have significant environmental effects than collocations on towers and buildings? Are there certain types of existing structures for which this is true and, if so, which types, and what effects? The Commission further seeks comment on whether, and how, the Commission should define, specify, or limit what constitutes a structure in any rule that the Commission adopts. Are there any technical or other limitations that the Commission should reference in a definition of the term structure such that Note 1 to § 1.1306 would not extend to types of existing structures, if any, for which collocations are likely to have significant environmental effects? Those that advocate a different level of environmental review for collocations on any types of existing structures, or that advocate any other limitations on an expanded exclusion, should identify those attributes of such structures that they believe warrant heightened scrutiny and describe with specificity any limitations they consider appropriate.

13. The Commission seeks comment on whether any further action is needed to adequately and appropriately tailor NEPA review for collocations of DAS and small cell facilities or other collocations. For example, the first sentence of Note 1 to § 1.1306 specifically excludes the mounting of antennas on existing structures from NEPA review. The Commission's understanding, however, is that the typical deployment of a DAS or small cell node on a pole or other structure includes not only antennas but also associated equipment such as power supplies, converters, and transceivers. Should the Commission further amend the categorical exclusion for collocations so that it expressly covers not only the mounting of antennas but also the associated equipment? Does such associated equipment raise particular environmental concerns that the antennas do not? Does the Commission need to clarify or define what constitutes associated equipment for purposes of this exclusion? If so, how should associated equipment be defined? Are there physical, technical, or other technologically neutral characteristics of associated equipment by which the Commission should limit the exclusion so that there will be no significant environmental effects?

14. The Commission also seeks comment on whether it should further amend the first sentence of Note 1 to § 1.1306 to clarify that the collocation exclusion applies to installations in the interior of buildings. Similarly, is any amendment needed to clarify that the first part of the Note 1 to § 1.1306 exclusion applies not only to rooftops but also to the sides of buildings? Given that either such clarification would not exclude facilities from section 106 review or review for exposure to RF emissions, are there any other special environmental concerns that might arise from collocations inside or on the side of buildings as opposed to collocations on rooftops? If either of these clarifications to the collocation exclusion in Note 1 to § 1.1306 is appropriate, how should the language be amended to reflect the clarification?

15. The Commission notes that while the proposed amendment to Note 1 to § 1.1306 would continue to exclude only facilities that are collocated on existing structures, the Commission is also seeking comment below on whether to adopt a new categorical exclusion that would broadly exclude DAS and small cell deployments, either collocated or deployed on new poles, from its routine NEPA review procedures (other than for compliance with RF exposure limits). The Commission proposes the above amendment to the Note 1 to § 1.1306 collocation exclusion independent of whether the Commission also adopts a separate categorical exclusion applicable to smaller facilities generally. Regardless of whether the Commission also adopts a broader NEPA exclusion for small facilities generally, it anticipates that the proposed expansion of the Note 1 to § 1.1306 collocation exclusion to cover all structures will continue to provide independent benefits, because it will apply to all collocations on any non-tower structure, not merely collocations involving DAS and small cell facilities. For example, such a clarification would also cover collocation of a macrocell on a water tank.

16. *Adopting A New Categorical Exclusion for DAS/Small Cell Deployments.* The Commission's existing categorical exclusions are designed to capture and exclude from environmental processing those categories of facilities that are unlikely to have significant environmental effects. Such exclusions facilitate rapid deployment of services to the public consistent with the Commission's obligation under NEPA to consider environmental effects, and also preserve the resources of the Commission and applicants for situations that may involve greater potential for significant

environmental effects. The Commission therefore seeks comment on whether DAS and small cell deployments are unlikely to have significant environmental effects and whether the Commission should adopt a categorical exclusion for some or all of the components involved in DAS and small cell deployments from NEPA review other than for compliance with RF exposure limits.

17. A typical DAS deployment includes a number of communications nodes, each typically consisting of an antenna or antennas either collocated on an existing support structure or deployed on a new structure, along with a cabinet containing associated equipment. In addition to the nodes, the DAS system includes a central hub site and fiber or other cabling connecting the nodes to the hub. Other small cell solutions may also include some or all of these components. If the Commission adopts the proposal discussed above to amend the first sentence of Note 1 to § 1.1306, it believes that it would effectively exclude the collocation of nodes for DAS, small cells, and other comparable wireless technologies from NEPA review, other than historic preservation review and review for compliance with its RF exposure limits. The Commission seeks comment on this analysis. Should the Commission adopt a special collocation exclusion for the communications nodes of DAS, small cell, and other small wireless technologies, either in addition to or instead of the proposed revisions to the existing categorical exclusion for collocations generally? If so, the Commission seeks comment on how to define the scope of the exclusion. The Commission explores this definitional question in greater detail below.

18. Assuming the Commission adopts a broadened collocation exclusion, either in general or specifically for small communications nodes, such an exclusion would not cover all construction that may be necessary to deploy DAS, small cells, and other small facilities. In particular, it would not cover new support structures, such as new poles, that are constructed to support communications nodes as part of a DAS or small cell deployment. The Commission seeks comment on whether some or all such construction should also be excluded from NEPA review. The Commission invites comment on the potential environmental effects of the construction or deployment of such new supporting structures and equipment, on whether the Commission may conclude that such facilities are unlikely to have significant environmental effects, and, if so, under what circumstances (e.g., categories or locations).

19. If the Commission adopts a specific NEPA exclusion for DAS and other small wireless facilities, either for collocated facilities or for facilities deployed on new structures, how should the Commission define the scope or application of such an exclusion? PCIA initially proposed that the Commission define the scope of the exclusion by reference to DAS or small cell installations. The Commission is concerned, however, that defining an exclusion by reference to a specific wireless technology such as DAS may be both over-inclusive and under-inclusive. It may be over-inclusive because some facilities associated with the named technology could be larger and more obtrusive than contemplated in the general case and therefore have a greater potential for significant environmental effects. For example, future DAS deployments over different spectrum bands may require larger or higher antennas. A definition that relies exclusively on reference to a particular technology may also be under-inclusive in that other technologies that involve comparably unobtrusive wireless facilities may be developed that equally warrant an exclusion. For example, commercial uses of signal boosters (such as repeaters) may have characteristics similar to DAS and small cells such that they should be similarly eligible for any exclusion developed for DAS and small cell deployments. The Commission therefore believes that framing any exclusion based on objective physical factors such as height, size, or location could be a better approach than referencing a specific technology such as DAS. The Commission seeks comment on this analysis, and on how to craft an exclusion based on the dimensions and other objective characteristics of facilities, including all aspects of any such definition.

20. Specifically, the Commission seeks comment on how it can define the covered facilities to ensure that deployments eligible for the categorical exclusion have no more than *de minimis* effects on the environment and that changes to technology do not expand the exclusion beyond its intent. Should the Commission define any such categorical exclusion with reference to the height of the supporting structure, the size of the antenna, and the dimensions of the equipment cabinets or other ancillary equipment? If so, what dimensions should the Commission adopt as a definition? To the extent that the Commission adopts a new categorical exclusion that extends to new support structures, the Commission seeks comment on how to define the structures that are eligible, the locations where the exclusion should apply, and any other conditions or criteria for eligibility that are necessary to ensure that such deployments do not have a significant effect on the environment.

21. The Commission notes that the size and architecture of antennas, supporting structures, and other equipment may depend in part on the characteristics of the service being provided, such as the spectrum used. Should the Commission strive to define any exclusion in a manner that is technologically neutral in effect as well as in form? If so, what definitions would best achieve this end? In order to assure that consumers can continue to benefit from technological development, should any size or other criteria the Commission applies attempt to anticipate potential future technological and industry developments?

22. The Commission also notes that PCIA and the HetNet Forum have recently submitted a new proposal for the definition of facilities that should be categorically exempt. This definition relies on defining the maximum cubic volume of the relevant facilities rather than on specific technological labels. PCIA and the HetNet Forum assert that their proposed definition has widespread industry support and both accommodates current DAS and small cell deployments and anticipates foreseeable technological development. Specifically, they propose that an installation conforming to the following parameters should be exempt:

(1) Equipment Volume. An equipment enclosure shall be no larger than seventeen (17) cubic feet in volume.

(2) Antenna Volume. Each antenna associated with the installation shall be in an antenna enclosure of no more than three (3) cubic feet in volume. Each antenna that has exposed elements shall fit within an imaginary enclosure of no more than three (3) cubic feet.

(3) Infrastructure Volume. Associated electric meter, concealment, telecom demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch may be located outside the primary equipment enclosure(s) and are not included in the calculation of Equipment Volume.

Volume is a measure of the exterior displacement, not the interior volume of the enclosures. Any equipment that is concealed from public view in or behind an otherwise approved structure or concealment, is not included in the volume calculations.

The Commission seeks comment on the proposed definition.

23. The Commission also seeks comment on whether any proposed exclusion should be defined in part by the location of facilities. For example, the NPA establishes an exclusion from routine section 106 review for deployments of wireless facilities, including deployments on new structures, located in utility or telecommunications rights-of-way. Specifically, deployments are not subject to section 106 review if (1) such facilities are located in or within 50 feet of a right-of-way designated for communications tower or above-ground utility transmission or distribution lines, (2) the facility would not constitute a substantial increase in size over existing structures in the right-of-way in the vicinity of the proposed construction, (3) the facility would not be located within the boundaries of a historic property, and (4) the applicant has successfully completed the process established in the NPA for Tribal and Native Hawaiian Organization participation. The Commission seeks comment on whether it should adopt a categorical exclusion from routine NEPA review for DAS and small cells in rights-of-way designated for utilities or telecommunications similar to the one in the NPA that applies to section 106 review. If so, should the Commission apply any of the NPA conditions for this categorical exclusion such as the one requiring that the facilities not constitute a substantial increase in size over existing nearby structures in the right-of-way? Would a rights-of-way categorical exclusion appropriately and effectively tailor NEPA review for DAS and small cells?

24. As another example of a location-based exclusion, Note 1 to § 1.1306 currently includes a categorical exclusion from all environmental review for the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use. PCIA proposes that the Commission similarly exclude DAS and small cell deployments, including deployments on new structures, that are placed along or within existing aerial or underground corridors. The Commission seeks comment on whether it should extend the wire and cable exclusion to cover components of DAS or small cell deployments in such corridors, including new support structures. Is there a basis for the Commission to conclude that DAS and small cell deployments (whether on new or existing structures) do not individually or cumulatively have a significant effect on the quality of the human environment so as to qualify for a categorical exclusion from NEPA review under 40 CFR 1508.4? To the extent that these deployments require the deployment of fiber optic cable, is any amendment to the existing exclusion necessary, or does the existing exclusion for aerial or underground cables deployed in existing corridors adequately cover such components? With regard to other components including new structures, to what extent can such components be placed in or along aerial or underground corridors?

25. Finally, the Commission seeks comment on whether any categorical exclusion outside of existing aerial or underground corridors should include specific provisions for DAS and small cell components other than the nodes. For example, should the exclusion cover fiber that is not already excluded under the existing Note 1 to § 1.1306 exclusion for cable in existing aerial or underground corridors? If so, how should the Commission frame such an exclusion? Should the hub station also be included, and if so, in what circumstances? What additional revisions to the exclusion for existing aerial or underground corridors would expedite DAS and small cell deployment without risking significant environmental impact?

B. Historic Preservation Review

26. The Commission next seeks preliminary comment on whether and how the Commission should tailor section 106 review for effects on historic properties in the context of DAS, small cells, and similar facilities. As one option, the Commission seeks comment on whether the Commission can and should adopt an exclusion from section 106 review for such facilities. The Commission notes that whether to adopt such exclusion raises many of the same questions of definition and scope discussed above in connection with a possible exclusion from NEPA review, and the Commission invites commenters to consider the same questions in addressing whether the Commission should adopt an exclusion from section 106 review. Further, in the discussion below, the Commission refers back as appropriate to the issues raised by a possible NEPA exclusion. The Commission seeks comment, however, on whether and to what extent a section 106 exclusion raises different legal or policy issues. The Commission explores these and other issues that relate specifically to section 106 review below.

27. The Commission also recognizes that changes to its section 106 processing rules may require coordination with the ACHP and NCSHPO and consultation with federally recognized Tribal Nations, and the Commission intends to undertake such coordination and consultation. Commission staff has written separately to Tribal leaders and to THPOs and Cultural Preservation Officials, informing them of section 106 priorities and issues for Tribal consultation, and inviting them to share their values and initial thoughts regarding tailoring of section 106 review for DAS and small cells. In an effort to prepare Tribal Nations for consultations, Commission staff has also discussed this matter at meetings of inter-Tribal government organizations.

28. *Options for Tailoring Historic Preservation Review.* PCIA identifies three possible avenues to tailor historic preservation review for DAS and small cell facilities: (1) categorical exclusion; (2) program alternative; or (3) finding that DAS and small cell deployments are not undertakings under section 106. PCIA favors the categorical exclusion approach as the most expeditious means to streamline the deployment of DAS and small cells and to facilitate wireless broadband deployment while maintaining historic preservation goals. According to PCIA, a rulemaking to add DAS and small cell solutions to the list of facilities that are categorically excluded from non-RF-related environmental processing under § 1.1306 (Note 1) would satisfy the Commission's responsibilities under the NHPA and the ACHP's section 106 regulations. In particular, PCIA relies on § 800.3(a)(1) of the ACHP's rules, which provides that an agency has no further section 106 obligations if the undertaking is a type of activity that does not have the potential to cause effects on historic properties assuming such historic properties were present. According to PCIA, this rule provides a categorical exclusion from the consultation process where there is no potential adverse effect or the environmental effects are *de minimis.* PCIA asserts that adopting a categorical exclusion through a notice-and-comment rulemaking would involve all interested parties, including the ACHP, but that, unlike the more elaborate program alternative processes authorized by § 800.14 of the ACHP's rules, it would require only a single proceeding, thus saving time and resources for all concerned. PCIA observes that the third option, finding

DAS and small cell deployments not to be undertakings, may be more vulnerable to protracted procedural and substantive challenges.

29. The Commission seeks comment on the alternatives of an exclusion in its rules or a program alternative under the ACHP rules, and the relative costs and benefits of each. The Commission invites commenters to discuss the potential effects of DAS and small cell systems on historic properties, as such an assessment is a key component in selecting an appropriate procedural mechanism to depart from the ordinary process for historic preservation review of a Federal undertaking. Does § 800.3(a)(1) of the ACHP's rules support an exclusion in circumstances where the potential for adverse effects is *de minimis,* as PCIA suggests, or only where there is no potential for any effects on historic properties? Commenters should also address the extent to which any revision of § 1.1306 (Note 1) to exclude DAS and small cell systems from section 106 historic preservation review would require that the Commission consult the ACHP, SHPOs, Tribal Nations and NHOs, or others. Given that either a Commission exclusion or an ACHP-approved program alternative would necessarily involve and revisit matters addressed in the NPA, what, if any, revision to the NPA would either option require? Does the very existence of the NPA favor or militate against adopting an exclusion in a rulemaking? Would a program alternative, providing the agency an opportunity to tailor a process for DAS and small cell systems in coordination with ACHP, offer greater flexibility or more significant benefits than a Commission exclusion? If the Commission were to pursue a program alternative, which of the various program alternatives authorized by § 800.14 of the ACHP's rules is most appropriate, considering their relative costs and benefits, consultative obligations, eligibility standards, and the time required to implement each alternative? Are there are other procedural mechanisms by which the Commission, either acting unilaterally or in coordination with the ACHP or others, could streamline any required historic preservation review of DAS or small cell systems?

30. The Commission notes that, while it proceeds with this rulemaking, it intends to work with ACHP and NCSHPO to explore the option of a program alternative to further tailor section 106 review for DAS, small cell, and similar facilities. Those efforts will also inform any steps the Commission takes as a result of this NPRM.

31. *Defining the Scope of the Exclusion.* Assuming the Commission excludes small wireless facilities from historic preservation review either through adoption of an exclusion or through one of ACHP's program alternatives, the Commission seeks comment on how to define the scope of the exclusion. In particular, as with the possible exclusion from NEPA review discussed above, the Commission seeks comment on how to define the facilities that would not be subject to review under these approaches. If the Commission does adopt an exclusion for small facilities that covers both section 106 and NEPA review, should the Commission define the facilities excluded from section 106 review the same way the Commission does the facilities excluded from NEPA review? While there may be administrative advantages to adopting the same definition, there may also be circumstances where a facility that meets criteria for an exclusion under NEPA does not meet the criteria for an exclusion under section 106 and vice versa. For example, Note 1 to § 1.1306, which provides a categorical exclusion for collocations on an existing building or antenna tower for most purposes under NEPA, does not extend to review under section 106.

32. In order to define the scope of an exclusion or program alternative, the Commission seeks comment on whether and under what circumstances DAS and small cell facilities, individually and cumulatively, are unlikely to cause an adverse effect on historic properties. Are there some circumstances, such as placement of facilities in historic districts or collocations near or on historic buildings, where there is a potential for significant effects on historic properties? If so, what conditions, criteria, or definitions should the Commission use to identify situations in which routine section 106 review may be appropriate while maintaining an exclusion in the ordinary case? In the alternative, is it sufficient to rely on §§ 1.1307(c) and (d) of the Commission's rules, which direct the reviewing bureau to require an Environmental Assessment (EA) for an otherwise categorically excluded deployment where, on its own motion or in response to public petition, the bureau finds that the deployment may have a significant environmental impact?

33. While the general provisions of the Collocation Agreement and the NPA already exclude many DAS and small cell facilities from some or all of the section 106 review process, PCIA notes two provisions that limit the applicability of the exclusions in this context. First, the Collocation Agreement, while excluding most collocations from section 106 review, provides that collocations on existing buildings or other non-tower structures that are over 45 years old are not excluded. PCIA asserts that the percentage of utility poles that are 45 years or older is significant and growing and that, as a consequence, collocations of small wireless facilities on such existing poles will increasingly not be excluded from review. Second, the NPA provides a partial exclusion for deployments (including new poles) in or near utility rights-of-way, but with certain limitations. Critically, this exclusion does not apply if the deployment would be located within the boundaries of a historic property. PCIA asserts that corridors including utility and highway rights-of-way are increasingly being found eligible for the National Register, thus reducing the availability of this exclusion.

34. The Commission seeks comment on whether, if it finds that a comprehensive exclusion for DAS and small cells is not appropriate through either an exclusion or a program alternative, the Commission should address one or both of these specific concerns or tailor review for any other categories of small facility deployments other than those that are currently excluded under the NPA or the Collocation Agreement. First, with respect to collocations on non-tower structures that are over 45 years old, the Commission notes that, because utility poles are being maintained for long periods of time, it is likely that most utility poles will eventually fall out of the NPA exclusion. Given that the NPA was adopted when use of structures such as utility poles for wireless communications facilities was extremely rare, the Commission seeks comment on whether review of collocations on older utility poles was intended, in what ways such structures might possess historic value, and to what extent collocation may result in adverse effects to that historic value. The Commission seeks comment on whether it can and should clarify or otherwise provide that the provision requiring review of collocations on buildings and other structures over 45 years old is not applicable to a utility pole that is over 45 years of age. If so, how should the Commission define a utility pole for such purpose? Should the Commission exclude other categories of non-tower structures, such as street lamps or water towers?

35. With regard to the second issue, as noted above, according to PCIA, use

of utility corridors for DAS and small cell deployment is becoming more difficult because such corridors are increasingly being considered historic properties or districts, and thus both new poles and collocations in such rights-of-way are becoming subject to routine section 106 review under the Collocation Agreement and the NPA. The Commission seeks comment on whether collocations and new pole deployments in utility or communications rights-of-way that otherwise fall within the exclusions in the Collocation Agreement or the NPA should be exempt from the section 106 historic preservation review process regardless of whether such rights-of-way are considered historic properties. Would additional infrastructure potentially have significant effects on historic properties if located in utility corridors that are already lined with utility poles and other infrastructure of similar size? Are there any particular circumstances that may suggest that a different result is appropriate, such as, for example, if utility poles are a contributing element towards making a corridor a Historic District?

36. The Commission also notes an additional issue that arises when a collocation requires an existing utility pole to be replaced with a new pole. The NPA currently provides that the construction of a new tower that replaces an existing tower is excluded from routine section 106 review if it meets certain criteria. The NPA does not, however, address replacements of utility poles or other non-tower structures. AT&T has suggested that the Commission extend the exclusion for replacement towers to cover replacements of non-tower structures. The Commission seeks comment on this proposal, and in particular, whether the Commission should provide, through an exclusion or a program alternative, for an exclusion from routine section 106 review for replacement utility poles. If so, should the Commission limit it to circumstances where the new pole is no larger than the existing pole or where there is not a substantial increase in size? Should the exclusion apply if the replacement is constructed with different materials?

37. Finally, the Commission seeks comment on whether, to the extent DAS, small cell, and other small facilities are not excluded from historic preservation review, the Commission could still develop a process that would enable the review to proceed more efficiently. For example, the Commission seeks comment on whether and how to define circumstances in which individual communication nodes (e.g., the separate antenna nodes of a single DAS deployment) can be grouped together and reviewed as a single undertaking for historic preservation review. The Commission further seeks comment on whether and to what extent such changes may be implemented as a matter of process by the bureaus without any amendment of the NPA or the Commission's rules.

C. Other Considerations

38. As noted above, in an ex parte submission in the *NOI* proceeding, PCIA suggests that the Commission could find that DAS and small cell deployments are not Federal undertakings under the NHPA pursuant to an NPA provision that grants it sole authority to determine what activities undertaken by the Commission or its applicants constitute undertakings within the meaning of the NHPA. In light of PCIA's suggestion, the Commission seeks comment on the extent to which deployments of DAS or small cell facilities qualify as Federal undertakings under the NHPA and major Federal actions under NEPA. The Commission invites commenters to analyze this issue in terms of the extent to which the Commission provides, or has the authority to provide, Federal licensing, approval, or other assistance for such deployments, and also to consider the effects of such deployments on the environment and historic preservation. In particular, section 319 of the Communications Act generally confers on the Commission authority to regulate and require pre-construction approval for the construction of any facility for which a license is required, which in turn extends to any apparatus for the transmission of energy, or communications, or signals by radio. Further, while the Commission has generally waived the requirement of preconstruction approval for geographic-area licensees, as permitted by section 319(d), the Commission has also retained a limited approval authority under § 1.1312 of the Commission's rules to review the environmental effects of all facilities. The Commission has found, given these provisions, that macro site deployments are appropriately classified as Federal undertakings, a conclusion affirmed by the United States Court of Appeals for the District of Columbia. Is there a difference in how these provisions apply to DAS facilities and small cells as compared to macrocells and the towers on which they are mounted that would justify distinguishing the deployment of DAS and small cell facilities for purposes of classification as a Federal undertaking and major Federal action? Is the only distinguishing factor that the physical characteristics of DAS and small cells may make them less intrusive than traditional macro sites? The Commission invites commenters to describe any other differences that potentially warrant different treatment under the NHPA and NEPA, and to explain specifically how these differences affect the analysis of whether these deployments are Federal undertakings and major Federal actions.

39. Assuming DAS and small cell deployments are Federal undertakings within the meaning of the NHPA and major Federal actions under NEPA, the Commission seeks comment on how and by what mechanisms the Commission might implement either of the options discussed above—categorical exclusion or program alternative. Under the Commission's existing rules and processes, where no site-by-site filing is otherwise required for a facility, a licensee is required to ensure compliance with the environmental rules before constructing a facility, but is not required to file any site-by-site certification. In particular, such a licensee planning to construct a new facility must ascertain if a proposed facility may have a significant environmental impact. If so, the licensee must submit the required documentation for an environmental assessment on which the Commission must complete environmental processing before construction may be initiated. Is this process appropriate for the potential exemptions discussed above? Should the Commission consider developing documentation requirements for demonstrating eligibility for any of the exemptions under consideration in this NPRM? Would the costs of such documentation requirements outweigh the benefits? What mechanism might be appropriate to address cases in which eligibility for the exemption is unclear?

40. The Commission emphasizes that if it excludes any class of DAS and small cell deployments or other small facilities deployments from all routine environmental processing, including section 106 historic preservation review, such deployments would still be subject to §§ 1.1307(c) and (d) of the Commission's rules. Thus, the relevant processing bureau would still require the filing of an EA if, either on its own motion or in response to a complaint from the public, the bureau determines that a particular action may cause significant environmental effects. In addition, deployments that are eligible for the exclusions discussed in this section would still be subject to any applicable notice requirements.

III. Environmental Notification Exemption for Registration of Temporary Towers

41. In this section, the Commission proposes to adopt a limited exemption from the environmental notification requirements that is substantially similar to the exemption proposed by CTIA. Specifically, and consistent with the interim exemption granted in the *Waiver Order,* 78 FR 59929, September 30, 2013, the Commission proposes an exemption from its Antenna Structure Registration (ASR) environmental notification requirements for temporary antenna structures that, because of their characteristics, do not have the potential for significant environmental effects. The Commission seeks comment on how to define such an exemption, and whether the criteria set out in the *Waiver Order* are sufficient and appropriate for this purpose. Under these criteria, an antenna structure would be exempt from the notification requirements if it (i) will be in use for 60 days or less, (ii) requires notice of construction to the Federal Aviation Administration (FAA), (iii) does not require marking or lighting pursuant to FAA regulations, (iv) will be less than 200 feet in height, and (v) will involve minimal or no excavation. The Commission seeks comment on its proposal and on alternative approaches to address the concerns raised in the CTIA petition.

42. In considering the proposed exemption, the Commission recognizes that one of its responsibilities under NEPA is to facilitate public involvement in agency decisions that may affect the environment. CEQ regulations direct that agencies shall make diligent efforts to involve the public in preparing and implementing their NEPA procedures and solicit appropriate information from the public. At the same time, an agency has wide discretion in fashioning its own procedures to implement its environmental obligations, and considerable discretion under CEQ regulations to decide the extent to which such public involvement is practicable. Consistent with the discretion to identify particular circumstances in which inviting public involvement is impracticable or inappropriate, the Commission proposes to find that the environmental notice requirements will typically be impracticable for temporary towers that meet the criteria outlined above. The Commission further proposes to find that the risk that carriers will not be able to meet short-term capacity needs and the resulting detriment to the public if they are required to complete the notification process outweighs the small likelihood that the process will confer any benefit. The Commission also notes that parties filing comments in response to the *Temporary Towers Petition PN* uniformly supported an exemption for antenna structures meeting the criteria set out by CTIA. The Commission therefore tentatively concludes that establishing the proposed exemption is consistent with its obligations under NEPA and CEQ regulations, and will serve the public interest.

43. Commenters state that the environmental notification process is impracticable for antenna structures meeting the criteria set out by CTIA and will interfere with carriers' ability to respond to short-term capacity needs. The ASR notice process takes approximately 40 days, as carriers must provide local and national public notice, allow 30 days for the filing of any requests for further environmental review, and wait for the Commission to clear the tower for a final certification. If a request for environmental review is filed, the deployment can be delayed longer even if the request lacks merit. According to commenters, situations frequently arise where there is insufficient time to complete this process before a temporary tower must be deployed to meet near-term demand, including (1) newsworthy events that occur without any prior notice and require immediate deployments, such as natural disasters; (2) other events that occur with less than 30 days advance notice, such as certain political events and parades for sports teams; (3) events for which the timing and general location are known in advance, but where the specific locations for temporary towers are unknown until days before the event, such as State fairs and major sporting events; and (4) situations in which unexpected difficulties with permanent structures require the deployment of temporary towers while permanent facilities are repaired. The record, as well as the Commission's own experience in administering the environmental notice rule, shows that substantial numbers of such non-emergency temporary towers require registration. In particular, notice to the FAA (and therefore ASR registration) is necessary for towers under 200 feet in height if they may interfere with the flight path of a nearby airport. Therefore, absent an exemption, application of the ASR notice process to these temporary towers will apparently prevent service providers from meeting important short term coverage and capacity needs. The Commission seeks comment on this analysis.

44. At the same time, the benefits of environmental notice appear to be limited in the case of most temporary towers. The environmental notice process is intended to effectuate the opportunity conferred by § 1.1307(c) of its rules for interested persons to allege that an otherwise categorically excluded ASR application presents circumstances necessitating environmental consideration in the decision-making process. Thus, to the extent that significant environmental effects are highly unlikely for certain classes of temporary towers, there seems to be little reason to require environmental notification, particularly given the harm to the public from delaying the deployment of such towers. The Commission seeks comment on this analysis, and on whether the criteria proposed by CTIA in the Temporary Towers Petition, as modified in the *Waiver Order,* sufficiently insure against potential environmental impact or risk to air safety from such towers.

45. In particular, CTIA proposes that, to be exempt from notice, a temporary tower must be less than 200 feet in height and not subject to FAA marking or lighting requirements. The Commission seeks comment on these conditions. Evidence demonstrates that lighting and height are major factors influencing whether an antenna structure may cause significant environmental impacts, particularly on migratory birds. Given this evidence, is it necessary that, in addition to the height and lighting restrictions, eligible temporary towers be limited to those that do not require marking? Is a requirement that eligible temporary towers be less than 200 feet in height a sufficient height limitation to protect against significant environmental impacts? Is it too strict?

46. In adopting an interim waiver, the Commission added a condition that deployments covered by the waiver either must involve no excavation or the depth of previous disturbance must exceed the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. That specific requirement was drawn from the NPA, which excludes towers from section 106 historic preservation review if they are deployed for less than 24 months and also meet this condition. As the Commission explained in adopting the NPA, so long as no excavation will occur on previously undisturbed ground, the risk of damage to archeological or other historic properties from a temporary facility is small. The Commission seeks comment on whether to similarly require no or minimal excavation as a condition of

the proposed temporary towers exemption from environmental notice. Is such a condition necessary to assure that such towers are unlikely to have significant environmental effects, and what are the costs of the condition? Are effects on historic properties the only concern with excavation, and, if so, is section 106 review under the NPA, which includes a process for public participation, sufficient to protect against such effects? Should the Commission adopt any other structural or construction conditions in addition to or in lieu of those proposed in the *Waiver Order*?

47. Consistent with CTIA's proposal in its Petition, the Commission proposes to limit the temporary towers exemption from notice to towers that will be deployed for no more than 60 days. The Commission seeks comment on this time period. The Commission notes that the NPA excludes from review under section 106 of the NHPA a broader category of temporary towers, generally defined as towers that will remain in place for up to 24 months. Further, NTCH proposes that the maximum period be three months instead of two. Would exempting from notice temporary towers that are deployed for longer than 60 days be consistent with avoiding a potential for all significant environmental effects, not only those on historic properties? Is it reasonable to expect that parties deploying a tower for more than 60 days will ordinarily have sufficient advance notice to complete the environmental notice process, and therefore should either do so or obtain a case-specific waiver? Alternatively, is a period shorter than 60 days both reasonable and necessary to protect against significant environmental effects? The Commission also notes that the NPA permits temporary towers used for national security purposes to exceed 24 months and still be excluded from section 106 review. Should the Commission adopt a similar exception to whatever time limit the Commission applies to the notification exemption?

48. The Commission proposes to require no post-construction environmental notice for temporary towers that qualify for the exemption. While the Commission ordinarily requires that environmental notice be provided within a short period after construction when pre-construction notice is waived due to an emergency situation, the Commission recognized in the *Order on Remand,* 77 FR 3935, January 26, 2012, that in some circumstances, post-construction notice may be impractical or not in the public interest. While towers subject to emergency waiver relief may be deployed for long periods or even indefinitely, thus warranting post-construction notice, the Commission addresses here only towers deployed for short periods of time. Notice in this circumstance would seem to serve little purpose as the deployment would be over or nearly so by the time the notice period ended. In addition, its own experience in administering the ASR public notice process is that temporary antenna structures rarely generate public comment regarding potentially significant environmental effects and rarely are determined to require further environmental processing. The Commission therefore proposes to find that it would not be in the public interest to require post-construction notice for towers subject to the proposed exemption. The Commission seeks comment on its proposal and analysis, and on the costs and benefits of requiring post-construction notice of towers subject to the exemption. As an alternative to completely exempting such towers from environmental notification, would it be appropriate to establish a shorter post-construction environmental notice period or limit the notice requirement to national notice?

49. CTIA states in its Temporary Towers Petition that under its proposal, towers exempted from environmental notice would still be required to comply with the Commission's other NEPA rules, including the obligation to certify environmental compliance on a completed ASR application and to file an EA in appropriate cases. The Commission proposes to retain these requirements. The Commission notes that, as part of the NEPA rules, even if a specific facility is categorically excluded from environmental processing under § 1.1306, the reviewing bureau shall require the filing of an EA under §§ 1.1307(c) and (d) of the rules if the bureau determines the deployment may have a significant environmental impact. The Commission also notes that where an EA is filed for a registered tower, the Commission puts the EA on public notice for 30 days and also requires the applicant to provide local notice unless local notice was previously completed for that tower. The Commission proposes that if an applicant determines that it needs to complete an EA for a temporary tower that would otherwise be exempt from environmental notice, or if the bureau makes this determination under §§ 1.1307(c) or (d), the application with an EA would not be exempt from environmental notice. Alternatively, should the Commission provide that temporary towers that require an EA are eligible for the exemption, or that they would be subject to national but not local notice?

50. The Commission notes that under the NPA, the exclusion from section 106 review for temporary towers expressly includes but is not limited to the following: a cell on wheels (COW) transmission facility, a broadcast auxiliary services truck, a TV pickup station, a remote pickup broadcast station (e.g., electronic newsgathering vehicle) authorized under part 74, a temporary fixed or transportable earth station in the fixed satellite service (e.g., satellite newsgathering vehicle) authorized under part 25, a temporary ballast mount tower, or any facility authorized by a Commission grant of an experimental authorization. CTIA's Temporary Towers Petition does not specify the types of temporary towers that would be eligible for the exemption, apart from the other criteria CTIA proposes. Should the Commission list or provide examples of specific types of facilities potentially eligible for an exemption from its environmental notification rules? What would be the purpose of limiting the exemption to listed facilities? If the Commission does specify a list of facilities eligible for the exemption, should the Commission replicate or modify in any way the list provided in the NPA? Could limiting the exemption to listed facilities have unintended consequences, such as inadvertently excluding new technologies or types of structures?

51. The Commission seeks comment on what process should apply when an applicant determines, subsequent to registering a tower under the temporary towers notification exemption, that the relevant tower will or may be needed beyond the maximum period for the exemption. Should the Commission adopt a process for extending the period the tower may remain in place without environmental notice? Alternatively, should the Commission condition the grant of the exemption on the requirement that, if the applicant needs the tower beyond the maximum period for the exemption, it must either: (1) Provide environmental notification before the end of the specified period; (2) obtain a case-specific waiver; or (3) remove the tower at the end of the permitted period and not redeploy it until environmental notice has been completed? Should there be any other consequences for exceeding the maximum period, even if post-construction notice is subsequently provided?

52. Finally, the Commission seeks comment generally on the costs and benefits of the proposed exemption. The

Commission asks commenters to quantify costs and benefits and provide supporting evidence, where possible. If the Commission determines that there is no or very little potential for significant environmental effects from these antenna structures, would environmental notification confer any benefits? If so, would they be outweighed by the costs from delays that might prevent deployment of these towers and result in a loss of service to the public? The Commission specifically seeks comment on the costs and benefits of the exemption as measured against the alternative of applying a case-by-case waiver process similar to that which applies to emergency situations. Under this case-by-case waiver process, applicants are required to file a waiver request and wait for a bureau determination of whether to grant the request. AT&T states that a waiver process similar to that which currently applies to emergency situations is an inefficient approach for the narrow category of temporary towers within the scope of its proposal and creates unnecessary uncertainty and delay. The Commission seeks comment on the costs of the case-by-case waiver process that would be avoided by adopting a rule. The Commission also seeks comment on the potential that an exemption by rule would be over-inclusive, and on any costs that might result.

IV. Implementation of Section 6409(a)

53. The Commission tentatively finds that it will serve the public interest to establish rules clarifying the requirements of section 6409(a) to ensure that the benefits of a streamlined review process for collocations and other minor facility modifications are not unnecessarily delayed. As the Commission noted in the *Sixteenth Competition Report,* 28 FCC Rcd 3700 (2013), collocation on existing structures is often the most efficient and economical solution for mobile wireless service providers that need new cell sites, either to expand their existing coverage area, increase their capacity, or deploy new advanced services.

54. Since Congress adopted section 6409(a) more than a year ago, parties have expressed widely divergent views as to the meaning of its terms and the scope of its requirements. Although the Wireless Telecommunications Bureau's release of the *Section 6409(a) PN, see* Wireless Telecommunications Bureau Offers Guidance on Interpretation of section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, *Public Notice,* 28 FCC Rcd 1 (WTB 2013) (*Section 6409(a) PN*), provided guidance on certain questions of interpretation under this provision, the bureau left other issues unaddressed, and parties have also raised questions and concerns regarding the *Section 6409(a) PN* guidance itself. While these issues could be addressed in practice through local interpretations, judicial decisions, and voluntary agreements, the Commission believes on balance it serves the public interest for us proactively to seek comment at this time on implementing rules to define terms that the statute leaves undefined, and to fill in other interstices that may serve to delay the intended benefits of section 6409(a). The Commission invites comment on its decision to do so and on any reasons why the Commission should limit or decline to take regulatory action in this proceeding.

55. In particular, the Commission anticipates that, in the absence of definitive guidance from the Commission, the uncertainties under section 6409(a) may lead to protracted and costly litigation and could adversely affect the timely deployment of a nationwide public safety network and delay the intended streamlining benefits of the statute with respect to other communications services. Further, addressing the interpretation of section 6409(a) in a rulemaking, with notice and opportunity for comment, will provide a broader opportunity for participation and input in the implementation of this provision than, for example, one or more adjudicatory proceedings. In addition, the Commission believes that State and local governments, FirstNet, Commission licensees, and tower companies will benefit from having settled interpretations on which they can rely in determining how to comply with the new law. The Commission therefore takes this opportunity to examine section 6409(a) and to seek public comment on its interpretation. The Commission seeks comment on this reasoning.

56. The Commission acknowledges, however, that there may also be countervailing benefits to offering governments additional opportunity to implement some or all of the provisions of section 6409(a) before adopting prescriptive rules. Such an approach would provide State and local governments more opportunity and flexibility to develop solutions that best meet the needs of their communities consistent with the requirements of the provision and may also help to distinguish those issues that require clarification by the Commission from those on which there is general consensus. In particular, the Commission believe that best practices or model ordinances that reflect a consensus of industry and municipal interests may facilitate the practical and efficient implementation of section 6409(a), and the Commission is aware of ongoing discussions between industry and municipal government representatives in that regard. Therefore, the Commission invites comment on whether it should refrain from addressing any or all of the issues discussed below at the present time, on how the Commission might encourage efforts to develop best practices for applying section 6409(a), and on what role best practices might play in the interpretation or implementation of this statutory provision.

57. The Commission also notes legislative efforts by State and local governments to streamline their collocation review processes in response to section 6409(a) and other considerations. The Commission seeks comment on how it could accommodate and encourage such efforts consistent with section 6409(a) and the factors discussed above. In particular, the Commission seeks comment on how this consideration affects whether and to what extent the Commission should leave issues unaddressed at this time. The Commission also seeks comment on other ways in which principles of federalism should inform its approach to implementation of section 6409(a). In this connection, the Commission notes that its goal is not to operate as a national zoning board. Rather, the Commission seeks to implement and enforce the intent of Congress to make compliance with Federal standards a precondition to continued State regulation in an otherwise pre-empted field. In establishing such Federal standards, how should the Commission most appropriately address the traditional responsibility of State and local governments for land use matters?

58. To the extent that the Commission does adopt rules implementing section 6409(a), the Commission also seeks comment on whether it should provide a transition period to allow States and localities time to implement the requirements in their laws, ordinances, and procedures. If so, how would the Commission establish such a mechanism consistent with the provision, and what transition period would be appropriate?

1. Terms in Section 6409(a)

59. Under section 6409(a), states and localities must grant an eligible facilities request, defined as any request for modification of an existing wireless tower or base station that involves collocation, removal or replacement of

transmission equipment, if the request does not substantially change the physical dimensions of the tower or base station. The Commission will refer to an eligible request that does not substantially change the physical dimensions of the tower or base station, and therefore that shall be approved and must not be denied, as a covered request.

60. The scope of section 6409(a) depends on the proper interpretation of a number of terms. The Commission seeks comment on how to interpret or define these terms, including ''transmission equipment,'' ''existing wireless tower or base station,'' ''substantially change the physical dimensions,'' and ''collocation,'' as they are used in and apply to an eligible facilities request under section 6409(a). The Commission also seeks comment on whether the term eligible facilities request itself requires any further clarification beyond the statutory definition provided in section 6409(a)(2). Commenters addressing these issues are strongly encouraged to offer specific definitions.

61. *Transmission equipment and wireless.* Section 6409(a) refers broadly to transmission equipment without referencing any particular service. Similarly, in defining eligible facilities to be modified, it refers broadly to a wireless tower or base station. In contrast, section 332(c)(7) of the Act, an older provision that also places limits on State and local authority to regulate wireless facility siting, extends only to facilities used for personal wireless services as defined in that section. In the *Section 6409(a) PN,* the bureau opined that the scope of a wireless tower or base station under section 6409(a) is not intended to be limited to facilities that support personal wireless services under section 332(c)(7), given Congress's decision not to use the pre-existing definition from another statutory provision relating to wireless siting.

62. Consistent with the bureau's interpretation, the Commission proposes to find that section 6409(a) applies to the collocation, removal, or replacement of equipment used in connection with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or fixed broadband. Similarly, the Commission proposes to define a wireless tower or base station to include one used for any such purpose. The Commission believes this interpretation is warranted given the clear intent of Congress to facilitate collocation, the substantial number of broadcast and public safety towers that are potentially available for wireless collocation and that are, in many cases, already being used for collocation, and Congress's use of the term wireless rather than a more restrictive term. The Commission also notes that the definitions of tower under both the Collocation Agreement and NPA have a similarly broad scope, encompassing structures used to support any Commission-licensed or authorized service. The Commission seeks comment on its proposal and on whether there is a reason to exclude any type of services. With respect to the service involved, should the scope of transmission equipment to be collocated, replaced, or removed be different from the scope of structures to be modified? If the Commission were to exclude structures used for certain services, how would the Commission treat a tower or other structure that is used or usable for multiple types of service? What about a tower that is not yet used for any service?

63. The Commission proposes to further define transmission equipment to encompass antennas and other equipment associated with and necessary to their operation, including, for example, power supply cables and a backup power generator. The Commission believes this is consistent with Congressional intent to streamline the review of collocations and minor modifications and also with Congress's use of the broad term transmission equipment rather than a more specific term such as antenna. The Commission seeks comment on this proposal and analysis. In particular, the Commission seeks comment on including backup power equipment in light of the public interest in continued service during emergencies. The Commission also seeks comment on whether it should specifically include or exclude any equipment to be considered as transmission equipment under section 6409(a).

64. The NPA defines antenna in part as an apparatus designed for the purpose of emitting radio frequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a tower, structure, or building as part of the original installation of the antenna. Should the Commission adopt or adapt this definition of antenna to define the term transmission facility under section 6409(a)?

65. *Existing wireless tower or base station.* The Commission seeks comment on how to define wireless tower or base station under section 6409(a). Initially, the Commission notes that both tower and base station have been previously defined in Commission rules and documents. Under the Collocation Agreement, a tower is defined as any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities. The NPA includes a similar definition of a tower as any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna. In part 90 of the Commission's rules, base station is defined as a station at a specified site authorized to communicate with mobile stations, whereas part 2 and part 24 of the Commission's rules define base station as a land station in the land mobile service. As noted in the *Section 6409(a) PN,* the Commission has also described a base station in more detail as consisting of radio transceivers, antennas, coaxial cable, a regular and backup power supply, and other associated electronics. The Commission seeks comment generally on the relevance of these definitions for defining wireless tower or base station under section 6409(a).

66. The Commission seeks comment on the types of structures that may be considered a wireless tower or base station under section 6409(a). At a minimum, tower would appear to include, as in the NPA, structures built for the sole or primary purpose of supporting antennas used for any wireless communications service. However, many other types of structures, from buildings and water towers to streetlights and utility poles, may also support antennas or other base station equipment. The Commission also notes that the Commission has encouraged the use of these types of structures to enhance capacity for wireless networks. In the *Section 6409(a) PN,* the bureau opined that it is reasonable to interpret a base station to include a structure that supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station under section 6409(a). The Commission proposes to

find, consistent with the bureau's guidance, that the term wireless tower or base station should be interpreted to encompass structures that support or house an antenna, transceiver, or other associated equipment that constitutes part of a base station, even if they were not built for the sole or primary purpose of providing such support. In particular, the Commission believes that interpreting section 6409(a) to include structures that house or support base station equipment not only is consistent with Congressional intent to streamline the facilities application process, but also accords with established principles of statutory construction by giving separate meaning to the term base station as well as tower. The Commission seeks comment on this interpretation. Should this definition be limited in any way? For example, should a building or cabinet with equipment inside be included in this definition? Is it material to the application of section 6409(a) whether a structure is a tower or a base station, and if so, how should the Commission distinguish these terms?

67. The Intergovernmental Advisory Committee (IAC) argues that base station should not be interpreted to encompass structures that support or house only part of a base station. Rather, the IAC argues, any interpretation of base station should reflect that a base station is a set of equipment components that collectively provides a system for transmission and reception of personal wireless services. The Commission seeks comment on the IAC's argument.

68. The Commission also seeks comment on what equipment constitutes a base station under section 6409(a). The Commission proposes, consistent with the definition of transmission equipment proposed above, to include antennas, transceivers, and other equipment associated with and necessary to their operation, including coaxial cable and regular and backup power equipment. The Commission seeks comment on this proposal. Should the equipment that constitutes a base station be defined in the same way as transmission equipment, more expansively, or less expansively? Should structures housing any particular type of equipment not be included? The Commission further seeks comment on how to ensure that the definition of base station is sufficiently flexible to encompass, as appropriate to section 6409(a)'s intent and purpose, future as well as current base station technologies and technological configurations, using either licensed or unlicensed spectrum. In the *Section 6409(a) PN,* the bureau indicated that the term base station encompasses the relevant equipment in any technological configuration, including DAS and small cells. The Commission seeks comment on whether to adopt this interpretation, and on what constitutes the base station in the context of DAS or other wireless technologies where the various components of what might traditionally be considered a base station are dispersed over a large area and may be owned or controlled by different parties.

69. Under section 6409(a), a wireless tower or base station must be existing in order for its modification to be covered. In the *Section 6409(a) PN,* the bureau opined that an existing base station only includes a structure that currently supports or houses base station equipment. Verizon, however, argues that modifications of base stations encompass collocations on buildings and other structures, even if those structures do not currently house wireless communications equipment. Verizon argues that the Collocation Agreement defines collocation as encompassing the mounting of an antenna on an existing building or structure, and that collocations in section 6409(a) should therefore be given similar scope. The Commission seeks comment on this argument. Does existing require only that the structure be previously constructed at the time of the collocation application, or does this term also require that the structure be used at that time as a tower or base station? Do the statutory language and context argue in favor of one interpretation or the other? Which interpretation, or some other, would be more consistent with both facilitating deployments that are unlikely to conflict with local land use policies (including policies that favor use of existing structures) and preserving State and local authority to review construction proposals that may have impacts? Should the interpretation of existing depend on the type of structure involved? For example, should the Commission consider a structure built for the primary purpose of supporting or housing transmission equipment existing under section 6409(a) whether or not it currently hosts such equipment, while considering other structures existing only if they currently support or house transmission equipment?

70. The Commission asks commenters, when discussing the scope of support structures encompassed by section 6409(a), to discuss the economic costs and benefits of adopting their proposed interpretation and how these might relate to the intent of Congress. Are there different costs and benefits to mandatory approval depending on the type of structure involved?

71. *Collocation, removal, and replacement.* The Commission seeks comment on how to define or interpret the terms collocation, removal, and replacement. Under the Collocation Agreement, collocation is defined as the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. The Commission seeks comment on whether to adopt a similar definition of collocation under section 6409(a).

72. The Commission also proposes to interpret a modification of a wireless tower or base station to include collocation, removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure, even if the equipment is not physically located upon it. The Commission notes that the Collocation Agreement similarly construes the mounting of an antenna on a tower to encompass installation of associated equipment cabinets or shelters on the ground. The Commission seeks comment on its proposed interpretation.

73. The Commission seeks comment on whether and to what extent a request to replace or harden a tower or other covered structure should be considered a covered request if the replacement would not substantially change the physical dimensions of the structure. For example, under some circumstances, a tower may need to be replaced, reinforced, or otherwise hardened in connection with an upgrade from 3G to heavier 4G facilities. Should replacement of the underlying structure be covered if it is necessary to support the otherwise covered collocation or replacement of transmission equipment? What if the replacement is constructed with different materials, such as if a wooden pole must be replaced with steel? Should a requested structure replacement be covered only for certain types of structures, such as those originally constructed for the sole or primary purpose of supporting communications equipment?

74. *Substantially Change the Physical Dimensions.* The Commission seeks comment on whether and how to define when a modification would substantially change the physical dimensions of a wireless tower or base station.

75. As the bureau noted in the *Section 6409(a) PN,* the Collocation Agreement establishes a four-prong test to

determine whether a collocation will effect a substantial increase in the size of a tower. The Commission later adopted the same test in the *2009 Declaratory Ruling* to determine whether an application will be treated as a collocation when applying section 332(c)(7). The Commission has also applied a similar definition to determine whether a modification of an existing registered tower requires public notice for purposes of environmental review.

76. Under this test, a substantial increase in the size of the tower occurs if:

(1) [t]he mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) [t]he mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

77. The Commission seeks comment on whether to adopt the Collocation Agreement's definition of substantial increase in the size of the tower as the test for when a modification will substantially change the physical dimensions of a tower or base station under section 6409(a). If the Commission does so, should the Commission apply this test to all modification requests, including collocation, replacement, and removal of transmission equipment? Or should the Commission modify or clarify any of the prongs of that test for any type of requests?

78. In determining what constitutes a substantial change in physical dimensions under section 6409(a), the Commission seeks comment on how to address situations where the tower or other structure has been previously modified since it was originally approved. For example, it is theoretically possible that successive increases of 10 percent could cumulatively increase the height of a structure by double or more. In such situations, should the physical change in dimensions resulting from a collocation be measured based on the structure's original dimensions or the existing dimensions taking into account all pre-existing modifications? Should it matter if previous expansions occurred before or after the enactment of section 6409(a)?

79. The Commission also seeks comment on whether the standard for what constitutes a substantial change should be different depending on the type of structure to be modified. As the Commission noted above, the Collocation Agreement definition applies to towers, defined as any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities. Should a different standard apply to other types of structures that may be defined as towers or base stations, such as buildings or utility poles? For example, what are the potential effects of adding up to 10 percent to the height of a building? Is a standard that allows for separation from the nearest existing antenna of up to twenty feet appropriate for structures that are much shorter than traditional towers, such as utility poles? The Commission further seeks comment on whether a different test should apply to stealth structures, structures and associated base stations that have been constructed to blend in with their surroundings. Should changes in physical dimensions that would defeat or be inconsistent with the stealth characteristics of the structure be considered substantial?

80. The Commission also seeks comment on the views of the IAC regarding when a modification will substantially change the physical dimensions of a tower or base station. In particular, the IAC argues that the question of substantiality cannot be resolved by the adoption of mechanical percentages or numerical rules applicable anywhere and everywhere in the United States, but rather must be evaluated in the context of specific installations and a particular community's land use requirements and decisions. As an example, the IAC suggests that a change in a tower's height of only 5 percent that would adversely affect substantial safety, esthetic, or quality-of-life elements would represent a substantial change in physical dimensions. The Commission seeks comment on this interpretation, and on how, consistent with the IAC's interpretation, the Commission might define the test for what constitutes a substantial change in physical dimensions.

2. Review and Processing of Applications, Time Limits, and Remedies

81. Section 6409(a)(1) provides that notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. The Commission asks for comments on the extent to which the statutory language leaves State or local governments discretion or authority to deny or condition approval and what restrictions or requirements, if any, it may place on the processes that a State or locality may adopt for the review of applications. The Commission further seeks comment on whether section 6409(a) warrants establishment of time limits for State and local review and prescription of remedies in the event of a failure to approve a covered request under section 6409(a)(1).

82. *May not deny and shall approve.* The Commission seeks comment on whether, by directing that States and localities may not deny and shall approve covered requests, section 6409(a) requires States and localities to approve all requests that meet the definition of eligible facilities requests and do not result in a substantial change in the dimensions of the facility, without exception and/or discretionary review. The Commission also seeks comment on whether there are any special circumstances under which, notwithstanding this unqualified language, section 6409(a) would permit a State or local government to deny an otherwise covered request. The Commission further seeks comment on whether States and localities may make the grant of a covered request subject to conditions on or alterations to the request. If so, what types of conditions or alterations may they require that would be consistent with section 6409(a)? In particular, the Commission

seeks comment below on whether and/or to what extent States and localities may require any covered requests to comply with State or local building codes and land use laws and whether States and localities are required to approve an otherwise covered modification of a tower or base station that has legal, non-conforming status or that does not conform to a condition or restriction that the State or locality imposed as a prerequisite to its original approval of the tower or base station. The Commission also proposes below to find that the requirement that States and localities may not deny and shall approve covered requests in any case applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners.

83. The Commission seeks comment whether and/or to what extent States and localities may require any covered requests to comply with State or local building codes and land use laws. For example, the Commission seeks comment on whether a State or local government must grant a facilities modification request that would result in an increase in height above the maximum height permitted by an applicable zoning ordinance. May States and localities require a covered request to be in compliance with general building codes or other laws reasonably related to health and safety? For example, the Commission seeks comment on whether States or localities can continue to enforce restrictions such as load-bearing limits on applications that otherwise meet the standard for approval under section 6409(a)(1). May they condition the approval of a modification on the underlying structure's compliance with the hardening standards under TIA–222 revision G, Structural Standards for Antenna Supporting Structures and Antennas? What is the cost of bringing a structure into compliance with these standards? Similarly, may a State or local government deny an application for an otherwise covered modification if the structure, as modified, would not meet the fall zone or setback distance that its ordinance requires? The Commission further seeks comment on the enforceability of codes that may not be designed for current technologies, e.g., codes establishing set-back minimums appropriate for towers but excessive for much shorter utility poles. The Commission asks commenters to discuss the extent to which principles of federalism require or permit the Commission to construe section 6409(a) in a manner that preserves traditional State or local land use authority with respect to any of these issues.

84. The Commission also seeks comment on whether section 6409(a) is applicable to eligible facilities requests involving existing towers or base stations that were approved at the time of construction but that are no longer in conformance due to subsequent changes to the governing zoning ordinance. Some jurisdictions routinely deny such requests, while others require full zoning review and impose conditions such as replacement or retrofitting of the underlying structure. The Commission therefore seeks comment on whether States and localities are required to approve an otherwise covered modification of a tower or base station that has legal, non-conforming status, and whether section 6409(a) disallows a jurisdiction from subjecting such a request to full zoning review. The Commission further seeks comment on current municipal practices regarding modification or collocation requests in connection with legal, non-conforming wireless towers. What are the reasons or justifications for the local jurisdiction to require a full zoning review? What is the common time frame to process a local zoning review for a request to modify a legal, non-conforming tower? What sorts of conditions have local governments placed on their approval?

85. The Commission also seeks comment on whether States and localities are required to approve a modification of an existing tower or base station that does not conform to a condition or restriction that the State or locality imposed as a prerequisite to its original approval of the tower or base station. For example, if a municipality has approved initial installation of some transmission facilities on a building or other structure conditioned on the facilities meeting standards with regard to height, width, bulk, appearance, or other design characteristics intended to camouflage the deployment, is it required to approve subsequent collocations on the structure that do not meet those stealth conditions? Should a different rule apply depending on whether the condition was imposed before or after the effective date of section 6409(a)? The Commission seeks comment on whether interpreting the statute to require approval of modifications notwithstanding conditions on the original installation may create disincentives for States and localities to approve the initial siting of towers or base stations, and if so, how section 6409(a) can be implemented to address this concern.

86. More broadly, the Commission seeks comment on the extent to which any of these asserted grounds for local substantive review and potential denial of an application should alternatively be understood as factors in determining whether a wireless tower or base station should be considered existing or what constitutes a substantial change in the physical dimensions of a wireless tower or base station. For example, should modifications that alter a facility in a fashion inconsistent with local ordinance or with conditions on the structure's use be considered to substantially change its physical dimensions? Should a tower that is legal but non-conforming not be considered existing for purposes of section 6409(a)?

87. The IAC argues that the mandate that States and localities may not deny and shall approve requests applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners. The IAC asserts, as example, that where a county government, as landlord rather than as land use regulator, has by contract or lease chosen, in its discretion, to authorize the installation of an antenna on a county courthouse rooftop of certain exact dimensions and specifications, section 6409 does not require the county, acting in its capacity as landlord rather than its capacity as regulator of private land use, to allow the tenant to exceed to any extent those mutually and contractually agreed-upon exact dimensions and specifications. The Commission proposes to adopt this interpretation of section 6409(a) and seeks comment, including comment on how to ensure it is clear in which capacity governmental action is requested and in which capacity a governmental entity is acting, and whether the Commission needs to address how section 6409(a) applies to requests seeking a government's approval in both capacities. For example, would section 6409(a) impose no limits on such a landlord's ability to refuse or delay action on a collocation request?

88. *Application procedures.* The Commission seeks comment on whether section 6409(a) places restrictions, limitations, or requirements on the filing and review process applicable to applications subject to section 6409(a), and if so, what Federal standards would appropriately implement such limitations. Some have suggested that because section 6409(a) provides that State and local governments shall approve covered facilities requests, the provision requires an expedited process. Other parties, on the other hand, have

argued that a fact-finding is required to determine whether section 6409(a) applies at all and that local governments need the freedom to adopt procedures that will enable them to resolve this question. In the *Section 6409(a) PN,* the bureau, noting that the provision on its face contemplates the submission of a request, indicated that the relevant government entity may still require the filing of an application for administrative approval. The *Section 6409(a) PN* did not provide any further procedural guidance.

89. The Commission proposes to find, consistent with the bureau guidance, that section 6409(a) permits a State or local government at a minimum to require an application to be filed and to determine whether the application constitutes a covered request. This is consistent with the statutory language providing that the government shall approve the application. The Commission seeks comment on this proposed finding. The Commission further seeks comment on whether, given the directive that the State or local government shall approve, section 6409(a) permits and warrants Federal limits on applicable fees, processes, or time for review. If so, should the Commission define what these limits are, or are the variations in circumstances such that it is better to address them case-by-case? If the Commission does define them, what should the limits be? For example, should the Commission find that section 6409(a) warrants specific expedited procedures or limits on the documentation that may be required with an application?

90. In particular, the Commission seeks comment on whether section 6409(a) warrants limiting the procedures for filing and reviewing an application that the applicant characterizes as stating a covered request to those procedures relevant to resolving whether the request is in fact covered by section 6409(a). The Commission further seeks comment on whether section 6409(a) permits limitations on which officials may review an application, and if so, whether such limitations are warranted. For example, to the extent that review under section 6409(a) is ministerial, approval by administrative staff may be more efficient, and no less effective, than submission to an elected Board. Would a Federal standard requiring State and local governments to utilize such an administrative process sufficiently protect their ability to identify applications that are not covered by section 6409(a) and otherwise to exercise any permitted discretion? Would it be consistent with principles of federalism to constrain State and local government procedures in this manner, as a condition for continuing to review covered requests? Would such a standard contradict some local ordinances and, if so, would it raise concerns that, at least for an interim period, the affected community could not review applications at all? Are administrative practices sufficiently uniform among communities that any rules could be meaningful?

91. The Commission also seeks comment on whether section 6409(a) permits or warrants imposing limits on the kinds of information and documentation that may be required in connection with an application asserted to be a covered request. The Commission notes that, in the *NOI* proceeding, some parties asserted that some jurisdictions were requesting extensive documentation for collocation approvals, thereby resulting in delay, while other jurisdictions required only the limited information necessary to issue a common building permit. The Commission also notes that, since the *NOI* was released, additional States have taken steps to streamline local processing of collocation requests, in part through clarifying what information may be required to support such requests. The Commission seeks comment on such developments and on whether, given current practices, it is now necessary or appropriate to establish Federal standards governing the information that applicants may be required to provide in connection with an asserted section 6409(a) request in order to ensure that such information requests do not unnecessarily extend the application process. For example, should the Commission clarify that States and localities may not require information or documents in connection with an eligible facilities request asserted to be a covered request under section 6409(a) that are not relevant to the criteria for approval under section 6409(a)?

92. The Commission also seeks comment on whether to establish a time limit for the processing of requests under section 6409(a). In the *Section 6409(a) PN,* the bureau noted that the *2009 Declaratory Ruling* established 90 days as a presumptively reasonable period of time to process collocation applications under section 332(c)(7). The bureau stated that 90 days should be the maximum presumptively reasonable period of time for reviewing requests that are covered by section 6409(a), whether for personal wireless services or other wireless facilities. The Commission seeks comment on whether to adopt this conclusion or adopt a shorter period, given that section 6409(a) considerably narrows the scope of review. Should the Commission also consider specific circumstances under which municipalities may extend the time period? For example, consistent with the Commission's interpretation of section 332(c)(7), should the Commission provide that a municipality may toll the running of the period if it notifies the applicant in writing within 30 days that an application is incomplete and specifies the additional information or documentation required to complete the application? Does section 6409(a) warrant imposing any limits on the ability of a municipality to require such additional information or documentation? Should municipalities be able to extend the time period by agreement with the applicant?

93. The Commission notes that some jurisdictions have adopted moratoria on the filing or processing of applications for new wireless facilities, including collocations and other modifications that may be covered under section 6409(a). The Commission seeks comment on current developments of this kind, and how they may relate to covered requests under section 6409(a). Considering Congress's explicit language that a State or local government may not deny, and shall approve a covered application, the Commission proposes to preempt the application of any such moratoria to covered requests under section 6409(a), including with respect to the running of any applicable time period. In other words, under this proposal, a State or local government may not prevent or delay the filing of applications asserted to be covered by section 6409(a) due to a moratorium, and it must approve covered applications within the same time period as if no moratorium were in effect. The Commission seeks comment on this proposal. Alternatively, the Commission seeks comment on whether it should specify a maximum cumulative time that may be added to the process due to moratoria and, if so, what that time period should be, as well as whether any tolling should be limited to moratoria that are put in place prior to submission of the application or request.

94. The Commission anticipates that in general, review of applications submitted under section 6409(a) will be limited to determining whether the application states an eligible facilities request, whether the request would substantially change the physical dimensions of the relevant tower or base station, and whether it satisfies any other criteria that, under interpretations

the Commission may adopt in this proceeding, allow the State or local government to deny or condition an otherwise covered application. Should the Commission distinguish any set of applications that are unlikely to raise any significant questions of eligibility and therefore should be subject to more stringent limitations on process, timing, or fees? If so, what criteria should identify these applications and what limits are appropriate under section 6409(a)? For example, should requests for removal of transmission equipment be eligible for a more expedited process than new collocations? Should replacement applications also be subject to a more expedited process and, if so, subject to what limitations on the size or appearance of the new equipment?

95. *Remedy and enforcement.* The Commission seeks comment on what remedies should be available to enforce section 6409(a) in cases of failure to act or decisions adverse to the applicant. The Commission first seeks comment on whether it should provide that a covered request is deemed granted by operation of law if a State or local government fails to act within a specified period of time. In the *2009 Declaratory Ruling,* the Commission declined to adopt such a deemed granted remedy for local government failures to act on facilities siting applications under section 332(c)(7)(B), finding that section 332(c)(7)(B)(v) indicated a Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies. Unlike section 332(c)(7), however, section 6409(a) does not explicitly include a judicial remedy. Indeed, whereas the terms of section 332(c)(7) do not mandate approval of any particular request, section 6409(a) provides that governments shall approve requests covered by the provision. Moreover, section 6409(a) compels such action notwithstanding section 332(c)(7) in particular. The Commission seeks comment on whether this statutory distinction supports a deemed granted remedy for applications subject to section 6409(a).

96. The Commission also seeks comment on whether such a remedy raises any constitutional concerns, including concerns under the Tenth Amendment. While the adoption of a deemed granted rule for cases of State inaction would result in the grant of facilities siting applications by operation of Federal law pursuant to section 6409(a), such a rule would not appear to compel the States to enact or administer a Federal regulatory program. Indeed, rather than drawing the States into such involvement, the rule would simply end the application process without a need for any State or local action at all, since a deemed granted approach would operate automatically to grant the application when the trigger event occurs (e.g., inaction on the application for the amount of time specified by the rule). Moreover, other than establishing the automatic grant, a deemed granted rule would not prescribe any particular processes or place any obligations on State or local governments, thereby leaving their regulatory authority over the siting matter otherwise undisturbed. In these respects, it would appear that a deemed granted rule would no more constitute a Federal regulatory program imposed on the States than would a pure preemption of State action.

97. In addition to the deemed granted approach, the Commission also seeks comment on any alternative remedies to similarly ensure that cases of State inaction or inordinate delay are addressed as Congress intended. Should the Commission, for example, exercise authority under *City of New York* to preempt State or local authority with respect to covered requests that have been pending for more than a specified period of time? Would such preemption effectively serve the goals of section 6409(a) by precluding State or local legal action against installations that meet the terms of section 6409(a)? Would this type of remedy effectively enable the installation to proceed, or would the preemption of the State/local application process prior to its normal conclusion create other potential impediments? For example, if the State or local body typically issues a permit after granting a siting application, would the lack of a permit affect the wireless carrier's ability to hire contractors to perform necessary work for the installation? While a similar problem is conceivable with the deemed granted approach, a carrier that receives a grant by operation of Federal law under section 6409(a) should have recourse through established legal frameworks to obtain any necessary paperwork and credentials to which those receiving a grant from the State or local government are entitled. The Commission seeks comment on this aspect of the deemed granted approach, as well as on any other practical problems that may arise.

98. The Commission also seeks comment on the appropriate remedy when a State or local government impermissibly denies a covered request. Should such a denial also be subject to a deemed granted remedy? How feasible would this approach be when the ostensible reason for the denial is that the request does not qualify as a covered request? Could such denials be excluded from the deemed granted approach without rendering the approach ineffective for addressing impermissible denials of covered requests? Is there any other reason to treat a State or local government's denial of an eligible facilities request differently from its failure to act within a specified period of time?

99. The Commission further seeks comment on how a deemed granted remedy, if adopted, should operate, when it should be applicable, and how it should be enforced under section 6409(a). For example, should an applicant be required to notify a State or local government when it believes that a deemed grant has occurred, thus providing that State or local government the opportunity to go to court or the Commission to seek a finding that the deemed granted remedy has not been triggered? Or should the onus be placed on the applicant to go to court or the Commission and asks for a finding that an application is a covered request before it can be deemed granted? Would placing the burden on the applicant pursuant to the latter option negate many of the benefits of having a deemed granted remedy?

100. For the reasons discussed above, the Commission proposes to permit the filing of complaints with the Commission alleging violations of section 6409(a) along with any implementing rules the Commission choose to adopt, and that such complaints be filed as petitions for declaratory ruling. The Commission seeks comment on these proposals, including whether it should adopt other procedures, such as those that have been adopted in connection with other local land use actions that affect Commission licensees. What alternative judicial remedies would a party have? The Commission also notes that some zoning regulations require that only a court decision can overturn a zoning decision. The Commission seeks comment on whether and how section 6409(a) might operate to preempt such requirements and how this issue should affect the remedies the Commission provides.

101. Finally, the Commission seeks comment on the relation between section 6409(a) and section 332(c)(7). While the provisions are not coextensive, many collocation applications under section 6409(a) are also covered under section 332(c)(7). Where both sections apply, the Commission proposes to find that section 6409(a) governs, consistent with canons of statutory construction that a

more recent statute takes precedence over an earlier one and that normally the specific governs the general. Thus, under this interpretation, because the substantive standard requiring approval of covered requests under section 6409(a) appears to provide significantly less leeway than section 337(c)(7) and is therefore in conflict with the latter provision, where both apply, such covered requests would be governed by the substantive standard of section 6409(a). The Commission seeks comment on this proposed finding and any alternatives.

V. Implementation of Section 332(C)(7)

102. The Commission does not intend in this NPRM to seek comment on or otherwise revisit any aspect of its *2009 Declaratory Ruling.* As discussed below, the Commission has received various comments in response to the *NOI* asserting that it is unclear how the standards established in the *2009 Declaratory Ruling* apply in certain specifically identified contexts or seeking clarification regarding questions arising under section 332(c)(7) that were not addressed by the *2009 Declaratory Ruling.* Additionally, the Commission has been asked to revisit its decision not to impose a deemed granted remedy in cases where a State or local government fails to comply with the time limits set forth in the *2009 Declaratory Ruling.* From these comments, the Commission has distilled six discrete issues that have been raised. While taking the opportunity to address these issues, the Commission stresses that it is not revisiting—or seeking comment in this proceeding on—any of the matters decided by the *2009 Declaratory Ruling.*

103. *Definition of collocation.* In the *2009 Declaratory Ruling,* the Commission held that the addition of an antenna to an existing tower or other structure constitutes a collocation for purposes of section 332(c)(7) if it does not involve a substantial increase in the size of a tower as defined in the Collocation Agreement. However, the Commission did not further define that term. In the context of defining a substantial change in physical dimensions under section 6409(a), the Commission seeks comment above on whether to adopt a different standard depending on the type of structure to be modified. The Commission similarly seeks comment here on whether to refine the substantial increase in size test as applied to collocations on structures other than communications towers under section 332(c)(7). Should the Commission apply the test for substantial increase in size under section 332(c)(7) in the same manner as it interprets the test under section 6409(a) for substantial change in physical dimensions? The Commission also seeks comment on whether terms that it defines under both section 332(c)(7) and section 6409(a), such as collocation, should be defined in the same way.

104. *Completeness of applications.* Although the *2009 Declaratory Ruling* held that a State or local government's period for acting on an application is tolled until the applicant completes its application in response to a request for additional information made within the first 30 days, it did not attempt to define when a siting application should be considered complete for this purpose. PCIA has asserted that, as a result, jurisdictions may delay processing by repeatedly requesting additional information. AT&T also asserted that some local authorities have tried to extend their period for decision by delaying when they deem the application complete. The Commission seeks comment on whether to clarify when a siting application is considered complete for the purpose of triggering the *2009 Declaratory Ruling* time frame and, if so, how that should be determined.

105. *Local moratoria.* Above, the Commission seeks comment on whether and how the requirements of section 6409(a) apply to delays in processing applications that result from local moratoria. Here, the Commission similarly seeks comment on whether and how the presumptively reasonable time frames under section 332(c)(7) apply to such delays. PCIA in its comments to the *NOI* argued that because the *2009 Declaratory Ruling* on timelines for application review did not explicitly discuss moratoria, many jurisdictions have enacted them in an effort to avoid the *2009 Declaratory Ruling* time frames altogether. PCIA asserted that siting moratoria lasting longer than six months are generally contrary to the industry-community agreement signed in 1998, and that local jurisdictions have not followed this agreement and have enacted moratoria extending well beyond the six-month time period. Thus, PCIA requested that the Commission clarify the applicability of the *2009 Declaratory Ruling* to local moratoria.

106. The Commission proposes to find that the presumptively reasonable period for State or local government action on an application runs regardless of any local moratorium. Since the *2009 Declaratory Ruling* makes no special provision for moratoria, the Commission believes this is consistent with the plain reading of that decision. Furthermore, the Commission believes this approach creates an appropriate bright-line test for when a State or local government's delay may be brought before a court. Under this reading, the reasonableness of the moratorium may be considered by a reviewing court in determining whether the delay violates section 332(c)(7). The Commission seeks comment on this proposal and analysis.

107. Alternatively, the Commission seeks comment on whether the running of the applicable presumptively reasonable period of time should be tolled by a moratorium. The Commission also seeks comment on whether, if it adopts this ruling, the tolling period for moratoria should be limited to a maximum cumulative time, what that time period should be, and whether tolling should be limited to moratoria that are put in place prior to the submission of the application or request. The Commission further seeks comment on how frequently moratoria are invoked, the typical duration of moratoria, and the local interests served by or justifications for such moratoria. The Commission notes that if it holds that the section 6409(a) substantive standards govern applications covered by both section 6409(a) and section 332(c)(7), such standards would include any decisions on moratoria under section 6409(a). The Commission seeks comment on whether treatment of moratoria should be similar under the two provisions.

108. *Application to DAS.* The *NOI* record has shown that in the absence of any explicit discussion, some jurisdictions have interpreted the *2009 Declaratory Ruling* time frames as not applying to DAS deployments. Neither section 332(c)(7) nor any Commission decision interpreting section 332(c)(7) makes any distinction among personal wireless service facilities based on technology, and absent a compelling reason to do so, the Commission is not inclined to make such distinctions. In any event, the Commission proposes to clarify that to the extent DAS or small cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, such facilities are subject to the same presumptively reasonable time frames and other requirements as other personal wireless service facilities.

109. The City of Philadelphia responded to the *NOI* record on this issue, arguing that a number of factors, including the possibility that a DAS network may include a large number of discrete sites, the density of the sites, and their tendency to have a large presence in the public rights-of-way,

dictate a substantially greater time to review and evaluate permitting applications than for traditional cell site applications, making the time frames provided in the *2009 Declaratory Ruling* inappropriate. The *2009 Declaratory Ruling* does not prevent a court from taking these factors into consideration in any determination of reasonableness, however, and applicants and municipalities can agree to extensions of time in appropriate cases. The Commission seeks comment on its proposal and analysis, including any reason DAS or small cell facilities should be subject to different time frames or other requirements.

110. *Section 332(c)(7)(B)(i)(I).* PCIA has asserted that some local ordinances establish preferences for placing wireless facilities on municipal property and argued that, by limiting the siting flexibility of subsequent wireless entrants in a given area, such ordinances unreasonably discriminate among providers of functionally equivalent services in violation of section 332(c)(7)(B)(i)(I). Other commenters have argued against such a *per se* conclusion. The Commission seeks comment on whether ordinances establishing preferences for the placement of wireless facilities on municipal property are unreasonably discriminatory under section 332(c)(7).

111. *Deemed Granted Remedy.* In the *2009 Declaratory Ruling,* the Commission declined to establish a deemed granted remedy in cases where a State or local government failed to abide by the time limits established by the Commission. It noted at the time that section 332(c)(7)(B)(v) states that when a failure to act has occurred, aggrieved parties should file with a court of competent jurisdiction within 30 days and that the court shall hear and decide such action on an expedited basis. The Commission then concluded that this provision indicates Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies.

112. PCIA in its comments asks the Commission to revisit this decision and adopt a deemed granted remedy. Specifically, it claims that adding a deemed granted rule is critical to ensuring that States and localities act within the prescribed timelines. PCIA notes that seeking judicial relief for violations of section 332(c)(7) can involve great time and expense and that a deemed granted remedy would reduce costly and time-consuming litigation, allowing those resources to be used to fund rather than defend the expansion of broadband deployment. What experiences have parties had since the end of the comment period for the *NOI* in WC Docket No. 11–59? Should the Commission adopt remedies beyond the one provided in the *2009 Declaratory Ruling* for violations of section 332(c)(7)? If so, what should they be? What authority does the Commission have to adopt the proposed remedy?

VI. Other Procedural Matters

A. Initial Regulatory Flexibility Analysis

113. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this NPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this NPRM and, if submitted together with comments to the NPRM in a single filing, must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

114. In this NPRM, the Commission addresses four major issues regarding the regulation of wireless facility siting and construction with the goal of reducing, where appropriate, the cost and delay associated with the deployment of such infrastructure. First, the Commission seeks comment on expediting its environmental review, including review under section 106 of the NHPA, in connection with proposed deployments of small cells, Distributed Antenna Systems (DAS), and other small wireless technologies that may have minimal effects on the environment. While the Commission has acted in the past to tailor its environmental review for the deployment of wireless infrastructure, those processes were largely developed long before small cell technologies became prevalent, and for the most part reflect the scale and level of environmental concern presented by traditional deployments on tall structures. Accordingly, the Commission seeks comment on whether to further tailor its environmental review process for technologies such as DAS and small cells through adoption of a categorical exclusion or other means. Second, the Commission proposes to adopt a narrow exemption from the Commission's pre-construction environmental notification requirements for certain temporary towers. These notification requirements provide that, before a party can register a proposed communications tower that requires registration under part 17 of its rules, and thus begin to construct or deploy the tower in question, it must complete a process of local and national notice. The proposed exemption will ensure that providers can timely deploy temporary facilities in response to unanticipated short term needs for broadband and other wireless services, such as in response to newsworthy events that occur without prior notice. Third, the Commission seeks comment on proposed rules to clarify and implement the requirements of section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), which streamlines State and local review of requests for modification of existing towers and base stations to facilitate the deployment of the nationwide public safety broadband network mandated by the Spectrum Act and help providers meet the Nation's growing demand for wireless broadband and other advanced services. Finally, the Commission seeks comment on certain issues arising from section 332(c)(7) of the Communications Act and the Commission's interpretations in the *2009 Declaratory Ruling* of that provision, in order to provide greater notice and clarity to affected stakeholders.

2. Legal Basis

115. The authority for the actions taken in this NPRM is contained in sections 1, 2, 4(i), 7, 201, 301, 303, 309, 332, 1403, and 1455 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 332, 1403, and 1455, section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

116. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term small entity as having the same

meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, the Commission provides a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

117. The NPRM proposes rule changes regarding local and Federal regulation of the siting and deployment of communications towers and other wireless facilities. Due to the number and diversity of owners of such infrastructure and other responsible parties, including small entities that are Commission licensees as well as non-licensees, the Commission classifies and quantifies them in the remainder of this section. The Commission seeks comment on its description and estimate of the number of small entities that may be affected.

118. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. As of 2010, there were 27.9 million small businesses in the United States, according to the SBA. Additionally, a small organization is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term small governmental jurisdiction is defined generally as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as small governmental jurisdictions. Thus, the Commission estimates that most governmental jurisdictions are small.

119. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its proposed action. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

120. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under part 95 of its rules. These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS). There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, the Commission applies the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer persons. Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by its proposed actions.

121. *Public Safety Radio Services.* Public Safety Radio Services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.

122. *Private Land Mobile Radio.* Private Land Mobile Radio (PLMR) systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories that operate and maintain switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. The SBA has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. However, the Commission believes that the most appropriate classification for PLMR is Wireless Communications Carriers (except satellite). The size standard for that category is that a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its proposed action.

123. Similarly, according to Commission data, 413 carriers reported

that they were engaged in the provision of wireless telephony, including cellular service, PCS, and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

124. Other relevant information about PLMRs is as follows. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

125. *Multiple Address Systems.* Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines small entity for MAS licensees as an entity that has average gross revenues of less than $15 million in the three previous calendar years. Very small business is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years. The SBA has approved of these definitions. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 EA market area MAS authorizations. The Commission's licensing database indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service.

126. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The applicable definition of small entity in this instance appears to be the Wireless Telecommunications Carriers (except satellite) definition under the SBA rules. Under that SBA category, a business is small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 99 or fewer employees and 372 had employment of 100 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by its proposed action.

127. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and wireless cable, transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as designating an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA's or the Commission's rules.

128. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (1) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (2) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (3) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

129. *Location and Monitoring Service (LMS).* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a small business as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million. A very small business is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million. These definitions have been approved by the SBA. An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

130. *Television Broadcasting.* The SBA defines a television broadcasting station that has no more than $35.5 million in annual receipts as a small business. Business concerns included in this industry are those primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to

affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in the station's own studio, from an affiliated network, or from an external source.

131. According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of March 31, 2013, about 90 percent of an estimated 1,385 commercial television stations in the United States have revenues of $35.5 million or less. Based on this data and the associated size standard, the Commission concludes that the majority of such establishments are small. The Commission has estimated the number of licensed noncommercial educational (NCE) stations to be 396. The Commission does not have revenue estimates for NCE stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. In addition, there are approximately 567 licensed Class A stations, 2,227 licensed low power television (LPTV) stations, and 4,518 licensed TV translators. Given the nature of these services, the Commission will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

132. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Its estimate, therefore, likely overstates the number of small entities affected by the proposed rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

133. In addition, an element of the definition of small business is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of small business is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and its estimates of small businesses to which they apply may be over-inclusive to this extent.

134. *Radio Broadcasting.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in the station's own studio, from an affiliated network, or from an external source. The SBA defines a radio broadcasting entity that has $35.5 million or less in annual receipts as a small business. According to Commission staff review of the BIA Kelsey Inc. Media Access Radio Analyzer Database as of June 5, 2013, about 90 percent of the 11,340 of commercial radio stations in the United States have revenues of $35.5 million or less. Therefore, the majority of such entities are small entities. The Commission has estimated the number of licensed noncommercial radio stations to be 3,917. The Commission does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the Commission will assume that all of these entities qualify as small businesses. The Commission notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. In addition, to be determined to be a small business, the entity may not be dominant in its field of operation. The Commission notes that it is difficult at times to assess these criteria in the context of media entities, and its estimate of small businesses may therefore be over-inclusive.

135. *FM translator stations and low power FM stations.* The proposed rules and policies could 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 $35.5 million in annual receipts. Currently, there are approximately 6,155 licensed FM translator and booster stations and 864 licensed LPFM stations. Given the nature of these services, the Commission will presume that all of these licensees qualify as small entities under the SBA definition.

136. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

137. *Satellite Telecommunications.* Two economic census categories address the satellite industry. The first category has a small business size standard of $30 million or less in average annual receipts, under SBA rules. The second has a size standard of $30 million or less in annual receipts.

138. The category of Satellite Telecommunications comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications. Census Bureau data for 2007 show that 607 Satellite Telecommunications establishments operated for that entire year. Of this total, 533 establishments had annual receipts of under $10 million, and 74 establishments had receipts of $10 million or more. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by its action.

139. The second category, i.e., All Other Telecommunications, comprises establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over

Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. For this category, Census data for 2007 shows that there were a total of 2,639 establishments that operated for the entire year. Of those 2,639 establishments, 2,333 operated with annual receipts of less than $10 million and 306 with annual receipts of $10 million or more. Consequently, the Commission estimates that a majority of All Other Telecommunications establishments are small entities that might be affected by its action.

140. *Non-Licensee Tower Owners.* Although at one time, most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission on FCC Form 854. Thus, non-licensee tower owners may be subject to the environmental notification requirements associated with Antenna Structure Registration (ASR), and may benefit from the exemption for certain temporary antenna structures that the Commission proposes in this NPRM. In addition, non-licensee tower owners may be affected by interpretations of section 6409(a) of the Spectrum Act or by any revisions to its interpretation of section 332(c)(7) of the Communications Act.

141. As of June 28, 2013, there are approximately 113,612 registration records in a 'Constructed' status and 13,572 registration records in a 'Granted, Not Constructed' status in the ASR database. This includes both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which the Commission can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require antenna structure registration, the Commission does not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners who would be subject to the proposed rules. Moreover, the SBA has not developed a size standard for small businesses in the category Tower Owners. Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes, however, that when all individuals owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands, and that nearly all of these qualify as small businesses under the SBA's definition for All Other Telecommunications. In addition, there may be other non-licensee owners of other wireless infrastructure, including DAS and small cells, that might be affected by the regulatory measures proposed in this NPRM. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

142. The NPRM proposes an exemption from the environmental notification process that, if adopted, may require amending a current information collection. Under the environmental notification rules, prior to filing a completed Antenna Structure Registration (ASR) application for any new antenna structure or for certain categories of antenna structure modifications or replacements, the ASR applicant must initially submit into the ASR system a partially completed FCC Form 854 that includes information about the proposed antenna structure but is not yet complete for filing. The applicant must also provide local notice of its proposed tower through publication in a local newspaper or other appropriate means, such as by following the local zoning public notice process. The Commission then posts information about the proposal on its Web site for thirty days, relying on information submitted by the applicant. Applicants claiming either a waiver from the notification process or entitlement to a defined exemption from the notification process must so indicate on their Form 854 submission.

143. This NPRM proposes to adopt a new limited exemption from the environmental notification requirements. This exemption would apply to temporary antenna structures that, because of their characteristics, do not have the potential for significant environmental effects. For these antenna structures, the NPRM proposes to find that the risk that carriers will not be able to meet short-term capacity needs if required to complete the notification process outweighs the small likelihood that the process will confer any benefit. The NPRM further seeks comment on the specific criteria for such an exemption, and whether it is sufficient for exemption if an antenna structure (1) will be in use for 60 days or less, (2) requires notice of construction to the Federal Aviation Administration (FAA), (3) does not require marking or lighting pursuant to FAA regulations, (4) will be less than 200 feet in height, and (5) will involve minimal or no excavation. Should such an exemption be adopted, applicants would be required to indicate on their Form 854 filing that they are claiming the notification exemption for new towers and to demonstrate that they satisfy any applicable criteria.

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

144. The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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.

145. In this proceeding, the Commission seeks to encourage and promote the deployment of advanced wireless broadband and other services by tailoring or streamlining the regulatory review of new wireless network infrastructure consistent with the law and the public interest. The Commission therefore anticipates that the steps it proposes or on which it seeks comment will not impose any significant economic impacts on small entities, and will in fact help reduce burdens on small entities that may need to deploy wireless infrastructure by reducing the cost and delay associated with the deployment of such infrastructure. As discussed below, however, certain proposals may impose regulatory compliance costs on small jurisdictions.

146. The NPRM seeks comment in four major areas relating to the regulation of wireless facility siting and construction. First, it seeks comment on whether and by what measures the Commission should expedite environmental review under the National Environmental Policy Act of 1969 and section 106 of the National Historic Preservation Act of 1966 for DAS and small cell deployments and

other new wireless network technologies involving the deployment of small facilities that may have minimal potential for significant environmental effects. The proposed measures should reduce existing regulatory costs for small entities that construct or deploy wireless infrastructure, and will not impose any additional costs on such entities. The Commission seeks comment on the economic impact of these clarifications and exclusions on small entities and invite commenters addressing these options to discuss alternatives that could further lessen the burden on small businesses and reduce unnecessary costs and delays associated with the deployment of wireless network infrastructure, without risking significant environmental impact.

147. In particular, the NPRM proposes to amend the first sentence of Note 1 to § 1.1306 of the Commission's rules to clarify that the existing NEPA exclusion for collocations of antennas on an existing building or antenna tower also applies to collocations on other structures, including the types of short structures upon which DAS and small facilities may be collocated. This change would clarify that small entities proposing to collocate wireless equipment on structures such as poles or water towers would be entitled to the same relief from the requirement to prepare an Environmental Assessment (EA) that they receive under Note 1 to § 1.1306 when collocating on buildings and antenna towers. The NPRM also seeks comment on whether to further amend the first sentence of Note 1 to § 1.1306 to clarify that the collocation exclusion applies to collocations of equipment inside buildings as well as to equipment attached externally, and whether to provide expressly that the exclusion for antennas also applies to associated equipment. This change would clarify that entities, including small entities, proposing to place wireless equipment inside buildings or on structures such as poles or water towers would be entitled to the same relief from the requirement to prepare an EA that they receive under Note 1 to § 1.1306 when collocating on the outside of buildings.

148. The NPRM further seeks comment on whether to adopt new categorical exclusions from NEPA and section 106 review for DAS and small cells and on how such exclusions should be defined to encompass other wireless technologies that similarly involve deployment of small facilities and therefore warrant similar treatment for purposes of NEPA and section 106 review. These new exclusions would reduce environmental compliance costs of small entities by providing that eligible proposed deployments of small wireless facilities do not require the preparation of an EA.

149. Second, the NPRM proposes to adopt an exemption from the pre-construction environmental notification process for certain temporary towers that have characteristics (very short duration, height limits, minimal or no excavation, and no lighting) that minimize their potential to cause significant environmental effects, and seeks comment specifically on an exemption for antenna structures that (1) will be in use for 60 days or less, (2) require notice of construction to the FAA, (3) do not require marking or lighting pursuant to FAA regulations, (4) will be less than 200 feet in height, and (5) will involve minimal or no excavation. The NPRM tentatively concludes that this exemption will serve the public interest by reducing the burden on broadband and other wireless service providers, including small entities. The Commission seeks comment on the economic impact of this proposal on small entities, and any alternative approaches that may further reduce the burden on such entities.

150. Third, the NPRM seeks comment on rules interpreting and implementing section 6409(a) of the Spectrum Act, which governs State and local review of eligible requests for modification of existing wireless towers or base stations, including requests for collocation. In particular, it seeks comment on the interpretation of various statutory terms, on time limits for the review of applications covered by section 6409(a), and other issues relevant to how State or local governments process and review applications under the provision. In considering what interpretations to adopt from among potential alternatives, the Commission will give full consideration to the effects on small entities, including small governmental jurisdictions, and will not adopt an interpretation that significantly burdens small entities unless necessary to effectuate the intent of the statute. The Commission invites commenters to discuss the economic impact on small entities of the interpretations of section 6409(a) on which the Commission seeks comment and to suggest alternatives that may reduce the impact on small entities while achieving the goals of the Commission and the provision. For example, the NPRM seeks comment on how the Commission might encourage efforts to develop best practices for applying section 6409(a), and on whether the Commission should provide a transition period to allow States and localities to implement the requirements of section 6409(a) in their laws, ordinances, and procedures, without risking significant delay in implementation of the provision.

151. Finally, the NPRM seeks comment on whether to clarify certain aspects of the Commission's interpretations of section 332(c)(7) in the *2009 Declaratory Ruling.* In particular, it seeks comment on whether to clarify when a siting application is considered complete, how the presumptive time frames apply in the context of local moratoria, whether to refine the substantial increase in size test as applied to collocations on structures other than communications towers under section 332(c)(7), how the decisions in the *2009 Declaratory Ruling* apply to deployments of DAS and small cell facilities, and whether the Commission should adopt remedies beyond those provided in the *2009 Declaratory Ruling.* The NPRM also seeks comment on whether ordinances establishing preferences for municipal property sitings violate section 332(c)(7)(B)(i)(I). The Commission invites commenters to discuss the economic impact of any clarification of those rulings on small entities, including small jurisdictions, and on any alternatives that would reduce the economic impact on such entities.

152. For the options discussed in this NPRM, the Commission seeks comment on the effect or burden of the prospective regulation on small entities, including small jurisdictions, the extent to which the regulation would relieve burdens on small entities, and whether there are any alternatives the Commission could implement that could achieve the Commission's goals while at the same time minimizing or further reducing the burdens on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

153. None.

B. Initial Paperwork Reduction Act Analysis

154. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,

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

C. Ex Parte Rules—Permit-but-Disclose

155. The proceeding this NPRM initiates shall be treated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

VII. Ordering Clauses

156. Accordingly, *it is ordered,* pursuant to sections 1, 2, 4(i), 7, 201, 301, 303, 309, 332, 1403, and 1455 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 157, 201, 301, 303, 309, 332, 1403, and 1455, section 102(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(C), and section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, that this Notice of Proposed Rulemaking *is* hereby *adopted.*

157. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before February 3, 2014 and reply comments on or before March 5, 2014.

158. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 17 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79, et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, and 1455.

■ 2. Amend § 1.1306 by
■ a. Revising NOTE 1; and
■ b. Redesignating NOTES 2 and 3 as ''NOTE 2 to § 1.1306'' and ''NOTE 3 to § 1.1306'' respectively.

The revision reads as follows:

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

NOTE 1 to § 1.1306: The provisions of § 1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment on an existing building, antenna tower, or other structure, or inside an existing building or other structure, unless § 1.1307(a)(4) of this part is applicable. Such antennas and associated equipment are subject to § 1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b) of this part. The provisions of §§ 1.1307 (a) and (b) of this part do not encompass the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the applicant or others. The use of existing buildings, towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged. The provisions of §§ 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

* * * * *

■ 3. Add Subpart CC to part 1 read as follows:

Subpart CC—State and Local Review of Applications to Site Wireless Facilities

Sec.
1.40001 *Wireless Facility Modifications.*

§ 1.40001 Wireless Facility Modifications.

(a) *Purpose.* These rules are issued under the Communications Act of 1934, as amended, 47 U.S.C. 151 et seq., implementing section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) *Definitions.* Terms used in this section have the following meanings.

Base Station. A station at a specified site that enables wireless communication between user equipment and a communications network, including any associated equipment such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. It includes a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station. It may encompass such equipment in any technological configuration, including distributed antenna systems and small cells.

Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Eligible Facilities Request. Any request for modification of an existing wireless tower or base station involving;

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

Eligible Support Structure. Any structure that meets the definition of a wireless tower or base station.

Transmission Equipment. Any equipment that facilitates transmission for wireless communications, including all the components of a base station, such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply, but not including support structures.

Wireless Tower. Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized license-exempt antennas and their associated facilities, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower. It includes structures that are constructed solely or primarily for any wireless communications service, such as, but not limited to, private, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul.

(c) A State or local government may not deny and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(d) A modification of an eligible support structure would result in a substantial change in the physical dimension of such structure if

(1) The proposed modification would increase the existing height of the support structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the proposed modification may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) The proposed modification would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) The proposed modification would involve adding an appurtenance to the body of the support structure that would protrude from the edge of the support structure more than twenty feet, or more than the width of the support structure at the level of the appurtenance, whichever is greater, except that the proposed modification may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the support structure via cable; or

(4) The proposed modification would involve excavation outside the current structure site, defined as the current boundaries of the leased or owned property surrounding the structure and any access or utility easements currently related to the site.

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 309, 48 Stat. 1081, 1085 as amended; 47 U.S.C. 301, 309.

■ 5. Amend § 17.4 by revising paragraphs (c)(1)(v) and (vi); and add paragraph (c)(1)(vii) to read as follows:

§ 17.4 Antenna structure registration.

* * * * *

(c) * * *

(1) * * *

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission. See § 1.1311(e) of this chapter; or

(vii) For any antenna structure that meets all of the following criteria:

(A) The antenna structure will be in use for no longer than 60 days;

(B) Construction of the antenna structure requires the filing of Form 7460–1 with the FAA;

(C) The antenna structure does not require marking or lighting pursuant to FAA regulations;

(D) The antenna structure will be less than 200 feet in height;

(E) The antenna structure will involve either no excavation or excavation where the depth of previous disturbance exceeds the proposed construction depth (excluding proposed footings and other anchoring mechanisms) by at least two feet; and

(F) Construction of the antenna structure does not require the filing of an Environmental Assessment pursuant to § 1.1307 of this chapter.

* * * * *

[FR Doc. 2013–28349 Filed 12–4–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

49 CFR Part 592

[Docket No. NHTSA–2013–0041; Notice 1]

RIN 2127–AL43

Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to clarify NHTSA regulations on registered importers (''RIs'') of motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards. The proposal would require RIs to certify to NHTSA, as appropriate, that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard or that the vehicle complies with those requirements as manufactured, or as modified prior to importation. The proposal would replace text that was inadvertently omitted when the regulations were last revised.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than January 6, 2014.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process,

see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the dockets or visit the Docket Management Facility at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, NHTSA (202) 366–5288. For legal issues, you may call Nicholas Englund, Office of Chief Counsel, NHTSA (202) 366–5263. You may call Docket Management at (202) 366–9324. You may visit the Docket in person from 9 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Introduction

NHTSA published a final rule on August 25, 2011 (76 FR 53072) amending parts 567, 591, 592, and 593 of title 49 to address issues related to the RI program. In amending the regulations, the agency inadvertently deleted from 49 CFR 592.6(d)(1) text under paragraphs (i) and (ii) that requires the RI to certify to NHTSA, as appropriate, that an imported vehicle either is not required to comply with the parts marking requirements of the Theft Prevention Standard (49 CFR part 541) or that the vehicle complies with those requirements as manufactured, or as modified prior to importation.

Background and Amendments

The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562, ''the 1988 Act''), which became effective on January 31, 1990, limited the importation of vehicles that did not comply with the Federal motor vehicle safety standards (FMVSS) to those capable of being modified to comply. To enhance oversight, the 1988 Act required that necessary modifications be performed by RIs. RIs are business entities that have demonstrated to NHTSA that they are technically and financially capable of importing nonconforming motor vehicles and of performing the necessary modifications on those vehicles so that they conform to all applicable FMVSS. See generally, 49 U.S.C. 30141–30147. As discussed in the January 14, 2011 proposed rulemaking that preceded the final rule (76 FR 2631), NHTSA proposed certain amendments to the RI regulations to protect the integrity of the RI program and to clarify RI requirements. In the final rule that was published on August 25, 2011 (76 FR 53072), CFR 592.6(d)(1) was amended by adding language requiring that RIs certify to NHTSA that they destroyed or exported nonconforming motor vehicle equipment that was removed from imported vehicles during conformance modifications. The remaining text of the paragraph remained unchanged and read: ''The Registered Importer shall also certify, as appropriate, that either:

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.''

In the regulatory text of the final rule, NHTSA inadvertently failed to properly mark subparagraphs (i) and (ii), resulting in the deletion of those paragraphs. In this rulemaking, the agency is proposing to restore the language that was originally in subparagraphs (i) and (ii).

The proposed amendment would not change the meaning or application of the regulations, as explained in the preamble of the final rule at 76 FR 53072.

Rulemaking Analyses and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This action was reviewed by the Office of Management and Budget under E.O. 12866. This rulemaking is not significant. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that if made final, the costs of the proposed rule would be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. If made final, the rule would have no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is

required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this proposed rulemaking under the Regulatory Flexibility Act, and certifies that if the proposed amendments are adopted they would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendments would primarily affect entities that currently modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies would be unable to certify as proposed by this action that either: (i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or (ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.''

Governmental jurisdictions would not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' Executive Order 13132 defines the term ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the rule as proposed.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 ''Civil Justice Reform,'' the agency has considered whether this proposed rule would have any retroactive effect. NHTSA concludes that this proposed rule would not have any retroactive effect. Judicial review of any rule adopted from this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. NHTSA requests public comment on whether (a) ''regulatory approaches taken by foreign governments'' concerning the subject matter of this rulemaking and (b) the above policy statement has any implications for this rulemaking.

G. Executive Order 13211

Executive Order 13211 applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA. As noted above, this proposed rule is not significant under E.O. 12866. NHTSA also believes that this proposed rule would not have any effect on the supply, distribution or use of energy.

H. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because a final rule based on this proposal would not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all

rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Part 592 includes collections of information for which NHTSA has obtained OMB Clearance No. 2127–0001, a consolidated collection of information for ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper and Theft Prevention Standards,'' approved through January 31, 2014. This proposed rule, if made final, would not affect the burden hours associated with Clearance No. 2127–0001 because we are proposing only to reinstate regulatory text that was inadvertently omitted when the regulations were last amended. This proposed regulation will not impose new collection of information requirements or otherwise affect the scope of the program.

K. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant and does not concern an environmental, health, or safety risk.

L. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the agency to provide Congress, through the OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This proposed rule would reinstate regulatory text that was inadvertently omitted when the regulations at issue were last amended. We are proposing no substantive changes to the vehicle import program or any action that would require the use of voluntary consensus standards. For these reasons, Section 12(d) of the NTTAA would not apply.

M. Public Participation

How do I prepare and submit comments?

Your comments must be written and be in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long. 49 CFR 553.21. We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address identified at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the NHTSA Office of Chief Counsel (NCC–110), 1200 New Jersey Avenue SE., Washington, DC 20590: (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR Part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR Part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address identified at the beginning of this document under **ADDRESSES**.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date identified at the beginning of this document under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address and times identified at the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, go to *http://*

www.regulations.gov and follow the on-line instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

N. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 592 as follows:

List of Subjects in 49 CFR Part 592

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 592 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

■ 2. Amend § 592.6 to add subparagraphs (d)(1)(i) and (ii):

§ 592.6 Duties of a registered importer.

* * * * *

(d) * * *

(1) * * *

(i) The vehicle is not required to comply with the parts marking requirements of the theft prevention standard (part 541 of this chapter); or

(ii) The vehicle complies with those parts marking requirements as manufactured, or as modified prior to importation.

* * * * *

Issued on November 27, 2013.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2013–28877 Filed 12–4–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2011–0003; FXES111309F2130–134–FF09E22000]

RIN 1018–AY42

Endangered and Threatened Wildlife and Plants; Listing the Straight-Horned Markhor as Threatened With Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are making changes to our proposed rule of August 7, 2012, to reclassify the straight-horned markhor (*Capra falconeri jerdoni*) from endangered to threatened. We propose to combine the straight-horned markhor (*Capra falconeri jerdoni*) and the Kabul markhor (*Capra falconeri megaceros*) into one subspecies, the straight-horned markhor (*Capra falconeri megaceros*), under the Endangered Species Act of 1973, as amended (Act) due to a change in taxonomy. We have conducted a status review of the straight-horned markhor (*C. f. megaceros*) and propose to list this subspecies as threatened under the Act. We are also proposing a concurrent special rule. The effects of these regulations will be to protect and conserve the straight-horned markhor, while encouraging local communities to conserve additional populations of the straight-horned markhor through sustainable-use management programs.

DATES: We will consider comments and information received or postmarked on or before February 3, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 21, 2014.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R9–ES–2011–0003, which is the docket number for this rulemaking. You may submit a comment by clicking on ''Comment Now!'' If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–ES–2011–0003; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested under **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

We are proposing to combine two subspecies of markhor currently listed under the Endangered Species Act of 1973, as amended (Act), the straight-horned markhor (*C. f. jerdoni*) and Kabul markhor (*Capra falconeri megaceros*), into one subspecies, the straight-horned markhor (*C. f. megaceros*), based on a taxonomic change. We conducted a status review of the newly combined subspecies and are issuing a proposed rule to list the straight-horned markhor (*C. f. megaceros*) as threatened under the Act.

We are also proposing a special rule that would allow for the import of sport-hunted straight-horned markhor trophies under certain conditions. This regulation would support and encourage conservation actions of the straight-horned markhor.

II. Major Provision of the Regulatory Action

If adopted as proposed, this action will eliminate the separate listing of the straight-horned markhor and Kabul markhor as endangered and list the combined straight-horned markhor

subspecies as threatened in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h), and would allow the import of sport-hunted straight-horned markhor trophies under certain conditions at 50 CFR 17.40. This action is authorized by the Act.

Previous Federal Actions

On June 14, 1976, we published in the **Federal Register** a rule listing the straight-horned markhor, or the Suleiman markhor (*Capra falconeri jerdoni*), and the Kabul markhor (*C. f. megaceros*), as well as 157 other U.S. and foreign vertebrates and invertebrates, as endangered under the Act (41 FR 24062). All species were found to have declining numbers due to the present or threatened destruction, modification, or curtailment of their habitats or ranges; overutilization for commercial, sporting, scientific, or educational purposes; the inadequacy of existing regulatory mechanisms; or some combination of the three. However, the main concerns were the high commercial importance and the inadequacy of existing regulatory mechanisms to control international trade.

Later, the Suleiman markhor and the Kabul markhor were considered by some authorities to be the single subspecies *C. f. megaceros* (straight-horned markhor). These subspecies currently remain listed as separate entities under the Act.

On March 4, 1999, we received a petition from Sardar Naseer A. Tareen, on behalf of the Society for Torghar Environmental Protection and the International Union for Conservation of Nature (IUCN) Central Asia Sustainable Use Specialist Group, requesting that the Suleiman markhor (*Capra falconeri jerdoni* or *C. f. megaceros*) population of the Torghar Hills region of the Balochistan Province, Pakistan, be reclassified from endangered to threatened under the Act. On September 23, 1999 (64 FR 51499), we published in the **Federal Register** a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted, and we initiated a status review. We opened a comment period, which closed January 21, 2000, to allow all interested parties to submit comments and information. A 12-month finding was never completed.

On August 18, 2010, we received a petition dated August 17, 2010, from Conservation Force, on behalf of Dallas Safari Club, Houston Safari Club, African Safari Club of Florida, The Conklin Foundation, Grand Slam Club/Ovis, Wild Sheep Foundation, Jerry Brenner, Steve Hornaday, Alan Sackman, and Barbara Lee Sackman, requesting the Service downlist the Torghar Hills population of the Suleiman markhor (*Capra falconeri jerdoni* or *C. f. megaceros*), in the Balochistan Province of Pakistan, from endangered to threatened under the Act. On June 2, 2011, we published in the **Federal Register** a finding that the petition had presented substantial information indicating that the requested reclassification may be warranted, and we initiated a status review (76 FR 31903). We opened a comment period, which closed August 1, 2011.

On February 1, 2012, Conservation Force, Dallas Safari Club, and other organizations and individuals filed suit against the Service for failure to conduct a 5-year status review pursuant to section 4(c)(2)(A) under the Act (*Conservation Force, et al.* v. *Salazar,* Case No. 11 CV 02008 D. D. C.). On March 30, 2012, a settlement agreement was approved by the Court (11–CV–02008, D. D. C.), in which the Service agreed to submit to the **Federal Register** by July 31, 2012, a 12-month finding on the August 2010 petition. On August 7, 2012, the Service published in the **Federal Register** a 12-month finding and proposed rule to reclassify the straight-horned markhor (*C.f. jerdoni*) from endangered to threatened (77 FR 47011).

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available. Therefore, we request comments and information from other concerned governmental agencies, the scientific community, and any other interested parties concerning this proposed rule. We particularly seek clarifying information concerning:

(1) Distribution, habitat selection, diet, and population abundance and trends of this subspecies.

(3) The effects of habitat loss and changing land uses on the distribution and abundance of this subspecies.

(4) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(5) Information on the status of habitat measures being implemented in the Torghar Conservation Project.

(6) Information on whether changing climatic conditions are affecting the subspecies or its habitat.

Please include sufficient information with your submission (such as full references) to allow us to verify information you provide. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Prior to issuing a final rule on this proposed action, we will take into consideration all information we receive. Such information may lead to a final rule that differs from this proposal. All comments, including names and addresses of commenters, will become part of the administrative record.

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in **FOR FURTHER INFORMATION CONTACT** by the date specified above in **DATES**.

Background

Taxonomic Classification

The markhor (*Capra falconeri*) is a species of wild goat belonging to the Family Bovidae and Subfamily Caprinae (sheep and goats) (Valdez 2008, unpaginated). When the markhor was first listed under the Act in 1975, seven subspecies of markhor were generally recognized: *Capra falconeri jerdoni* (straight-horned or Suleiman markhor), *C. f. megaceros* (Kabul markhor), *C. f. cashmirensis* (Kashmir markhor), *C. f. falconeri* (Astor markhor), *C. f. ognevi* (Uzbek markhor), *C. f. heptneri* (Tajik markhor), and *C. f. chialtanensis* (Chiltan markhor) (64 FR 51499, September 23, 1999; Roberts 1977, p. 196). In 1975, Schaller and Khan (1975, pp. 188, 191) recognized 3 subspecies of markhor based on horn shape and body

characteristics: *C. f. jerdoni* and *C. f. megaceros* were combined into *C. f. megaceros* (straight-horned markhor); *C. f. cashmirensis* and *C. f. falconeri* were combined into *C. f. falconeri* (flare-horned markhor); and *C. f. ognevi* and *C. f. heptneri* were combined into *C. f. heptneri* (Heptner's markhor). Many authorities consider *C. f. chialtanensis* to be *Capra aegagrus chialtanensis* (Chiltan wild goat) (64 FR 51500, September 23, 1999).

In our June 2, 2011, 90-day petition finding, and August 7, 2012, proposed rule to reclassify the straight-horned markhor (*C. f. jerdoni*), we requested information on the taxonomy of *C. f. jerdoni* and *C. f. megaceros* to determine if these constitute a single subspecies. We have reviewed the available information, including information submitted by the public. While scientists have not reached a consensus on the correct classification of markhor (Zahler 2013, pers. comm.; Frisina 2012, pers. comm.), the Integrated Taxonomic Information System (ITIS), International Union for Conservation of Nature (IUCN), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) all follow Grubb 2005 (p. 701), which recognizes three subspecies of markhor as recommended by Schaller and Khan (1975 pp. 188, 191) (ITIS 2013a, unpaginated; ITIS 2013b, unpaginated; Smithsonian National Museum of Natural History 2011, unpaginated; CITES Resolution Conf. 12.11. (Rev. CoP15) 2010, p. 3; Valdez 2008, unpaginated; CITES 10.84 (Rev.) 1997, p. 894).

Currently, the straight-horned markhor (*C.f. jerdoni*) and Kabul markhor (*C.f. megaceros*) are listed as separate subspecies under the Act. We propose to revise the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h) to maintain consistency with ITIS, IUCN, and CITES to reflect the current scientifically accepted taxonomy and nomenclature. In the Proposed Regulation Promulgation section of this document, we propose the taxonomic change to reflect the combining of the straight-horned markhor (*C.f. jerdoni*) and Kabul markhor (*C.f. megaceros*) into one subspecies, the straight-horned markhor (*C.f. megaceros*).

Subspecies Information

Due to the proposed taxonomic change, we have conducted a status review of the newly combined straight-horned markhor subspecies. For most of the straight-horned markhor populations, there is no detailed information on distribution, population estimates, or threats to the subspecies; most information that is available predates the onset of hostilities in the region in 1979. However, the Torghar Hills population of the straight-horned markhor has been extensively studied since the mid-1980s due to the implementation of a conservation plan in this area. Therefore, this status review mainly consists of information related to this population. When possible, we have included general information on the status of the populations outside of the Torghar Hills. For these particular populations, for which we lack information, we request additional information from the public during this proposed rule's comment period (see Information Requested, above).

Species Description

Markhor are sturdy animals with strong, relatively short, thick legs and broad hooves. They are a reddish-grey color, with more buff tones in the summer and grey in the winter. The legs and belly are a cream color with a conspicuous dark brown pattern on the forepart of the shank interrupted by a white carpal patch. They also have a dark brown mid-dorsal stripe that extends from the shoulders to the base of the tail. The tail is short and sparsely covered with long black hairs, but is naked underneath. Adult males have an extensive black beard followed by a shaggy mane of long hairs extending down the chest and from the fore part of the neck. There is also a crest of long black and dark brown hairs that hang like a mane down either side of the spine from the shoulders to the croup (Roberts 1977, p. 197). Horns are straight with an open, tight spiral resembling a corkscrew (Schaller and Khan 1975, p. 189).

Life History

Straight-horned markhor are associated with extremely rugged terrain with precipitous cliffs, rocky caves, and bare rock surfaces interspersed with patches of arid, steppe vegetation. They can be found from 600 meters (m) (1,969 feet (ft)) up to 3,300 m (10,827 ft) in elevation (Woodford *et al.* 2004, p. 181; Mitchell 1989, p. 8; Johnson 1994b, p. 5).

Markhor are diurnal in feeding activity. They are most active in the early morning and late evening (Mitchell 1989, p. 8). Wild pistachios are a preferred food for straight-horned markhor (Johnson 1994, p. 12; Roberts 1977, p. 198), although in general they are known to feed on grasses and leaves, and twigs of bushes. Markhor seek water in the late afternoon; they may need to descend to valley bottoms for water, but only after darkness (Roberts 1977, p. 198).

Markhor are gregarious, with females, their young, and immature males associating in small herds, but competition with domestic goat flocks may drive markhor populations to higher terrain and result in larger herds. Adult males live solitary lives, taking shelter under rock overhangs or natural caves. They only join the females and young during the rut, which for the straight-horned markhor peaks around mid-November and lasts about 2 weeks. Males may attach themselves to one particular territory or herd. Fighting between rival males also occurs during this time. Markhor reach sexual maturity around 3 years of age. Females usually give birth to one young, but twins are not uncommon. A young markhor will remain with its mother until the rutting season or until the next young is born. After this, the female will drive the older young away if it approaches too closely. In the wild, it is possible that markhor can live up to 18 years of age, but perhaps few males live beyond 11 or 12 years (Ali 2008, p. 16; Mitchell 1989, p. 9; Roberts 1977, pp. 198–199).

Range and Population

Historically, the straight-horned markhor inhabited a wide range in the mountains of eastern Afghanistan and Pakistan. In Afghanistan, it has been reported that this subspecies survives only in the Kabul Gorge and the Kohe Safi area of Kapissa Province, and in some isolated pockets in between (Ali 2008, pp. 17–18; Valdez 2008, unpaginated; Habibi 1997, p. 208; Schaller and Khan 1975, pp. 195–196). However, no surveys have been conducted in the area, and it is likely that this subspecies has been extirpated from Afghanistan (Zahler 2013, pers. comm.). In Pakistan, the straight-horned markhor is found in the mountains of Balochistan and Khyber Pakhtunkhwa provinces. There is one unconfirmed report of the subspecies in Punjab Province (Valdez 2008, unpaginated; CITES 10.84 (Rev.) 1997, p. 894).

Within Baluchistan, the straight-horned markhor has been reduced to small, scattered populations on all the mountain ranges immediately to the north and east of Quetta, including Murdar, Takhatu, Zarghun, Kaliphat, Phil Garh, and Suleiman. It is reported that the straight-horned markhor still survives in the Shingar Range on the border of Balochistan and South Waziristan. The greatest concentration is in the Torghar Hills of the Toba Kakar Range on the border with Afghanistan,

within a community-based management program, the Torghar Conservation Project (Frisina and Tareen 2009, pp. 142–143; Johnson 1994b, p. 16; Roberts 1977, p. 198; Schaller and Khan 1975, p. 196).

Within Khyber Pakhtunkhwa, the subspecies is reported to still survive in the area of Sheikh Buddin, as well as the Sakra Range, Murghazar Hills, Khanori Hills, and Safed Koh Range; however, the occurrence in Safed Koh has been questioned due to a lack of information (Ali 2008, p. 18; Valdez 2008, unpaginated; Hess *et al.* 1997, p. 255; Roberts 1977, p. 198).

Limited information is available for populations throughout most of the straight-horned markhor's range. Many historical populations were extirpated due to over-hunting (Johnson 1994b, p. 5; Johnson 1994, p. 10). In Afghanistan, very few straight-horned markhor survive; perhaps as few as 50–80 occur in the Kohe Safi region, with few in other isolated pockets (Valdez 2008, unpaginated; Habibi 1997, pp. 205, 208; Schaller and Khan 1975, p. 195). However, as stated above, this subspecies may be extirpated from Afghanistan (Zahler 2013, pers. comm.). In Pakistan, Schaller and Khan (1975, pp. 195–196) estimated 150 in Takhatu, 20 to 30 in Kalifat, 20 in Zarghum, 20 in Shinghar, 20 around Sheikh Buddin, 50 in the Sakra Range, and at least 100 in Safed Koh. Few were estimated to survive in the Murdar Range, and a remnant population may have existed near Loralei in the Gadabar Range. Roberts (1969 in Valdez, 2008, unpaginated) believed the number of markhor in the Toba Kakar range was fewer than 500. In 1984, Tareen estimated fewer than 200 remained in the Torghar Hills (Mitchell, 1989, p. 9). Overall, Schaller and Khan (1975, pp. 195–196) estimated fewer than 2,000 straight-horned markhor survived throughout the subspecies' range.

In general, markhor populations are reported as declining (Kanderian *et al.* 2011, p. 287; Valdez 2008, unpaginated). Hess *et al.* (1997, p. 255) and Habibi (1997, p. 208) concluded that the straight-horned markhor had likely not increased in recent years. Current estimates for populations of straight-horned markhor are lacking, with the exception of the population in the Torghar Hills of the Toba Kakar Range. This population has been extensively studied due to the implementation of a community-based management program. In addition, as part of the use of annual export quotas for markhor sport-hunted trophies granted to Pakistan at the 10th meeting of the Conference of the Parties to CITES, Pakistan submits annual surveys of markhor populations, including populations within the Torghar Conservation Area (Resolution Conf. 10.15 (Rev. CoP 14); See discussion below under Summary of Threats). Based on surveys conducted from 1985 through 1988, Mitchell (1989, p. 9) estimated 450 to 600 markhor inhabited the Torghar Hills. Regular surveys of the managed area have taken place since 1994, when Johnson (1994b, p. 12) estimated the population of markhor to be 695. Later surveys estimated the population to be 1,296 in 1997; 1,684 in 1999; 2,541 in 2005; 3,158 in 2008; and 3,518 in 2011 (Frisina and Rasheed 2012, p. 5; Arshad and Khan 2009, p. 9; Shafique 2006, p. 6; Frisina 2000, p. 8; Frisina *et al.* 1998, p. 6). Although most of the mountain ranges in Balochistan have not been formally surveyed, Johnson (1994b, p. 16) concluded that Torghar was the last remaining stronghold for the subspecies.

Summary of Threats

Throughout the range of the straight-horned markhor, over-hunting, keeping of large herds of livestock for subsistence, deforestation, and the lack of effective federal and provincial laws have devastated populations of straight-horned markhor and destroyed vital habitat (Valdez 2008, unpaginated; Habibi 1997, pp. 205, 208; Hess *et al.* 1997, p. 255).

Small-scale hunting has been a long-standing tradition of the people of Afghanistan and Pakistan (Zahler 2013, pers. comm.; Kanderian *et al.* 2011, p. 283; Frisina and Tareen 2009, p. 146; Ahmed *et al.* 2001, p. 2). However, prior to the beginning of the Soviet-Afghan War in 1979, few animals were hunted, as weapons were primitive and ammunition scarce and expensive. After the beginning of the war, there was an influx of more sophisticated weapons, such as semi- and fully-automatic rifles, and cheap ammunition was more accessible. This proliferation of arms and increased likelihood of a successful kill, combined with millions of displaced people dependent on wild meat for subsistence, led to excessive hunting of wildlife and critically low populations of straight-horned markhor (Zahler 2013, pers. comm.; Kanderian *et al.* 2011, p. 284; Frisina and Tareen 2009, p. 145; MAIL 2009, p. 4; Woodford *et al.* 2004, p. 181; Ahmed *et al.* 2001, pp. 2, 4; CITES 10.84 (Rev.) 1997, p. 895; Habibi 1997, pp. 205, 208; Hess *et al.* 1997, p. 255; Johnson 1994b, p. 1).

In an effort to manage diminishing wildlife populations, national bans on hunting were implemented in Pakistan in 1988, 1991, and 2000. However, the ban had little impact on the recovery of wildlife populations (Ahmed *et al.* 2001, p. 5). In 2005, Afghanistan banned hunting for 5 years, but there was no enforcement and most Afghans were either unaware of the Decree or ignored it (Kanderian *et al.* 2011, p. 291; MAIL 2009, pp. 4, 23, 24). Additionally, the markhor (*Capra falconeri*) is a protected species under Afghanistan's Environmental Law of 2007, the Balochistan Wildlife Protection Act of 1974 (BWPA), and the North-West Frontier Province Wild-life (Protection, Preservation, Conservation, and Management) Act (NWFPWA) of 1975, which extends to all of the Khyber Pakhtunkhwa Province. Under these laws, hunting, killing, or capturing of markhor is prohibited (MAIL 2009, p. 23; Aurangzaib and Pastakia 2008, p. 58; Official Gazette No. 912, dated 25 January 2007, Article 49; BWPA 1977, p. 15; NWFPWA 1975, Third Schedule).

Today, the straight-horned markhor has been extirpated from much of its former range due to over-hunting, and they survive only in the most inaccessible regions of its range (Habibi 1997, p. 205; Johnson 1994b, p. 5; Johnson 1994, p. 10), despite laws intended to provide protection from hunting. We have no information on the extent of poaching currently taking place in most of the subspecies' range, but information suggests that hunting remains a threat to most remaining populations of this subspecies (UNEP 2009, p. 10; NEPA and UNEP 2008, p. 17; Valdez 2008, unpaginated; CITES 10.84 (Rev.) 1997, p. 895; Hess *et al.* 1997, p. 255). However, increases in populations of ungulates, including markhor, have occurred in conservation areas managed specifically for trophy hunting (University of Montana 2013, unpaginated; Frisina and Rasheed 2012, p. 5; WCS 2012, unpaginated; Arshad and Khan 2009, p. 9; Government of Pakistan 2009, p. viii; Ali 2008, pp. 21, 38, 64; Shafique 2006, p. 6; Frisina 2000, p. 8; Virk 1999, p. 142; Frisina *et* al. 1998, p. 6). Currently, only one conservation plan is being implemented for the straight-horned markhor, the Torghar Conservation Project (TCP) in Torghar Hills, Pakistan.

In the early 1980s, local tribal leaders became alarmed at the significant decline in the markhor population in the Torghar Hills (Frisina and Tareen 2009, p. 145; Ahmed *et al.* 2001, p. 4; Johnson 1994b, p. 1). The population had reached a critical level, estimated at fewer than 200 (Ahmed *et al.* 2001, p. 4; Johnson 1994b, p. 14; Mitchell, 1989, p. 9). The tribal leaders attributed the decline to an increase in poaching due

to the significant increase in weapons in the area during the Soviet-Afghan War (Frisina and Tareen 2009, p. 145; Johnson 1994b, p. 1). After unsuccessful attempts to receive assistance from the Balochistan Forest Department, they turned to wildlife biologists in the United States, including the U.S. Fish and Wildlife Service. Together, they developed the TCP, an innovative, community-based conservation program that allows for limited trophy hunting to conserve local populations of markhor, improve habitat for both markhor and domestic livestock, and improve the economic conditions for local tribes in Torghar (Frisina and Tareen 2009, p. 146; Woodford *et al.* 2004, p. 182; Ahmed *et al.* 2001, p. 4 Johnson 1994b, pp. 1–2).

In 1985, the TCP was launched and covered most of the Torghar area (approximately 1,000 square kilometers (386 square miles)). First, tribal leaders implemented a ban on all hunting activities by tribesmen in the Torghar Hills. Then, local tribesmen were hired as game guards to assist in population surveys and prevent poachers from entering the Torghar Hills. Guards were placed at points of entry into the protected area to inform migrating tribesmen of the hunting ban, who, in turn, agreed to the ban so as not to jeopardize their passage through the Torghar Hills. Support for the program, including salaries for the game guards, is raised through fees for limited trophy hunting of markhor within the TCP, mostly by foreign game hunters. Currently, markhor fees are $35,000 U.S. dollars, 80 percent of which goes to the TCP and the other 20 percent goes to the Pakistani government. In the beginning, 7 game guards were hired; currently, 82 game guards are employed. The number of markhor allowed to be hunted each year is based on surveys conducted by game guards and wildlife biologists (Frisina and Tareen 2009, pp. 142, 146–147; Ahmed *et al.* 2001, p. 5; Johnson 1994b, p. 3). Numbers of animals taken have ranged from 1 to 5 animals per hunting season, or less than the 2 percent of the total population recommended by Harris (1993 in Woodford *et al.* 2004, p. 182) annually for trophy hunting (Frisina and Tareen 2009, pp. 146–147, 149; Ali 2008, p. 20; Woodford *et al.* 2004, p. 182; Johnson 1997, pp. 403–404). Because markhor have a polygynous mating system, reproduction rates have not been affected by the removal of a limited number of adult males (Woodford *et al.* 2004, p. 182), as evidenced by the continuing increase in the Torghar Hills population.

As a result of the TCP, poaching has been eliminated in the Torghar Hills (Woodford *et al.* 2004, p. 182; Johnson 1994b, p. 3). Johnson (1994b, p. 15) attributed the markhor population growth to the substantial reduction in mortality when uncontrolled hunting was stopped.

The markhor (*Capra falconeri*) is protected under CITES, an international agreement between governments to ensure that the international trade of CITES-listed plant and animal species does not threaten species' survival in the wild. Under this treaty, CITES Parties (member countries or signatories) regulate the import, export, and reexport of specimens, parts, and products of CITES-listed plant and animal species. Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Management Authority of each CITES Party. Both Afghanistan and Pakistan are Parties to CITES.

The straight-horned markhor was listed in CITES Appendix I, effective July 1, 1975. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species generally requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

Straight-horned markhor in the Torghar Hills, and other subspecies of markhor within community-managed conservation areas in Pakistan, may be legally hunted and exported. In 1997, at the 10th meeting of the Conference of the Parties to CITES, the Government of Pakistan submitted a proposal for approval of an annual export quota for sport-hunted markhor trophies to act as an incentive to communities to conserve markhor. During that same meeting, the Conference of the Parties approved an annual export quota of 6 sport-hunted markhor trophies for Pakistan (Resolution Conf. 10.15). Due to the success of conservation programs in Pakistan, CITES increased the annual export quota to 12 markhor in 2002, to further encourage community-based conservation (Ali 2008, p. 24; Resolution Conf. 10.15 (Rev. CoP 14)).

Furthermore, because the straight-horned markhor is listed as an Appendix-I species under CITES, legal international trade is very limited; most of the international trade in straight-horned markhor specimens consists of trophies and live animals. Data obtained from the United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database show that from July 1975, when the straight-horned markhor was listed in Appendix I, through 2011, a total of 86 specimens were reported to UNEP–WCMC as (gross) exports. Of those 86 specimens, 40 were trophies, 45 were live animals, and 1 was a body. In analyzing these data, it appears that one record may be an over-count due to a slight difference in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of straight-horned markhor specimens in international trade during this period was 84, including 40 trophies, 43 live animals, and 1 body. Exports from range countries included: 39 trophies from Pakistan, 1 trophy from Afghanistan, and 1 body from Afghanistan. It should be noted that the straight-horned markhor trade data provided above are based on reported trade to UNEP–WCMC in both the subspecies *Capra falconeri jerdoni* and the subspecies *Capra falconeri megaceros.* It should also be noted that the markhor at the species level (*Capra falconeri*) was transferred from CITES Appendix II to Appendix I in 1992, and since then, international trade was likely in some cases reported to UNEP–WCMC at the species level rather than the subspecies level. Therefore, it is possible that, between 1992 and 2011, some international trade in *Capra falconeri jerdoni* and *Capra falconeri megaceros* may have been reported to UNEP–WCMC at the species level. It was not possible to determine whether the trade reported at the species level represented trade in straight-horned markhor or trade in other markhor subspecies. Because there has been limited trade in straight-horned markhor, totaling 86 specimens over 37 years, we believe that international trade controlled via valid CITES permits is not a threat to the subspecies.

Habitat modification has also contributed to the decline of the straight-horned markhor. People living in rural areas heavily depend on natural resources; habitat throughout the range of the straight-horned markhor has been

negatively impacted by domestic livestock overgrazing and deforestation from logging and collection of wood for fuel, charcoal, and building materials (Kanderian *et al.* 2011, pp. 281, 284, 287; WWF 2011, unpaginated; MAIL 2009, p. 5; UNEP 2009, p. 6; NEPA and UNEP 2008, p. 15; Valdez 2008, unpaginated; WWF 2008, unpaginated; Hess *et al.* 1997, p. 255; CITES 10.84 (Rev.) 1997, p. 895).

Much of the land where straight-horned markhor occur is owned by local tribes whose subsistence is largely dependent on keeping large herds of primarily sheep and goats. Livestock often exceed the carrying capacity of rangelands, leading to overgrazing, a halt to natural regeneration, and subsequent desertification of native vegetation. Overgrazing and competition with domestic livestock for forage is known to have resulted in the decline of wild ungulates and pushed their occurrence to range edges (WWF 2011, unpaginated; Frisina and Tareen 2009, pp. 145, 154; UNEP 2009, p. 8; NEPA and UNEP 2008, pp. 15–17; Valdez 2008, unpaginated; WWF 2008, unpaginated; Woodford *et al.* 2004, p. 180; Tareen 1990, p. 4; Mitchell 1989, pp. 4–5; Schaller and Khan 1975, p. 197).

Throughout the markhor's range, millions of displaced people and a high human population growth rate have created a tremendous demand for natural resources. Straight-horned markhor habitat and food sources are suffering significant declines due to illegal logging and collection of wood for building materials, fuel, and charcoal (Zahler 2013, pers. comm.; Smallwood *et al.* 2011, p. 507; WWF 2011, unpaginated; MAIL 2009, pp. 3, 5; UNEP 2009, p. 6; NEPA and UNEP 2008, pp. 15–16; Valdez 2008, unpaginated; WWF 2008, unpaginated; Hess *et al.* 1997, p. 255; Hasan and Ali 1992, pp. 8–9, 12–13).

Several Afghan and Pakistani laws protect wildlife and its habitat in these countries. Protected areas, such as national parks, sanctuaries, and game reserves may be designated under Afghanistan's Environmental Law, the BWPA, and the NWFPWA (MAIL 2009, pp. 22–23; Aurangzaib and Pastakia 2008, pp. 58, 65–67; Environmental Law 2007, Articles 38, 39, 40, and 41; NWFPWA 1975, sections 15, 16, and 17). However, no designated protected areas contain the straight-horned markhor.

Article 45 of Afghanistan's Environmental Law dictates that grazing of livestock shall be managed and controlled by the Ministry of Agriculture, Animal Husbandry, and Food to minimize the impact on, and optimize use of, vegetation cover. Given that overgrazing of livestock is a wide-ranging threat to Afghanistan's environment (UNEP 2009, p. 8; NEPA and UNEP 2008, pp. 15–17; Valdez 2008, unpaginated), it appears that the Environmental Law has not yet been effectively implemented. Also, Presidential Decree No. 405 and No. 736 prohibit the cutting of forests to preserve and maintain forests as a national asset. However, these decrees are unfamiliar to most Afghans or are ignored (MAIL 2009, pp. 5, 23).

In Balochistan, the Forest Act of 1927 allows for the creation of various classes of forests, the reservation of state-owned forest land, and for the provincial government to assume control of privately owned forest land and declare government-owned land to be a protected area. It also prohibits grazing, hunting, quarrying, and clearing land for cultivation; removal of forest produce; and the felling or lopping of trees and branches in reserved and protected forests (Aurangzaib and Pastakia 2008, p. 46). However, this law does not provide for sustainable use, conservation, or the protection of endangered wildlife within forests. Other legislation related to forests in Balochistan restricts subsistence use, but focuses on maximizing commercial exploitation. This may be because these laws date back to the early 20th century and reflect priorities of that time. Provincial amendments have done little to alter the focus of these laws. Enforcement of forest laws is lacking, and where enforcement is possible, penalties are not severe enough to serve as a deterrent to violators. Furthermore, these laws may be overridden by other laws in favor of development and commercial uses (Aurangzaib and Pastakia 2008, pp. 42–43).

The Land Preservation Act of 1900 is a Punjab law that, by default, was applied to the Balochistan province shortly after its establishment in 1970. This law allows the government to prevent soil erosion and conserve sub-soil water. Activities such as clearing, breaking up, and cultivating land not ordinarily under cultivation; quarrying stone and burning lime; cutting trees and removing forest produce; setting fire to trees, timber, and forest produce; and herding and pasturing goats and sheep are prohibited. However, the government may permit inhabitants to carry out such activities (Aurangzaib and Pastakia 2008, p. 39).

In Khyber Pakhtunkhwa, the North-West Frontier Province Forest, Ordinance, 2002 (No. XIX of 2002) consolidates and amends the laws relating to protection, conservation, management, and sustainable development of the forests and natural resources of the province. It allows the government to declare forest land as a reserved forest (Forest Ordinance 2002, section 4). Within a reserved forest, it is illegal for a person to cultivate, clear, break up, or occupy any land; construct a building, road, enclosure, or any infrastructure, or alter or enlarge any such existing structures; trespass, graze, browse or drive cattle; set fire, cut, fell, uproot, lop, tap, or burn any tree listed in Schedule I; quarry stone, burn lime or charcoal, or collect or remove forest produce; pollute; or hunt, shoot, fish, or set snares or traps (Forest Ordinance 2002, section 26). Given that deforestation is a widespread problem in Pakistan, it appears that this provincial law has not been effectively implemented.

Despite federal and provincial laws, declines in markhor populations and significant degradation of habitat have continued. Enforcement is lacking and very difficult to achieve due to the remoteness of many areas, the political situation in remote areas, conflicting policies, lack of understanding of the need and importance of conservation, and economic constraints (MAIL 2009, pp. 5, 23; UNEP 2009, pp. 4, 29; Aurangzaib and Pastakia 2008, pp. 39, 42–43; Hess *et al.* 1997, p. 243). Additionally, many of the areas where the straight-horned markhor occurs are on tribal lands, which are generally governed by tribal law, and Provincially Administered Tribal Areas where federal and provincial laws do not apply (Frisina and Tareen 2009, p. 144; Ahmed and Khazi 2008, pp. 13, 24; Aurangzaib and Pastakia 2008, p. 23; CITES 10.84 (Rev.) 1997, p. 895; Johnson 1994a, p. 1). In areas where existing laws are applicable, it does not appear that they have provided adequate protection given the severe declines in straight-horned markhor and threats the markhor continues to face from habitat loss and poaching.

Afghanistan and Pakistan are Parties to major multilateral treaties that address natural resource conservation and management (MAIL 2009, p. 32; Ahmed and Khazi 2008, p. 31). Among these are the Convention on Biological Diversity and the Convention on Combating Desertification (MAIL 2009, p. 34; Ahmed and Khazi 2008, pp. 14, 31). In becoming a Party to these treaties, both countries assumed obligations to implement the treaties' provisions, which in many cases require legislation. However, participation in treaty activities or laws to implement obligations are lacking (MAIL 2009, pp.

32–33; Ahmed and Khazi 2008, pp. 14, 31; Aurangzaib and Pastakia 2008, pp. 65, 58). Therefore, these treaties do not provide adequate protections to ameliorate threats faced by the straight-horned markhor.

Although international, federal, and provincial laws do not appear to effectively provide protection to markhor habitat from overgrazing and deforestation, the TCP has taken steps to create better habitat for both markhor and domestic livestock.

In our August 7, 2012, proposed rule, we determined that key areas in the steeper, upland slopes and higher elevation of the Torghar Hills are not easily accessible and, therefore, are not impacted by human settlement or grazing pressure. However, we expressed concern that grazing pressure may increase in these upland areas due to a combination of drought conditions and the tradition of keeping large herds of domestic livestock. The lower slopes and valleys have been denuded of trees for livestock grazing and collection of fuel wood (Ahmed *et al.* 2001, pp. 3, 8; Frisina *et al.* 1998, pp. 9–10). Demand on these resources increases during the biannual migration of local and nearby tribes and their herds through the Torghar Hills (Woodford *et al.* 2004, p. 180; Ahmed *et al.* 2001, p. 4). As forage becomes limited in the lower slopes and valleys, due to drought conditions and grazing pressure, domestic herds are likely to move to higher elevations in search of forage (Frisina *et al.* 2002, p. 13).

Recognizing that protecting markhor and its habitat can generate greater income for the community than relying solely on traditional livestock production, tribesmen of the Torghar Hills requested that the Society for Torghar Environmental Protection (STEP), the community-based, nongovernmental organization established to administer the TCP, integrate habitat management measures to protect markhor and create better habitat for both markhor and their domestic animals.

A habitat management plan was developed in 2001. The plan emphasizes range management, improved agriculture, and water storage projects to improve habitat conditions, and reduce grazing pressure, eliminate the need for domestic herds to utilize upper slope areas, and, therefore, reduce interactions between domestic livestock and markhor around forage and water resources (Frisina and Tareen 2009, p. 152; Woodford *et al.* 2004, pp. 180, 184; Frisina *et al.* 2002, pp. 3, 8, 16; Ahmed *et al.* 2001, pp. 7, 11). Additionally, STEP plans to plant woodlots of indigenous trees to meet the fuel wood and timber requirements of the local tribes and develop orchards and croplands. Agriculture is seen as an alternative to raising livestock, thus reducing grazing pressure (Frisina and Tareen 2009, p. 152; Ahmed *et al.* 2001, p. 11). The STEP will also train locals in livestock management and agricultural practices (Frisina and Tareen 2009, p. 152).

Although we do not know the extent to which the different stages of the management plans described above have been implemented, we have received new information on the markhor and its habitat in the TCP. Frisina and Rasheed (2012, p. 8) concluded from the 2011 population surveys in the TCP that the markhor population and its habitat are secure under the current management scenario.

Disease transmission was identified as a potential threat to the Torghar Hills straight-horned markhor in our August 7, 2012, proposed rule. The potential for disease transmission stems from livestock-wildlife interactions due to overgrazing by large herds of livestock, drought conditions, and the migration of flocks through the Torghar Hills. The risk of transmission was linked to future and continued habitat and livestock management. The risk of disease transmission is particularly severe if large numbers of domestic livestock are present during periods of drought. During these circumstances, resources are limited and interactions would be more frequent around available water sources and in the vegetated upper slopes. Additionally, there were concerns that interactions would likely increase in the TCP if domestic livestock herds grew and the markhor population expanded (Woodford *et al.* 2004, p. 183).

In addition to implementing measures to improve habitat conditions at lower elevations, eliminating the need for domestic herds to utilize upper slope areas, and thereby, reduce interactions between domestic livestock and markhor around forage and water resources, STEP has discussed the establishment of a community-based Animal Health Service; the herdsmen within the TCP have agreed to this measure. As it is not feasible to vaccinate markhor in mountainous terrain, STEP will train and equip tribesmen to act as ''barefoot vets'' with the responsibility of vaccinating domestic sheep and goats, and administering appropriate anthelmintics (drugs that expel parasitic worms) as they travel through the TCP. Veterinary care will be effective only if range and livestock management plans are implemented, and have the potential to result in smaller, healthier domestic livestock herds (Woodford *et al.* 2004, p. 185).

Currently, there is no evidence of disease transmission between livestock and markhor (Woodford *et al.* 2004, p. 184; Frisina *et al.* 2002, p. 13). The plans developed by STEP to improve habitat for markhor also lowers the risk of disease transmission by addressing livestock management and minimizing interactions between domestic livestock and wildlife. With these actions, coupled with the planned Animal Health Service, the risk of diseases being transferred from domestic livestock to markhor is significantly reduced. Although we do not know the status of the habitat management plans or the Animal Health Service, Frisina and Rasheed (2012, p. 8) concluded from the 2011 population surveys in the TCP that the markhor population and domestic livestock have minimal range-use overlap, and the markhor's habitat is secure under the current management scenario. Therefore, we have no information that indicates that disease transmission is a current threat to the Torghar Hills markhor. However, because the larger Torghar Hills population is within an area that heavily relies on domestic livestock for subsistence, it is more likely to interact with domestic sheep and goats than the other populations. In the event of a disease outbreak, the Torghar Hills population would be particularly vulnerable. Because the other extant populations are critically low, declining, and continue to face threats from poaching and habitat loss, the single population in the Torghar Hills will not provide a sufficient enough margin of safety for the subspecies to withstand this type of catastrophic event.

In the rest of the straight-horned markhor's range, we have no information on the occurrence of disease or the risk of disease transmission from domestic sheep and goats. Overgrazing of domestic livestock has contributed to habitat loss in other mountain ranges, suggesting large livestock herds have also been maintained in these areas, but we do not have information on herd size or the likelihood of livestock-wildlife interactions. Given the extremely small population estimates of straight-horned markhor outside of the Torghar Hills, it may be that interactions are rare.

We found no information indicating that the current threats to the straight-horned markhor, as described above, are likely to improve in the future. Threats to this subspecies are driven by past and

current conflict, the needs of millions of displaced people, and an expanding human population. Current regulatory mechanisms in place to protect the markhor and its habitat are not being implemented effectively in most of the range to reduce or remove threats to the subspecies. With the exception of the Torghar Hills, no other management plans are in place to specifically address the straight-horned markhor. Therefore, the tremendous pressure put on natural resources, and the impacts to the straight-horned markhor and its habitat, will likely continue unless the natural resources of Afghanistan and Pakistan are effectively protected.

In the Torghar Hills, the TCP has eliminated poaching of straight-horned markhor and managed the habitat such that the population has steadily increased since the TCP's inception and both the population and its habitat are currently secure. Because the TCP has incorporated economic incentives for the local community and is supported by the community, we believe the protections and management provided by the TCP will continue.

The narrow geographic range of the straight-horned markhor and the small, scattered, and declining populations make this subspecies particularly vulnerable to threats and more susceptible to extinction. Furthermore, small scattered populations may experience decreased demographic viability and increased susceptibility to extinction from stochastic environmental factors (e.g., weather events, disease) and an increased threat of extinction from genetic isolation and subsequent inbreeding depression and genetic drift. Although the Torghar Hills population is subject to a management plan, and the protections provided by that management plan has led to an increasing population, a single stable population does not provide a sufficient margin of safety for the subspecies to withstand effects from catastrophic events, such as disease.

Finding

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

As required by the Act, we conducted a review of the status of the subspecies and considered the five factors in assessing whether the straight-horned markhor is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the straight-horned markhor. We reviewed the 1999 petition submitted by the Society for Torghar Environmental Protection and IUCN, the 2010 petition submitted by Conservation Force, information available in our files, other available published and unpublished information, and information received in response to the August 7, 2012, proposed rule.

Today, the straight-horned markhor occurs in small, scattered populations in the mountains of Balochistan and Khyber Pakhtunkhwa provinces, Pakistan. Although there are reports that this subspecies survives in Afghanistan, it has likely been extirpated. In general, markhor populations are reported as declining and have likely not increased since 1975. However, there is one exception to this declining population trend, the Torghar Hills population in the Toba Kakar Range. Due to the implementation of a conservation plan, the Torghar Hills population has increased from fewer than 200 in the mid-1980s to 3,518 currently.

Straight-horned markhor have been significantly impacted by years of conflict and the accompanying influx of sophisticated weapons. Easy access to accurate weapons and millions of displaced people dependent on wild meat for subsistence led to excessive hunting and the extirpation of straight-horned markhor from much of its former range and a severe reduction in remaining populations. Additionally, tremendous pressure has been placed on natural resources from millions of displaced people and an expanding human population. Deforestation for livestock grazing, illegal logging, and collection of wood for building materials, fuel, and charcoal, to meet the needs of the growing population, continues to impact straight-horned markhor habitat.

Several federal and provincial laws are in place to provide some protection to natural resources, but they are subject to broad exemptions, allowing for overriding laws favoring development and commercial use, and enforcement is lacking. However, in the Torghar Hills, the population of straight-horned markhor and its habitat have been effectively managed by the TCP such that both are secure under the current management scenario. Due to the establishment of the TCP, the cessation of uncontrolled poaching, and the hunting of only a limited number of trophies in the Torghar Hills, the population has increased substantially since TCP's inception in 1985. Furthermore, due to the TCP, straight-horned markhor habitat is secure and is no longer impacted by overgrazing or collection of wood. Because the TCP has incorporated economic incentives for the local community and is supported by the community, we believe the protections and management provided by the TCP will continue in the foreseeable future. We are not aware of other populations of straight-horned markhor under the same level of management. Information indicates that hunting and habitat loss remain as threats in the rest of the straight-horned markhor's range; without effective and enforcement of federal and provincial laws, we believe these threats will continue into the foreseeable future.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Most of the straight-horned markhor populations are small and declining. Threats to this subspecies from hunting and habitat loss still exist and will

likely continue into the foreseeable future. Current regulatory mechanisms are inadequate to ameliorate the negative effects of these threats on the subspecies and will likely remain ineffective until changes in implementation are made. Therefore, we expect that most straight-horned populations will continue to decline into the foreseeable future.

However, although most remaining populations of straight-horned markhor are critically low, continue to face threats from overhunting and habitat loss, and will likely continue to decline, implementation of the TCP has eliminated threats from hunting and habitat loss in the Torghar Hills. This population has continued to increase since the inception of the TCP and, today, is the only stronghold of the species.

Furthermore, because of the protective measures provided to the Torghar Hills population by the TCP, we believe that the threats identified under Factors A, B, and D are not of sufficient imminence, intensity, or magnitude to indicate that the subspecies is presently in danger of extinction, and, therefore, does not meet the definition of endangered under the Act. However, the straight-horned markhor occupies a narrow geographic range and threats acting on those critically low populations and are likely to continue in the foreseeable future. A single stable population does not provide a sufficient margin of safety for the subspecies to withstand effects from catastrophic events (e.g., disease). These factors indicate that the straight-horned markhor continues to be at risk of extinction and will likely become in danger of extinction in the foreseeable future due to those continuing threats. Therefore, on the basis of the best scientific and commercial information, we find that the straight-horned markhor meets the definition of a ''threatened species'' under the Act, and we are proposing to list the straight-horned markhor as threatened in its entirety.

Distinct Vertebrate Population Segment

Section 3(16) of the Act defines ''species'' to include any species or subspecies of fish and wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). Under the Service's ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible distinct population segment (DPS). These elements, which are applied similarly for additions to or removals from the Federal List of Endangered and Threatened Wildlife, include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened?).

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We reviewed available information to determine whether any population, including the Torghar Hills population, of the straight-horned markhor meets the first discreteness condition of our 1996 DPS policy. We found no evidence that any population was markedly separated from other markhor populations as a consequence of physical, physiological, ecological, or behavioral factors. Additionally, we are not aware of measures of genetic or morphological discontinuity that provide evidence of marked separation. With respect to Torghar Hills, the boundaries are unclear and appear to grade into other ranges within the Toba Kakar Mountains. Additionally, Johnson (1994b, p. 15) noted that, if the Torghar Hills population reaches carrying capacity, it could become a source of emigrants for other mountain ranges in the area and that intermountain movement is probably already taking place. Since that publication, the Torghar Hills population has increased from 695 markhor to 3,518, indicating a greater likelihood that intermountain movement of markhor will or is already taking place. We currently do not know the extent, if any, that markhor are moving from the Torghar Hills into other mountain ranges; however, it appears that they could. Movement may require markhor to cross unsuitable habitat (e.g., the TCP is surrounded by less severe topography and valleys typically not preferred by markhor), but there is no reason that they could not cross, especially if carrying capacity is met, thereby creating a need to emigrate to other suitable areas in adjacent ranges. Therefore, without evidence of marked separation, we determine that none of the populations of the straight-horned markhor meet the first discreteness condition of the 1996 DPS policy.

We next evaluated whether any of the straight-horned markhor populations meet the second discreteness condition of our 1996 DPS policy. A population segment may be considered discrete if it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. Although the straight-horned markhor is reported to occur in Afghanistan, it has likely been extirpated. Additionally, we found no significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms in Afghanistan and Pakistan; therefore, none of the populations of the straight-horned markhor meet the second discreteness condition of the 1996 DPS policy.

We determine, based on a review of the best available information, that none of the populations of the straight-horned markhor, including the Torghar Hills population, meet the discreteness conditions of the 1996 DPS policy. Because we found that the straight-horned markhor populations do not meet the discreteness element under the Service's DPS policy, we need not conduct an evaluation of significance under that policy. We conclude that none of the straight-horned markhor populations qualify as a DPS under the Act.

Significant Portion of the Range

Having determined that the straight-horned markhor meets the definition of threatened throughout its range, we must next consider whether the straight-horned markhor is in danger of extinction within a significant portion of its range.

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within

the foreseeable future throughout all or a significant portion of its range.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations either: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

For the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, then that species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act's protections will be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice, as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine whether a portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a

portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

After reviewing the potential threats throughout the range of the straight-horned markhor, we find that threats appear to be affecting the subspecies in the portion of the range outside of the Torghar Hills more severely, particularly with respect to overhunting. Applying the process described above for determining whether this subspecies is endangered in a significant portion of its range, we consider significance first to determine if this portion of the straight-horned markhor's range warrants further consideration.

As stated above, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction rangewide. We find that if there was a loss of the straight-horned markhor populations outside of the Torghar Hills, the remaining population in the Torghar Hills would not be in danger of extinction. The Torghar Hills population, under the management of the TCP, has been steadily increasing since the inception of the TCP in 1985. Poaching, the greatest cause of substantial markhor declines, has been virtually eliminated in the Torghar Hills. Furthermore, the straight-horned markhor and its habitat are stable under the current management. Given the level of the abundance and protection within Torghar Hills as a result of management under the TCP, we find that this population would continue to persist, despite the hypothetical loss of the range outside of Torghar Hills. In contrast, based on the information available, the populations outside of Torghar Hills are small and fragmented. We have no information to suggest that habitat for populations outside of Torghar Hills is optimal, and, instead, the information suggests that these populations likely exist on lands that are subject to overgrazing by domestic livestock, which is the dominant land use and the primary means of subsistence for local tribes. Therefore, the portion of the range outside of the Torghar Hills does not meet the definition of ''significant'' and does not warrant further consideration.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection in the United States, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments in the United States, foreign governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. However, given that the straight-horned markhor is not native to the United States, we are not designating critical habitat for this species under section 4 of the Act.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. For endangered wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and

special purposes consistent with the Act.

Special Rule

Section 4(d) of the Act states that the Secretary may, by regulation, extend to threatened species prohibitions provided for endangered species under section 9 of the Act. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. For threatened species, section 4(d) of the Act gives the Secretary discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, and provisions that are necessary and advisable to provide for the conservation of the species. A special rule allows us to include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

The Service recognizes that there is a reasonable argument for the proposition that controlled sport hunting (i.e., noncommercial) may provide economic incentives that contribute to the conservation of certain wildlife populations. These incentives may be direct, such as generating funding for essential conservation measures through licensing fees. They may also be indirect, such as focusing governmental attention on the need to protect species of economic value.

Well-managed conservation programs, including those that incorporate sport hunting, can significantly contribute to the conservation of wildlife, improve wildlife populations, and greatly enhance the livelihoods of the local people. The primary objective of a well-managed trophy-hunting program is not hunting, but the conservation of large mammals (Shackleton 2001, p. 7). The key lies in ensuring a sufficient number of mature males remain in the population to maintain normal reproduction rates. For species with polygynous mating systems, removing some of the males from a population does not necessarily affect the growth rate of the population. If a fraction of the mature trophy males are removed, normal reproduction can be maintained and any long-term genetic impacts from removing ''genetically superior'' individuals from a population can be minimized (Shackleton 2001, p. 10).

Many hunters are willing to pay relatively large fees for the privilege to hunt. If the money is used to conserve the species that is the focus of the conservation program, the program may be sustainable. Additionally, habitat restoration may also be achieved. Incorporating the needs of the local people creates an incentive to conserve wildlife and ensures the success of the program (Shackleton 2001, pp. 7, 10).

In recognizing the potential of conservation programs, including those based on sport hunting, we are proposing a special rule to allow the import of sport-hunted markhor trophies taken from established conservation programs without a threatened species permit issued under 50 CFR 17.32, provided that certain criteria are met. Importation of a personal sport-hunted straight-horned markhor may be authorized by the Director of the U.S. Fish and Wildlife Service (Director) without a threatened species permit if the trophy is taken from a conservation program that meets the following criteria: (1) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport-hunting and the populations are stable or increasing; (2) regulating authorities have the capacity to obtain sound data on populations; (3) the conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species; (4) regulating authorities have the legal and practical capacity to provide for the long-term survival of the populations; (5) regulating authorities can determine that the trophies have in fact been legally taken from the populations under an established conservation program. The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the **Federal Register** the importation of personal sport-hunted straight-horned markhor, taken legally from the established conservation program after the date of such notice, without a threatened species permit, provided that the applicable provisions of 50 CFR Part 23 have been met.

As discussed above, hunting of markhor is allowed through a Pakistani Government exemption, and export of markhor in Pakistan is allowed only from community-managed conservation areas in accordance with CITES provisions. To encourage communities to conserve populations of markhor, the Conference of the Parties to CITES granted Pakistan an annual export quota of 12 markhor sport-hunted trophies taken through community-based programs. CITES Resolution Conf. 10.15 (Rev. CoP 14) recommends that CITES Authorities in the State of import approve permits of sport-hunted markhor trophies from Pakistan if they meet the terms of the Resolution. This proposed special rule, if made final, would similarly facilitate support for these conservation programs. Therefore, we find this special rule would provide necessary and advisable conservation measures that are needed for this subspecies.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that are the basis for our conclusions regarding the proposal to reclassify the straight-horned markhor as threatened under the Act and to promulgate the proposed special rule.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Required Determinations

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written,

which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0003, or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as amended at 77 FR 47011 (August 7, 2012), as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by removing the entry for ''Markhor, Kabul'' and revising the entry for ''Markhor, straight-horned'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Markhor, straight-horned.	*Capra falconeri megaceros.*	Afghanistan, Pakistan	Entire	T	15	NA	17.40(a)
*	*	*	*	*	*		*

■ 3. Amend § 17.40 by adding a new paragraph (a) to read as follows:

§ 17.40 Special rules—mammals.

(a) Straight-horned markhor (*Capra falconeri megaceros*).

(1) *General requirements.* Except as noted in paragraph (a)(2) of this section, all prohibitions of § 17.31 of this part and exemptions of § 17.32 of this part apply to this subspecies.

(2) *What are the criteria under which a personal sport-hunted trophy may qualify for import without a permit under § 17.32 of this part?* If, upon receiving information on an established conservation program for straight-horned markhor:

(i) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport hunting and are stable or increasing;

(ii) Regulating authorities have the capacity to obtain sound data on populations;

(iii) The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species; and the funds derived from sport hunting are applied toward benefits to the community and the species;

(iv) Regulating authorities have the legal and practical capacity to provide for the long-term survival of the populations; and

(v) Regulating authorities can determine that the sport-hunted trophies have in fact been legally taken from the populations under an established conservation program, the Director may, consistent with the purposes of the Act, authorize by publication of a notice in the **Federal Register** the importation of personal sport-hunted straight-horned markhor, taken legally from the established program after the date of such notice, without a Threatened Species permit issued under § 17.32 of this part, provided that the applicable provisions of 50 CFR Part 23 have been met.

* * * * *

Dated: November 19, 2013.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–28879 Filed 12–4–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 78, No. 234

Thursday, December 5, 2013

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

DEPARTMENT OF AGRICULTURE

Forest Service

Wallowa-Whitman National Forests, Oregon; Lower Imnaha Rangeland Analysis

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

Authority: 36 CFR 220.5(b).

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement to authorize the approval of grazing livestock within the lower Imnaha area, including allotments within the Lightning Creek, Tulley Creek, Cow Creek, and a portion of the Snake River watersheds of the Hells Canyon National Recreation Area of the Wallowa-Whitman National Forest.

The Lower Imnaha Rangeland Analysis (LIRA) has previously been initiated through a scoping letter for environmental analysis for livestock grazing. The scoping letter was sent on August 26, 2011 to 159 individuals, organizations, and agencies which included tribal representatives, grazing permittees, state and federal resource management agencies, special interest organizations, and interested publics. As a result of scoping, a concern was brought forward regarding impacts to *Silene spaldingii* or Spalding's catchfly, a threatened species, which indicated the need for the LIRA to be analyzed in an environmental impact statement (EIS) instead of the environmental assessment (EA) that was indicated in the scoping letter. Since the proposed action has not changed since the scoping letter was released, a new scoping period will not be initiated. All scoping comments received during the 2011 30-day scoping period will be considered in the EIS.

DATES: The draft environmental impact statement is expected June 2014 and the final environmental impact statement and draft record of decision are expected September 2014.

ADDRESSES: Send written comments and suggestions to Area Ranger Kris Stein, Hells Canyon National Recreation, Wallowa-Whitman National Forest, PO Box 905, Joseph, OR 97846. Comments may also be sent via email to *comments-pacificnorthwest-wallowa-whitman-hellscanyonnra@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jamie McCormack, Interdisciplinary Team Leader, Wallowa-Whitman National Forest, Wallowa Mountains Office, PO Box 905, Joseph, OR 97846, Phone: (541) 263–1645.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need

The purpose of this project is to implement the direction of the Wallowa-Whitman Forest Plan,[1] HCNRA CMP (Comprehensive Management Plan) FEIS,[2] and the Acts of Congress to provide grazing on National Forest System lands. This analysis is being prepared to determine if the Forest Service should continue to authorize livestock grazing in the four allotments identified of this project.

The needs associated with this project are (1) to comply with with the Rescission Act of 1995 (Pub. L. 104–19, Section 504), (2) to be consistent with other multiple use goals and objectives provided by Congress, (3) to continue contributing to the economic and social well-being of communities that depend on range resources for their livelihood by providing opportunities for economic diversity and promoting stability (FSM 2202.14).

Proposed Action

The LIRA area is located approximately 35 miles northeast of the town of Enterprise, Oregon, and primarily includes the Imnaha River watershed and associated watersheds downstream of the Imnaha River Bridge ''Cow Creek Bridge'', and watersheds from Deep Creek to the mouth of the Imnaha River. The decision area will encompass 45,625 acres, including four allotments: Cow Creek, Lone Pine, Rhodes Creek, and Toomey, all of which are in Wallowa County, Oregon. This EIS will analyze and authorize the continued use of this area for cattle grazing through Allotment Management Plans.

Responsible Official

The Hells Canyon National Recreation Area Ranger, Kris Stein will be the responsible official for making the decision and providing direction for the analysis.

Nature of Decision To Be Made

The responsible official will decide whether or not to authorize continued grazing in the LIRA project area. The responsible official will also decide whether or not to select the proposed action as stated or modified, or to select an alternative to it, any mitigation measures needed, and any monitoring that may be required.

Preliminary Issues

The interdisciplinary team has conducted field surveys and data research to identify preliminary issues of concern with this proposal. There is one primary concern:

The concern is with Spalding's catchfly, in regard to potential direct and indirect effects to the plant by livestock grazing. Through surveys conducted within the project area, this species has been found in several isolated patches, all of which are in fescue (*Festuca*)—type vegetation habitat on relatively steep north facing slopes. The direct effect would be livestock consuming the plant. However, livestock are grazing these areas when the species is dormant, and grazing of the plant is not a concern. The indirect effect to Spalding's catchfly is of more concern, and would require more detailed analysis because these plants are primarily growing in north facing areas, the soils tend to be deeper, and with grazing in wet conditions, there is a higher likelihood of hoof-shear causing damage to the crown of the Spalding's catchfly. The second indirect effect of concern is soil sloughing and

[1] USDA Forest Service. (1990). Land and Resources Management Plan for the Wallowa-Whitman National Forest. Wallowa-Whitman National Forest, Baker City, Oregon.

[2] USDA Forest Service. (2003). Hells Canyon National Recreation Area Comprehensive Management Plan FEIS. Wallowa-Whitman National Forest. Baker City, Oregon.

hoof sheer on steeper slopes, and primarily in north-facing areas as the sloughing and hoof shear which could be contributing to a slow-moving erosion process in which soil is slowly being displaced and moving down the hillsides.

There are no preliminary concerns for the listed fish species and designated critical habitat of listed fish species within or adjacent to this allotment.

Based on these two preliminary issues and their potential for significant impacts, an EIS fits the scope of this analysis rather than an EA.

New 218 Objection Period

The new regulations, found at 36 CFR 218, provide an opportunity for individuals, organizations and tribal entities to file an objection to a project before the final decision is signed (36 CFR 218.5). This allows interested individuals, organizations and tribal entities to advise the responsible official about concerns regarding the final decision *before* the decision is made. When the final EIS and *draft* Record of Decision are released for public review, the public will have 45 days in which to review the documents and, if desired, file an objection to the Record of Decision.

Dated: November 26, 2013.

Thomas Montoya,

Deputy Forest Supervisor.

[FR Doc. 2013–29075 Filed 12–4–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et.seq.), the National Forest Management Act of 1976 (16 U.S.C. sec. 1612), and the Federal Public Lands Recreation Enhancement Act (Pub. L. 108–447). The purpose of the Board is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments and forest health, including fire and mountain pine beetle epidemics, travel management, forest monitoring and evaluation, recreation fees, and site-specific projects having forest-wide implications. The meeting is open to the public.

The purpose of the meeting is to:

(1) Conduct Annual Ethics Training for all members of the Advisory Board;

(2) provide orientation to Board Members on Basic Laws governing the Forest Service work;

(3) update and discussion with working group on Motorized Travel on trails in the Black Hills National Forest in South Dakota; and

(4) update and report on Mountain Pine Beetle Working Group actions.

DATES: The meeting will be held December 18, 2013, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216, or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by December 6, 2013 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us,* or via facsimile to 605–673–9208. Within 45 days of the meeting, a summary of the meeting will be posted at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: November 25, 2013.

Craig Bobzien,

Forest Supervisor/DFO.

[FR Doc. 2013–29074 Filed 12–4–13; 8:45 am]

BILLING CODE 3410–11–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, December 10, 2013

PLACE: CFTC Headquarters Conference Center, Three Lafayette Centre, 1155 21st St. NW., Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled this meeting to consider various rulemaking matters, including the approval of final rules and the issuance of a proposed rule. The agenda for this meeting is available to the public and posted on the Commission's Web site at *http://www.cftc.gov.* In the event that the time, date, or place of the meeting changes, an announcement of the change, along with the new time, date, or place of the meeting, will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: Melissa D. Jurgens, Secretary of the Commission, 202–418–5516.

Melissa D. Jurgens,

Secretary of the Commission.

[FR Doc. 2013–29180 Filed 12–3–13; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–415–001.

Applicants: Anahau Energy, LLC.

Description: Notice of Change in Status of Anahau Energy, LLC.

Filed Date: 11/25/13.

Accession Number: 20131125–5247.

Comments Due: 5 p.m. ET 12/16/13.

Docket Numbers: ER13–2333–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits Refund Report re Service Agreement No 693 to be effective N/A.

Filed Date: 11/26/13.

Accession Number: 20131126–5029.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–23–001.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: Northern States Power Company, a Minnesota corporation submits 2013–11–26–NSP–MSHL-Repl Meters-564 to be effective 12/2/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5103.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–464–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits 2014 TRBAA Update Filing to be effective 1/1/2014.

Filed Date: 11/26/13.

Accession Number: 20131126–5001.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–465–000.

Applicants: The Connecticut Light and Power Company.

Description: The Connecticut Light and Power Company submit Bridgeport Energy Localized Cost Responsibility Agreement to be effective 12/1/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5046.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–466–000.

Applicants: Public Service Company of New Hampshire.

Description: Public Service Company of New Hampshire submits Bridgeport Energy Localized Cost Responsibility Agreement to be effective 12/1/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5047.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–467–000.

Applicants: Western Massachusetts Electric Company.

Description: Western Massachusetts Electric Company submits Bridgeport Energy Localized Cost Responsibility Agreement to be effective 12/1/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5053.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–468–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Queue Position Y2–077; Original Service Agreement No. 3670 to be effective 11/1/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5081.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–469–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits SGIA and Distribution Service Agreement with SEPV Mojave West, LLC to be effective 11/27/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5086.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–470–000.

Applicants: Rock River I, LLC.

Description: Rock River I, LLC submits 2nd Revised MBR to be effective 11/27/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5088.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–471–000.

Applicants: Cabazon Wind Partners, LLC.

Description: Cabazon Wind Partners, LLC submits 2nd Revised MBR to be effective 11/27/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5089.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–472–000.

Applicants: Whitewater Hill Wind Partners, LLC.

Description: Whitewater Hill Wind Partners, LLC submits 2nd Revised MBR to be effective 11/27/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5090.

Comments Due: 5 p.m. ET 12/17/13.

Docket Numbers: ER14–473–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits Compliance waiver Order 784 re: 3rd prty prvsn ancllry srvcs to be effective 11/27/2013.

Filed Date: 11/26/13.

Accession Number: 20131126–5096.

Comments Due: 5 p.m. ET 12/17/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 26, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–29057 Filed 12–4–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2013–0762; FRL–9903–85–Region–9]

Adequacy Status of Motor Vehicle Emissions Budget in Submitted State Implementation Plan; Maricopa County PM–10 Nonattainment Area, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that the Agency has found that the motor vehicle emissions budget (MVEB) for particulate matter less than ten microns (PM–10) for the year 2012 in the Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area (May 2012) (''Five Percent Plan'') is adequate for transportation conformity purposes. The Five Percent Plan for PM–10 in the Maricopa County Nonattainment Area was submitted to EPA on May 25, 2012 by the Arizona Department of Environmental Quality (ADEQ) as a revision to the Arizona State Implementation Plan (SIP). As a result of our adequacy findings, the Maricopa Association of Governments (MAG) and the U.S. Department of Transportation must use the MVEB for future conformity determinations.

DATES: Effective December 20, 2013.

FOR FURTHER INFORMATION CONTACT: Greg Nudd, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 947–4107 or *nudd.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Today's notice announces that we have found that the MVEB in the submitted Five Percent Plan for PM–10 in the Maricopa County Nonattainment Area for the year 2012 is adequate. The adequate MVEB is 54.9 metric tons per day of PM–10. More information regarding our finding can be found in our letter to MAG and ADEQ dated November 22, 2013.

Receipt of the MVEB in Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area was announced on EPA's transportation conformity Web site on September 12, 2013. We received no comments in response to the adequacy review posting. The adequacy finding is available at EPA's transportation conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and transportation projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's MVEB is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4), which was promulgated in a final rule published on August 15, 1997 (62 FR 43780, 43781–43783). We have further described our process for determining the adequacy of submitted SIP budgets in a final rule published on July 1, 2004 (69 FR 40004, 40038), and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's review of the SIP, and should not be used to predict EPA's action for the SIP.

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

Dated: November 26, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–29090 Filed 12–4–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 13–2201]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Tuesday, December 10, 2013, 10:00 a.m.

ADDRESSES: Federal Communications Commission, Portals II, 445 12th Street SW., Room 5–C162, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carmell Weathers at (202) 418–2325 or *Carmell.Weathers@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 13–2201 released November 15, 2013. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document my also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, December 10, 2013, from 10:00 a.m. until 2:00 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda:

Tuesday, December 10, 2013, 10:00 a.m.*

1. Announcements and Recent News
2. Approval of Transcript—Meeting of September 18, 2013
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the Numbering Oversight Working Group (NOWG)
6. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
7. Report of the Billing and Collection Working Group (B&C WG)
8. Report of the North American Portability Management LLC (NAPM LLC)
9. Report of the LNPA Selection Working Group (SWG)
10. Report of the Local Number Portability Administration (LNPA) Working Group
11. Status of the Industry Numbering Committee (INC) activities
12. Report of the Future of Numbering Working Group (FoN WG)
13. Summary of Action Items
14. Public Comments and Participation (5 minutes per speaker)
15. Other Business

Adjourn no later than 2:00 p.m.

*The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Sanford S. Williams,

Attorney, Wireline Competition Bureau.

[FR Doc. 2013–29089 Filed 12–4–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, December 10, 2013, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors

requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Final Rule—Appraisals for Higher-Priced Mortgage Loans.

Memorandum and resolution re: Change of Submission Dates for Resolution Plans of Certain Covered Companies and Certain Covered Insured Depository Institutions, under Title I of the Dodd-Frank Act, and 12 CFR 360.10.

Memorandum and resolution re: Final Rule on the Removal of Transferred Office of Thrift Supervision Regulation 12 CFR Part 390, Subpart K—Recordkeeping and Confirmation Requirements for Securities Transactions and Amendments to 12 CFR part 344.

Memorandum and resolution re: Review of Regulations Transferred from the Former Office of Thrift Supervision: Part 390, Subpart H—Disclosure and Reporting of CRA-Related Agreements.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Final Rule—Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds.

Memorandum and resolution re: 2014 Corporate Operating Budget.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: December 3, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–29210 Filed 12–3–13; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 30, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Grand Bancorp, Inc.,* Grove, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Grand Savings Bank, Grove, Oklahoma.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Carpenter Bank Partners, Inc, CCFW, Inc (dba Carpenter & Company), Carpenter Fund Manager GP, LLC, Carpenter Fund Management Company, LLC, Carpenter Community BancFund, L.P., Carpenter Community BancFund-A, L.P., and Carpenter Community BancFund-CA, L.P.,* all in Irvine, California; to acquire at least 18 percent of the voting shares of Heritage Oaks Bancorp, and thereby indirectly acquire voting shares of Heritage Oaks Bank, both in Paso Robles, California.

Board of Governors of the Federal Reserve System, December 2, 2013.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–29069 Filed 12–4–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m. on Tuesday, December 10, 2013.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number(SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on December 9, 2013. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

PRIVACY ACT NOTICE: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel.

In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C 1001 for any false statements you make in your request to enter the Board's premises.

Matters To Be Considered

Discussion Agenda

1. Joint agency final rule on Section 619 of the Dodd-Frank Act.

Notes: 1. The staff memo to the Board will be made available to the public on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 3, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–29188 Filed 12–3–13; 4:15 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m. on Tuesday, December 10, 2013.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW., Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public Web site. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public Web site at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may *register online.* You may pre-register until close of business on December 9, 2013. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

PRIVACY ACT NOTICE: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

Matters To Be Considered

Discussion Agenda

1. Joint agency final rule on Section 619 of the Dodd-Frank Act.

Notes: 1. The staff memo to the Board will be made available to the public on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public Web site *http://www.federalreserve.gov/aboutthefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public Web site at *www.federalreserve.gov* for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 3, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–29227 Filed 12–3–13; 4:15 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend through December 31, 2016, the current Paperwork Reduction Act (''PRA'') clearance for the FTC's enforcement of the information collection requirements in its Affiliate Marketing Rule (or ''Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the provisions (subpart C) of the CFPB's Regulation V regarding other entities (''CFPB Rule''). The current clearance expires on December 31, 2013.

DATES: Comments must be filed by January 6, 2014.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411'' on your comment, and file your comment online at *https://public.commentworks.com/ftc/affiliatemarketingpra2*, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Steven Toporoff, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., NJ–8100, Washington, DC 20580, (202) 326–3135.

SUPPLEMENTARY INFORMATION: On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] The Dodd-Frank Act substantially changed the federal legal framework for financial services providers. Among the changes, the Dodd-Frank Act transferred to the CFPB most of the FTC's rulemaking authority for the Affiliate Marketing provisions of the Fair Credit Reporting Act (''FCRA''),[2] on July 21, 2011.[3] For certain other portions of the FCRA, the FTC retains its full rulemaking authority.[4]

The FTC retains rulemaking authority for its Affiliate Marketing Rule, 16 CFR 680, solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[5]

On December 21, 2011, the CFPB issued its interim final FCRA rule, including the affiliate marketing provisions (subpart C) of CFPB's Regulation V.[6] Contemporaneous with that issuance, the CFPB and FTC submitted to OMB, and received its approval for, that agency's respective burden estimates reflecting its overlapping enforcement jurisdiction with the FTC. The discussion in the Burden Statement below, following preliminary background information, continues that analytical framework of shared enforcement authority, as supplemented by the FTC's jurisdiction over auto motive dealers, as noted above.

On August 27, 2013, the FTC sought public comment on the information collection requirements associated with the Rule (August 27, 2013 Notice[7]), its shared enforcement with the CFPB of the provisions of the CFPB Rule, and the FTC's associated PRA burden analysis. No comments were received. However, the FTC is correcting and otherwise modifying certain estimates that appeared in the August 27, 2013 Notice: These adjustments are highlighted by footnotes appended to the revised figures that appear in the ensuing Burden Statement.

Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. All comments should be filed as prescribed herein, and must be received on or before January 6, 2014.

For more background on the FTC's Affiliate Marketing Rule, see the August 27, 2013 Notice.[8]

Burden Statement

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under the FTC and CFPB Rules.

Except where otherwise specifically noted, staff's estimates of burden are based on its knowledge of the consumer credit industries and knowledge of the entities over which the Commission has jurisdiction. This said, estimating PRA burden of the Rule's disclosure requirements is difficult given the highly diverse group of affected entities that may use certain eligibility information shared by their affiliates to send marketing notices to consumers.

The estimates provided in this burden statement may well overstate actual burden. As noted above, verbatim adoption of the disclosure of information provided by the federal government is not a ''collection of information'' to which to assign PRA burden estimates, and an unknown number of covered entities will opt to use the model disclosure language. Second, an uncertain, but possibly significant, number of entities subject to FTC jurisdiction do not have affiliates and thus would not be covered by section 214 of the FACT Act or the Rule. Third, Commission staff does not know how many companies subject to FTC jurisdiction under the Rule actually share eligibility information among affiliates and, of those, how many affiliates use such information to make marketing solicitations to consumers. Fourth, still other entities may choose to

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1681 *et seq.*

[3] Dodd-Frank Act, at section 1061. This date was the ''designated transfer date'' established by the Treasury Department under the Dodd-Frank Act. *See* Dep't of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date,* 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, at section 1062.

[4] The Dodd-Frank Act does not transfer to the CFPB rulemaking authority for FCRA sections 615(e) (''Red Flag Guidelines and Regulations Required'') and 628 (''Disposal of Records''). *See* 15 U.S.C. 1681s(e); Public Law 111–203, section 1088(a)(10)(E). Accordingly, the Commission retains full rulemaking authority for its ''Identity Theft Rules,'' 16 CFR Part 681, and its rules governing ''Disposal of Consumer Report Information and Records,'' 16 CFR Part 682. *See* 15 U.S.C. 1681m, 1681w.

[5] *See* Dodd-Frank Act, at section 1029 (a), (c).

[6] 76 FR 79308. Subpart C of the interim final rule became effective on December 30, 2011. Subpart C is codified at 12 CFR 1022.20 *et seq.* Except for certain motor vehicle dealers (*see supra* note 5 and accompanying text), the disclosure and opt-out provisions described in the ''Background'' discussion below also pertain to Subpart C of Regulation V and the FTC's associated co-enforcement jurisdiction.

[7] 78 FR 52918.

[8] 78 FR 52919.

rely on the exceptions to the Rule's notice and opt-out requirements.[9] Finally, the population estimates below to apply further calculations are based on industry data that, while providing tallies of business entities within industries and industry segments, does not identify those entities individually. Thus, there is no clear path to ascertain how many individual businesses have newly entered and departed within a given industry classification, from one year to the next or from one triennial PRA clearance cycle to the next. Accordingly, there is no ready way to quantify how many establishments accounted for in the data reflect those previously accounted for in the FTC's prior PRA analysis, i.e., entities that would already have experienced a declining learning curve applying the Rule with the passage of time. For simplicity, the FTC analysis will continue to treat covered entities as newly undergoing the previously assumed learning curve cycle, although this would effectively overstate estimated burden for unidentified covered entities that have remained in existence since OMB's most recent clearances for the FTC Rule.[10]

As in the past, FTC staff's estimates assume a higher burden will be incurred during the first year of a prospective OMB three-year clearance, with a lesser burden for each of the subsequent two years because the opt-out notice to consumers is required to be given only once. Institutions may provide for an indefinite period for the opt-out or they may time limit it, but for no less than five years.

Staff's labor cost estimates take into account: managerial and professional time for reviewing internal policies and determining compliance obligations; technical time for creating the notice and opt-out, in either paper or electronic form; and clerical time for disseminating the notice and opt-out.[11] In addition, staff's cost estimates presume that the availability of model disclosures and opt-out notices will simplify the compliance review and implementation processes, thereby significantly reducing the cost of compliance. Moreover, the Rule gives entities considerable flexibility to determine the scope and duration of the opt-out. Indeed, this flexibility permits entities to send a single joint notice on behalf of all of its affiliates.

A. Non-GLBA Entities

Based, in part, on industry data regarding the number of businesses under various industry codes, staff estimates that 1,174,347 non-GLBA entities under FTC jurisdiction have affiliates and would be affected by the Rule.[12] Commission staff further estimates an average of 5 businesses per family or affiliated relationship, and believes that the affiliated entities will choose to send a joint notice, as permitted by the Rule. Thus, an estimated 234,869 non-GLBA business families may send the affiliate marketing notice.

Staff also estimates that non-GLBA entities under the jurisdiction of the FTC would each incur 14 hours of burden during the prospective requested three-year PRA clearance period, comprised of a projected 7 hours of managerial time, 2 hours of technical time, and 5 hours of clerical assistance.

Based on the above, total burden for non-GLBA entities during the prospective three-year clearance period would be approximately 3,288,166 hours, cumulatively. Associated labor cost would total $123,353,199.[13] These estimates include the start-up burden and attendant costs, such as determining compliance obligations. Non-GLBA entities, however, will give notice only once during the clearance period ahead. Thus, averaged over that three-year period, the estimated annual burden for non-GLBA entities is 1,096,055 hours and $41,117,733 in labor costs.

B. GLBA Entities

Entities that are subject to the Commission's GLBA privacy notice regulation already provide privacy notices to their customers.[14] Because the FACT Act and the Rule contemplate that the affiliate marketing notice can be included in the GLBA notices, the burden on GLBA regulated entities would be greatly reduced. Accordingly, the GLBA entities would incur 6 hours of burden during the first year of the clearance period, comprised of a projected 5 hours of managerial time and 1 hour of technical time to execute the notice, given that the Rule provides a model.[15] Staff further estimates that 3,350 GLBA entities under FTC jurisdiction would be affected,[16] so that the total burden for GLBA entities during the first year of the clearance period would approximate 20,100 hours (3,350 × 6) and $1,003,493 in associated labor costs.[17]

Allowing for increased familiarity with procedure, the PRA burden in ensuing years would decline, with GLBA entities each incurring an estimated 4 hours of annual burden (3 hours of managerial time and 1 hour of technical time) during the remaining two years of the clearance, amounting to 13,400 hours (3,350 × 4) and $653,753 in labor costs in each of the ensuing two

[9] Exceptions include, for example, having a preexisting business relationship with a consumer, using information in response to a communication initiated by the consumer, and solicitations authorized or requested by the consumer.

[10] On December 21, 2010, OMB granted three-year clearance for the Rule through December 31, 2013 under Control No. 3084–0131. On February 3, 2012, OMB additionally approved under that control number FTC adjustments submitted on December 9, 2011 to reflect the effects of the Dodd-Frank Act, but the latter approval retained the previously accorded clearance expiration of December 31, 2013.

[11] No clerical time was included in staff's burden analysis for GLBA entities as the notice would likely be combined with existing GLBA notices.

[12] This estimate is derived from an analysis of a database of U.S. businesses based on June 2013 SIC codes for businesses that market goods or services to consumers, which included the following industries: transportation services; communication; electric, gas, and sanitary services; retail trade; finance, insurance, and real estate; and services (excluding business services and engineering, management services). *See http://www.naics.com/search.htm*. This estimate excludes businesses not subject to FTC jurisdiction and businesses that do not use data or information subject to the rule. To the resulting sub-total (7,111,026), staff applies a continuing assumed rate of affiliation of 16.75 percent, *see* 75 FR 43526, 43528 n. 6 (July 26, 2010), reduced by a continuing estimate of 100,000 entities subject to the Commission's GLBA privacy notice regulations, *see id.*, applied to the same assumed rate of affiliation. The net total is 1,174,347.

[13] The associated labor cost is based on the labor cost burden per notice by adding the hourly mean private sector wages for managerial, technical, and clerical work and multiplying that sum by the estimated number of hours. The classifications used are ''Management Occupations'' for managerial employees, ''Computer and Mathematical Science Occupations'' for technical staff, and ''Office and Administrative Support'' for clerical workers. See OCCUPATIONAL EMPLOYMENT AND WAGES—MAY 2012, U.S. Department of Labor released March 29, 2013, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2012''): *http://www.bls.gov/news.release/pdf/ocwage.pdf*. The respective private sector hourly wages for these classifications are $52.20, $38.55, and $16.54. Estimated hours spent for each labor category are 7, 2, and 5, respectively. Multiplying each occupation's hourly wage by the associated time estimate, labor cost burden per notice equals $525.20. This subtotal is then multiplied by the estimated number of non-GLB business families projected to send the affiliate marketing notice (234,869) to determine cumulative labor cost burden for non-GLBA entities ($123,353,199).

[14] Financial institutions must provide a privacy notice at the time the customer relationship is established and then annually so long as the relationship continues. Staff's estimates assume that the affiliate marketing opt-out will be incorporated in the institution's initial and annual notices.

[15] As stated above, no clerical time is included in the estimate because the notice likely would be combined with existing GLBA notices.

[16] Based on the previously stated estimates of 100,000 GLBA business entities at an assumed rate of affiliation of 16.75 percent (16,750), divided by the presumed ratio of 5 businesses per family, this yields a total of 3,350 GLBA business families subject to the Rule.

[17] 3,350 GLBA families × [$52.20 × 5 hours) + ($38.55 × 1 hour)] = $1,003,493.

years.[18] Thus, averaged over the three-year clearance period, the estimated annual burden for GLBA entities is 15,633 hours and $770,333 in labor costs.

The cumulative average annual burden for both non-GLBA and GLBA for the prospective three-year clearance period is 1,111,688 burden hours and $41,888,066 in labor costs. GLBA entities are already providing notices to their customers so there are no new capital or non-labor costs, as this notice may be consolidated into their current notices. For non-GLBA entities, the Rule provides for simple and concise model forms that institutions may use to comply. Thus, any capital or non-labor costs associated with compliance for these entities are negligible.

C. FTC Share of Burden: 560,609 hours; $21,173,214, labor costs [19]

To calculate the total burden attributed to the FTC, staff first deducted from the total annual burden hours those hours attributed to motor vehicle dealers, which are in the exclusive jurisdiction of the FTC. Staff estimates that there are 60,959 motor vehicle dealerships subject to the Rule.[20] Of these, staff estimates that 10% are non-GLBA entities (6,096), and 90% are GLBA entities (54,863). Applying an assumed rate of affiliation of 16.75%, staff estimates that there are 1,021 [21] non-GLBA and 9,190 GLBA motor vehicle dealerships in affiliated families. Staff further assumes there are an average of 5 businesses per family or affiliated relationship, leaving approximately 204 [22] non-GLBA and 1,838 GLBA motor vehicle dealership families, respectively.

Staff further estimates that non-GLBA business families will spend 14 hours in the first year and 0 hours thereafter to comply with the Rule, while GLBA business families will spend 6 hours in the first year, and 4 hours in each of the following two years. The cumulative average annual burden for the non-GLBA and GLBA motor vehicle dealership families is 9,529 hours.[23]

To calculate the FTC's total shared burden hours, staff deducted from the total burden hours (1,111,688 hours) those attributed to motor vehicle dealerships (9,529), leaving a total of 1,102,159 hours to split between the CFPB and the FTC. The resulting shared burden for the CFPB is half that amount, or 551,080 hours. To calculate the total burden hours for the FTC, staff added the burden hours associated with motor vehicle dealers (9,529 hours), resulting in a total burden of 560,609 hours.

Staff used the same approach to estimate the shared costs for the FTC. Staff estimated the costs attributed to motor vehicle dealers as follows: non-GLBA business families have $35,714 in annualized labor costs,[24] and GLBA business families have $422,648 annualized labor costs,[25] for cumulative annualized costs of $458,362.[26]

To calculate, on an annualized basis, the FTC's cumulative share of labor cost burden, staff deducted from the overall total ($41,888,066) [27] the labor costs attributed to motor vehicle dealerships ($458,362), leaving a net amount of $41,429,704 to split between the CFPB and the FTC. The resulting shared burden for the CFPB is half that amount, or $20,714,852. To calculate the total burden hours for the FTC, staff added the costs associated with motor vehicle dealers ($458,362), resulting in a total cost burden for the FTC of $21,173,214.

Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 6, 2014. Write ''Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[28] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://public.commentworks.com/ftc/affiliatemarketingpra2* by following the

[18] 3,350 GLBA families × [($52.20 × 3 hours) + ($38.55 × 1 hours)] = $653,753.

[19] Previously stated as 560,179 hours and $20,771,941 in the August 27, 2013 Notice, based on pre-corrected inputs, as further detailed below.

[20] This figure consists, in part, of 55,417 car dealers per NADA (franchise/new cars) (*http://www.nada.org/Publications/NADADATA/2011/default*) and NIADA data (independents/used cars) (*http://www.usedcarnews.com/news/2963-niada-survey-shows-more-action-online*), respectively, for 2011, multiplied by an added factor of 1.10 to cover for an unknown quantity of additional motor vehicle dealer types (motorcycles, boats, other recreational vehicles) also covered within the definition of motor vehicle dealer under section 1029(a) of the Dodd-Frank Act. This leaves a total of 60,959 motor vehicle dealers subject to the Rule.

[21] Erroneously stated as 102 non-GLBA entities in the August 27, 2013 Notice.

[22] Erroneously stated as 20 in the August 27, 2013 Notice.

[23] 204 non-GLBA families × 4.666667 average hours = 952 hours; 1,838 GLBA families × 4.666667 average hours = 8,577 hours. The total is thus 9,529 hours. In the August 27, 2013 Notice the estimated total was 8,670 hours, but that reflected the pre-corrected input for the estimated number of non-GLBA motor vehicle dealership families.

[24] (204 non-GLBA families × $525.20) ÷ 3 = $35,714. Previously stated as $3,501 in the August 27, 2013 Notice, but that reflected the pre-corrected input for the estimated number of non-GLBA motor vehicle dealership families.

[25] In the first year, GLBA families have $550,573 costs: 1,838 × [($52.20 × 5 hours) + ($38.55 × 1 hour)] = $550,573. In each of the second and third years, GLBA families have $358,686 in costs: 1,838 × [($52.20 × 3 hours) + ($38.55 × 1 hour)] = $358,686.

[26] Previously stated as $426,149 in the August 27, 2013 Notice, but that reflected the pre-corrected input for the estimated number of non-GLBA motor vehicle dealership families.

[27] The August 27, 2013 Notice used $41,117,733 as the total labor cost estimate from which to apportion between the FTC and CFPB, but that amount represented only the non-GLBA labor cost estimate while inadvertently excluding the estimate for GLBA-related labor cost.

[28] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Affiliate Marketing Disclosure Rule, PRA Comment: FTC File No. P0105411'' on your comment, and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 6, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2013–29078 Filed 12–4–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974: CMS Computer Matching Program Match No. 2013–01; HHS Computer Matching Program Match No. 1312

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, this notice announces the renewal of a CMP that CMS plans to conduct with the Purchased Care at the Health Administration Center (PC@HAC) of the Department of Veteran Affairs. We have provided background information about the proposed matching program in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See ''Effective Dates'' section below for comment period.

DATES: *Effective Dates:* CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Policy (DPP), Privacy Policy and Compliance Group (PPCG), Office of E-Health Standards & Services (OESS), CMS, Mailstop S2–24–25, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records (SOR) are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: November 21, 2013.

Michelle Snyder,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2013–01; HHS Computer Match No. 1312

NAME:

''Computer Matching Agreement between the Centers for Medicare & Medicaid Services (CMS) and the Purchased Care at the Health Administration Center (PC@HAC) of the Department of Veterans Affairs for Verification of CHAMPVA Eligibility.''

SECURITY CLASSIFICATION:

None

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services, and Purchased Care at the Health Administration Center (PC@HAC) of the Department of Veterans Affairs.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This Computer Matching Program (CMP) is executed to comply with the provisions of Public Laws (Pub. L.) 93–82, 94–581, 102–190, and 107–14 (codified at Title 38 United States Code (U.S.C.) 1713) that restrict CHAMPVA eligibility for benefits dependent upon a beneficiary's Medicare Part A and Part B status. This computer matching program will match CHAMPVA applicants and beneficiaries with Medicare Part A and B beneficiaries.

PURPOSE(S) OF THE MATCHING PROGRAM:

The purpose of this computer matching agreement is to establish the conditions, safeguards and procedures under which the CMS and PC@HAC will conduct a computer-matching program to determine entitlement to CHAMPVA benefits. Under the terms of this matching agreement, PC@HAC will provide to CMS a list of social security numbers (SSN) for all CHAMPVA eligible beneficiaries who may also be eligible for Medicare benefits. This information is maintained in PC@HAC's System of Records (SOR) entitled ''Health Administration Center Civilian Health and Medical Program Records-VA.'' CMS agrees to conduct a computer match of the SSNs of beneficiaries provided by PC@HAC against the information found in CMS's Enrollment Database (EDB) SOR. PC@HAC will receive the results of the computer match in order to determine a beneficiary's eligibility for care under CHAMPVA.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

Upon establishment of the CHAMPVA program under Public Law 93–82, CHAMPVA entitlement will be terminated when any individual becomes eligible for Medicare Part A (Hospital Insurance) on a non-premium basis. Public Law 94–581 provided for reinstatement of CHAMPVA as second payer for beneficiaries aged 65 and over who exhausted a period of Medicare Part A (Hospital Insurance). These beneficiaries must also be enrolled in Medicare Part B (Medical Insurance) in order to retain their CHAMPVA entitlement. Public Law 102–190 extended CHAMPVA benefit to age 65 for any beneficiary eligible for Medicare Part A on the basis of disability/end stage renal disease (ESRD) only if that individual is also enrolled in Medicare Part B. Public Law 107–14 provided for extending benefit coverage for beneficiaries over the age of 65 years if the beneficiary is in receipt of Medicare Part A and Medicare Part B.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

A. Systems of Records

1. Records Maintained by PC@HAC

The information used in this matching program is maintained in the PC@HAC system identified as 54VA16, entitled ''Health Administration Center Civilian Health and Medical Program Records-VA,'' last published at 68 Fed. Reg. 53784 (September 12, 2003). SSNs of CHAMPVA beneficiaries will be released to CMS pursuant to the routine use number 21 as set forth in the system notice.

2. Records Maintained by CMS

The matching program will be conducted with data maintained by CMS in the EDB, System No. 09–70–0502, published at 73 Fed. Reg. 10249 (February 26, 2008). Matched data will be released to PC@HAC pursuant to the routine use number 2 as set forth in the system notice.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2013–29066 Filed 12–4–13; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child and Family Services Plan (CFSP), Annual Progress and Services Review (APSR), and Annual Budget Expenses Request and Estimated Expenditures (CFS–101).

OMB No.: 0970–0426.

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act (the Act), States, Territories, and Tribes are required to submit a Child and Family Services Plan (CFSP). The CFSP lays the groundwork for a system of coordinated, integrated, and culturally relevant family services for the subsequent five years (45 CFR 1357.15(a)(1)). The CFSP outlines initiatives and activities the State, Tribe or territory will carry out in administering programs and services to promote the safety, permanency, and well-being of children and families. By June 30 of each year, States, Territories, and Tribes are also required to submit an Annual Progress and Services Report (APSR) and a financial report called the CFS–101. The APSR is a Yearly report that discusses progress made by a State, Territory or Tribe in accomplishing the goals and objectives cited in its CFSP (45 CFR 1357.16(a)). The APSR contains new and updated information about service needs and organizational capacities throughout the five-year plan period. The CFS–101 has three parts. Part I is an annual budget request for the upcoming fiscal year. Part II includes a summary of planned expenditures by program area for the upcoming fiscal year, the estimated number of individuals or families to be served, and the geographical service area. Part III includes actual expenditures by program area, numbers of families and individuals served by program area, and the geographic areas served for the last complete fiscal year.

The Child and Family Services Improvement Act of 2006 amended Title IV–B, subparts 1 and 2, adding a number of requirements that affect reporting through the APSR and the CFS–101. Of particular note, the law added a provision requiring States (including Puerto Rico and the District of Columbia) to report data on caseworker visits (section 424(e) of the Act). States must provide annual data on 1) the percentage of children in foster care under the responsibility of the State who were visited on a monthly basis by the caseworker handling the case of the child; and 2) the percentage of the visits that occurred in the residence of the child. In addition, by June 30, 2008, States must set target percentages and establish strategies to meet the goal that; by October 1, 2011; at least 90 percent of the children in foster care are visited by their caseworkers on a monthly basis and that the majority of these visits occur in the residence of the child (section 424(e)(2)(A) of the Act).

Respondents: States, Territories, and Tribes must complete the CFSP, APSR, and CFS–101. Tribes and territories are exempted from the monthly caseworker visits reporting requirement of the APSR. There are approximately 180 Tribal entities that are eligible for IV–B funding. There are 52 States (including Puerto Rico and the District of Columbia) that must complete the CFSP, APSR, and CFS–101. There are a total of 232 possible respondents.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
APSR	232	1	76.58	17,766.56
CFSP	232	1	120.25	27,898
CFS–101, Parts I, II, and III	232	1	4.38	1,016.16
Caseworker Visits	52	1	99.33	5,165.16
Estimated Total Annual Burden Hours:				51,845.88

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–29083 Filed 12–4–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0823]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Over-the-Counter Drugs; Labeling Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 6, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0340. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Over-the-Counter Drugs; Labeling Requirements—(OMB Control Number 0910–0340)—Extension

In the **Federal Register** of March 17, 1999, (64 FR 13254) (the 1999 labeling final rule), we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed over-the-counter (OTC) drug products in part 201 (21 CFR part 201). The regulations in part 201 require OTC drug product labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. Specifically, the 1999 labeling final rule added new § 201.66 (21 CFR 201.66) to part 201. Section 201.66 sets content and format requirements for the Drug Facts portion of labels on OTC drug products.

On June 20, 2000 (65 FR 38191), we published a **Federal Register** final rule that required all OTC drug products marketed under the OTC monograph system to comply with the labeling requirements in § 201.66 by May 16, 2005, or sooner (65 FR 38191 at 38193). Currently marketed OTC drug products are already required to be in compliance with these labeling requirements, and thus will incur no further burden to comply with Drug Facts labeling requirements in § 201.66. Modifications of labeling already required to be in Drug Facts format are usual and customary as part of routine redesign practice, and thus do not create additional burden within the meaning of the Paperwork Reduction Act of 1995 (the PRA). Therefore, the burden to comply with the labeling requirements in § 201.66 is a one-time burden applicable only to new OTC drug products introduced to the marketplace under new drug applications, abbreviated new drug applications, or an OTC drug monograph, except for products in ''convenience size'' packages.[1] New OTC drug products

[1] In a final rule published in the **Federal Register** of April 5, 2002 (67 FR 16304), the Agency delayed the compliance dates for the 1999 labeling final rule for all OTC drug products that: (1) Contain no more than two doses of an OTC drug; and (2) because of their limited available labeling space, would require more than 60 percent of the total surface area available to bear labeling to meet the requirements

Continued

must comply with the labeling requirements in § 201.66 as they are introduced to the marketplace.

Based on a March 1, 2010, estimate provided by the Consumer Healthcare Products Association (75 FR 49495 at 49496), we estimated that approximately 900 new OTC drug product stock keeping units (SKUs) are introduced to the marketplace each year. We estimated that these SKUs are marketed by 300 manufacturers. We estimated that the preparation of labeling for new OTC drug products would require 12 hours to prepare, complete, and review prior to submitting the new labeling to us. Based on this estimate, the annual reporting burden for this type of labeling is approximately 10,800 hours.

OTC sunscreen products were previously not included in our consideration of the burden to comply with the Drug Facts labeling requirements in § 201.66. We specifically exempted OTC sunscreen products from complying with the 1999 labeling final rule until we lifted the stay of the sunscreen final rule published in the **Federal Register** of May 21,1999 (64 FR 27666). In the **Federal Register** of December 31, 2001 (66 FR 67485), we stayed the 1999 sunscreen final rule indefinitely. Additionally, in the **Federal Register** of September 3, 2004 (69 FR 53801), we delayed the § 201.66 labeling implementation date for OTC sunscreen products indefinitely, pending future rulemaking to amend the substance of labeling for these products. In the **Federal Register** of August 27, 2007 (72 FR 49070), we proposed changes to labeling and related testing requirements for sunscreen products to address both ultraviolet A and ultraviolet B radiation, and we anticipated that sunscreen products would become subject to § 201.66 at the time any resultant final rule becomes effective. In the **Federal Register** of June 17, 2011 (76 FR 35620), we published a final rule that established testing and labeling requirements for OTC sunscreen products. This 2011 final rule lifted the delay of the § 201.66 labeling implementation date for OTC sunscreen product. The compliance dates for the 2011 final rule were June 18, 2012, for sunscreen products with annual sales of $25,000 or more and June 17, 2013, for sunscreen products with annual sales of less than $25,000, but we later delayed these compliance dates to December 17, 2012, and December 17, 2013, respectively, when we published an extension date notice on May 11, 2012 (77 FR 27591).

All currently marketed sunscreen products are, therefore, already required to be in compliance with the Drug Facts labeling requirements in§ 201.66, and thus will incur no further burden under the information collection provisions in the 1999 labeling final rule. However, a new OTC sunscreen drug product, like any new OTC drug product, will be subject to a one-time burden to comply with Drug Facts labeling requirements in § 201.66. We estimated that 60 new SKUs of OTC sunscreen drug products would be marketed each year (77 FR 27234). We estimated that these 60 SKUs would be marketed by 30 manufacturers. We estimated that approximately 12 hours would be spent on each label, based on the most recent estimate used for other OTC drug products to comply with the 1999 Drug Facts labeling final rule, including public comments received on this estimate in 2010 that addressed sunscreens.

In determining the burden for § 201.66, it is also important to consider exemptions or deferrals of the regulation allowed products under § 201.66(e). Since publication of the 1999 labeling final rule, we have received only one request for exemption or deferral. One response over an 8-year period equates to an annual frequency of response equal to 0.125. In the 1999 labeling final rule, we estimated that a request for deferral or exemption would require 24 hours to complete (64 FR 13254 at 13276). We continue to estimate that this type of response will require approximately 24 hours. Multiplying the annual frequency of response (0.125) by the number of hours per response (24) gives a total response time for requesting exemption or deferral equal to 3 hours.

In the **Federal Register** of July 23, 2013 (78 FR 44124), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment in response to the notice. The comment was a complaint about the ''deceptively large'' containers in which some OTC drug products are packaged. These deceptively large containers mislead consumers into thinking that they were purchasing more product than the package actually contained.

We do not consider this comment relevant to this proposed collection of information. This information collection concerns OTC drug product labeling format and content, specifically the labeling that appears within the Drug Facts panel. This comment is a complaint about OTC drug products packaged in ''deceptively large'' containers, which is a separate issue and is not the subject of this notice. The regulations for Drug Facts labeling in § 201.66 do not establish, and were not intended to establish, container size requirements for OTC drug products. The Federal Food, Drug, and Cosmetic Act already prohibits the use of deceptively large containers. According to 21 U.S.C. 352(i): ''A drug or device shall be deemed to be misbranded if it is a drug and its container is so made, formed, or filled as to be misleading.'' Therefore, the commenter's complaint is already addressed by statute.

FDA estimates the current burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
201.66(c) and (d) for new OTC drug products	300	3	900	12	10,800
201.66(c) and (d) for new OTC sunscreen products	20	3	60	12	720
201.66(e)	1	0.125	0.125	24	3
Total					11,523

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

set forth in § 201.66(d)(1) and (d)(9) and, therefore, qualify for the labeling modifications currently set forth in § 201.66(d)(10) (67 FR 16304 at 16306). The Agency issued this delay in order to develop additional rulemaking for these ''convenience size'' products (December 12, 2006; 71 FR 74474). These products are not currently subject to the requirements of § 201.66. PRA approval for any requirements to which they may be subject in the future will be handled in a separate rulemaking.

Dated: November 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–29079 Filed 12–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1464]

Draft Guidance for Industry on Bioequivalence Studies With Pharmacokinetic Endpoints for Drugs Submitted Under an Abbreviated New Drug Application; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Bioequivalence Studies With Pharmacokinetic Endpoints for Drugs Submitted Under an ANDA.'' This guidance provides recommendations to applicants planning to include bioequivalence (BE) information in abbreviated new drug applications (ANDAs) and ANDA supplements. The guidance describes how to meet the BE requirements set forth in FDA regulations. The guidance is applicable to dosage forms intended for oral administration and to non-orally administered drug products in which reliance on systemic exposure measures is suitable for documenting BE. The guidance will be especially useful when planning BE studies intended to be conducted during the postapproval period for certain changes in an ANDA.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 5, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments to *http://www.regulations.gov.* Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Teresa Ramson, Center for Drug Evaluation and Research, Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–402–3870.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Bioequivalence Studies With Pharmacokinetic Endpoints for Drugs Submitted Under an ANDA.'' The guidance is applicable to dosage forms intended for oral administration, including tablets, capsules, solutions, suspensions, conventional/immediate release, and modified (extended, delayed) release drug products, and to non-orally administered drug products in which reliance on systemic exposure measures is suitable for documenting BE (e.g., transdermal delivery systems and certain rectal and nasal drug products).

This guidance revises parts of the guidances to industry on ''Bioavailability and Bioequivalence Studies for Orally Administered Drug Products—General Considerations,'' and ''Food-Effect Bioavailability and Fed Bioequivalence Studies Relating to BE studies in ANDAs.'' Specifically, the draft guidance revises recommendations related to (1) the use of systemic exposure measures and (2) considerations for the conduct of BE studies under fed conditions. Revisions are based primarily on experience gained with recommendations contained in prior guidances as well as on scientific information that has become available to the Agency. We believe the revisions will clarify guidance to applicants conducting BE studies for systemically bioavailable generic drug products. This draft guidance contains recommendations for submission of BE studies for ANDAs only. A separate guidance entitled ''Bioavailability and Bioequivalence Studies Submitted in NDAs or INDs—General Considerations'' to address investigational new drugs (INDs), new drug applications (NDAs), and NDA supplements will be published in the near future. FDA has determined that separating guidances according to application type will be beneficial to sponsors.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on BE studies with pharmacokinetic endpoints for drug products submitted in ANDAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Information submitted in an ANDA under 21 CFR 314.94(a)(7), supplemental applications submitted under 21 CFR 314.70(b), and waiver requests submitted under 21 CFR 314.90 are approved under OMB control number 0910–0001.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–29081 Filed 12–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369 (Formerly Docket No. 2007D–0168)]

Draft Guidance for Industry on Bioequivalence Recommendations for Paliperidone Palmitate Extended-Release Injectable Suspension; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised draft guidance for industry entitled ''Bioequivalence Recommendations for Paliperidone Palmitate.'' The guidance provides specific recommendations on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for paliperidone palmitate extended-release injectable suspension.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 3, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration,7519 Standish Pl., Rockville, MD 20855,240–276–9326.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of revised draft BE recommendations for paliperidone palmitate extended-release injectable suspension.

New drug application 022264 for INVEGA SUSTENNA (paliperidone palmitate) extended-release injectable suspension was initially approved by FDA in July 2009. In August 2011, FDA issued a draft guidance for industry on BE recommendations for generic paliperidone palmitate (Draft BE Recommendations for Paliperidone Palmitate). FDA is now issuing a revised version of the Draft BE Recommendations for Paliperidone Palmitate Extended-Release Injectable Suspension (Revised Draft BE Recommendations).

In May 2013, Janssen Research & Development, LLC, submitted a citizen petition requesting that FDA require that any ANDA referencing INVEGA SUSTENNA (paliperidone palmitate) extended-release injectable suspension meet certain conditions, including conditions related to demonstrating BE (Docket No. FDA–2013–P–0608). FDA is reviewing the issues raised in the petition. FDA will consider any comments on the Revised Draft BE Recommendations in responding to the citizen petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for paliperidone palmitate extended-release injectable suspension. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: November 27, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–29080 Filed 12–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this Information Collection Request must be received within 60 days of this notice.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of

the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Rural Health Network Development Planning Performance Improvement and Measurement System Database

OMB No. 0915–xxxx—[NEW]

Abstract: The purpose of the Rural Health Network Development Planning (Network Planning) program, authorized by Section 330A(f) of the Public Health Service Act, 42 U.S.C. 254c(f), as amended by section 201, Public Law 107–251 of the Health Care Safety Net Amendments of 2002, is to assist in the development of an integrated healthcare network, if the network participants do not have a history of collaborative efforts.

The Network Planning program helps to promote the planning and development of healthcare networks in order to: (i) Achieve efficiencies; (ii) expand access to, coordinate, and improve the quality of essential health care services; and (iii) strengthen the rural health care system as a whole. This program brings together key parts of a rural health care delivery system, particularly those entities that may not have collaborated in the past under a formal relationship, to work together to establish and improve local capacity and coordination of care. This grant program supports one year of planning with the primary goal of helping networks create a foundation for their infrastructure and focusing member efforts to address important regional or local community health needs.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data to the program and to enable HRSA to provide aggregate program data. These measures cover the principal topic areas of interest to the Office of Rural Health Policy, including (a) network infrastructure; (b) network collaboration; (c) sustainability; and (d) network assessment. Several measures will be used for this program.

Likely Respondents: The respondents would be Network Planning grant recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement and Measurement System (PIMS) Database	21	1	21	1	21
Total	21	1	21	1	21

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Dated: November 22, 2013.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2013–29038 Filed 12–4–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a conference call of the Interagency Autism Coordinating Committee (IACC).

The IACC Full Committee will have a conference call meeting on Friday, December 13, 2013. The committee will discuss and finalize the 2013 IACC Strategic Plan Update. The conference call will be publicly accessible in listen-only mode.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open—Conference Call.

Date: December 13, 2013.

Time: 12:00 p.m. to 1:30 p.m. *Eastern Time*—Approximate end time.

Agenda: To discuss and finalize the 2013 IACC Strategic Plan Update.

Written Public Comments: Due by 5:00 p.m. ET on Tuesday, December 10, 2013.

Place: Conference call only; No in-person meeting.

Conference Call: Dial: 888–390–8568, Access code: 8162989.

Cost: The conference call is free.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 6182A, Rockville, MD 20852, Phone: (301) 443–6040, Email: *IACCPublicInquiries@mail.nih.gov.*

Please Note:

The meeting will be open to the public through a conference call phone number. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the conference call, please send an email to *helpdeskiacc@gmail.com* or by phone at 415–652–8023.

Written Public Comments:

Written public comments may be submitted to: Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC,

Room 6182A, Rockville, MD 20852, Email: *IACCPublicInquiries@mail.nih.gov*.

By 5:00 p.m. ET on Tuesday, December 10, 2013.

Accommodations Statement:

Individuals who participate by using this conference call service and who need special assistance such as captioning or other reasonable accommodations should submit a request to the Contact Person listed on this notice as soon as possible.

This meeting is being published less than 15 days prior to the meeting due to the need of the committee to discuss and vote on the updates of the 2013 IACC Strategic Plan. Information about the IACC and a registration link for this meeting are available on the Web site: *www.iacc.hhs.gov*. Schedule subject to change.

Dated: November 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–29034 Filed 12–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Exercise of Authority Under the Immigration and Nationality Act; Correction

AGENCY: Office of the Secretary, DHS.

ACTION: Notice; correction.

SUMMARY: On November 4, 2013, DHS published a notice in the **Federal Register**, announcing a Secretarial determination under section 212(d)(3)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(3)(B)(i), as amended. DHS inadvertently omitted three words from that notice. With this document, DHS is making three typographical corrections to that notice: inserting the words ''alien,'' ''in,'' and ''or.''

FOR FURTHER INFORMATION CONTACT: Nicholas J. Perry, Assistant General Counsel for Immigration Enforcement, (202) 282–9822.

Correction

Correct FR Doc. 2013–26263 as follows:

1. In the **Federal Register** of November 4, 2013, in FR Doc. 2013–26263, on page 66037, in the first column, correct the sixth through ninth lines to read:

respect to an alien for solicitation of funds or other things of value for; solicitation of any individual for membership in; the provision of material support to; or who

Dated: November 29, 2013.

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs, U.S. Department of Homeland Security.

[FR Doc. 2013–29040 Filed 12–4–13; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0074]

Review and Revision of the National Critical Infrastructure Security and Resilience (NCISR) Research and Development (R&D) Plan Outline and Specific Questions Regarding the Content

AGENCY: National Protection and Programs Directorate, Department of Homeland Security (DHS).

ACTION: Notice and request for comments and answers to specific questions.

SUMMARY: This Request for Information (RFI) notice informs the public that the Department of Homeland Security's (DHS) Science and Technology Directorate (S&T) is currently developing a National Critical Infrastructure Security and Resilience Research and Development Plan (NCISR R&D Plan) to conform to the requirements of Presidential Policy Directive 21, *Critical Infrastructure Security and Resilience*. As part of a comprehensive national review process, DHS solicits public comment on issues or language in the NCISR R&D Plan that need to be included. Critical infrastructure includes both cyber and physical components, systems, and networks for the sixteen established ''critical infrastructures''.

DATES: Written comments are encouraged and will be accepted until January 6, 2014.

ADDRESSES: Written comments and questions about the NCISR R&D Plan should be forwarded to Kristin Wyckoff, DHS/S&T/RSD, 445 Murray Lane SW., Mail Stop 0208, Washington, DC 20528–0208. Written comments should reach the contact person listed no later than January 6, 2014. Comments must be identified by ''DHS–2013–0074'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*.
- *Email: R&DWG@hq.dhs.gov*. Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. All comments received (via any of the identified methods) will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may submit your comments and material by one of the methods specified in the **FOR FURTHER INFORMATION CONTACT** section. Please submit your comments and material by only one means to avoid the adjudication of duplicate submissions. If you submit comments by mail, your submission should be an unbound document and no larger than 8.5 by 11 inches to enable copying and electronic document management. Please limit submissions to a maximum of 10 pages of text if possible. If you want DHS to acknowledge receipt of comments by mail, include with your comments a self-addressed, stamped postcard that includes the docket number for this action. We will date your postcard and return it to you via regular mail.

Docket: Background documents and comments can be viewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Kristin Wyckoff, DHS/S&T/RSD, 445 Murray Lane SW., Mail Stop 0208, Washington, DC 20528–0208.

SUPPLEMENTARY INFORMATION:

I. Public Participation

The Department of Homeland Security (DHS) invites interested persons to contribute highly relevant content for consideration in the development the National Critical Infrastructure Security and Resilience Research and Development (NCISR R&D) Plan. Content can include, but is not limited to, published information and data, technical views, and/or ideas on research and development priorities, unsatisfied requirements or unmet capabilities, and/or current and long-term issues for critical infrastructure. Input is welcome from stakeholder groups, private and public entities, and individuals on content to be included to best fulfill the intended purpose of the plan. Comments that will provide the most assistance to DHS in writing the NCISR R&D Plan will include the reason for the recommended information or topic along with supplemental data, information, or authority that supports such recommendation.

II. Background

On February 12, 2013, President Obama signed Presidential Policy Directive-21 [1] (PPD–21), *Critical*

[1] PPD–21 can be found at: *http://www.whitehouse.gov/the-press-office/2013/02/12/*

Infrastructure Security and Resilience, which builds on the extensive work done to date to protect and enhance the resilience of the Nation's critical infrastructure. This directive aims to clarify roles and responsibilities across the Federal Government and establish a more effective partnership with owners and operators and state, local, tribal, and territorial entities to enhance the security and resilience of critical infrastructure.

President Obama also signed Executive Order (EO) 13636 [2] on February 12, 2013, entitled *Improving Critical Infrastructure Cybersecurity.* By issuing the EO and PPD together, the Administration is taking an integrated approach to strengthening the security and resilience of critical infrastructure against all hazards, through an updated and overarching national framework that acknowledges the increased role of cybersecurity in securing physical assets.

PPD–21 sets forth several actions that the Secretary of Homeland Security shall take to implement the directive. One of these actions is to develop a National Critical Infrastructure Security and Resilience R&D Plan. This is to be done within two years of the date of the directive, or by February 12, 2015, with the Secretary of Homeland Security working in coordination with the Office of Science and Technology Policy (OSTP), the Sector Specific Agencies (SSAs), Department of Commerce (DOC), and other Federal departments and agencies. The plan is to take into account the evolving threat landscape, annual metrics, and other relevant information to identify priorities and guide research and development requirements and investments. The plan shall be issued every four years after its initial delivery with interim updates as needed. The plan will provide input to align Federal and Federally-funded research and development activities seeking to strengthen the security and resilience of the Nation's critical infrastructure.

III. Initial List of Issues To Be Updated in the NCISR R&D Plan

PPD–21 specifies the following elements shall be included in the NCISR R&D Plan:

1. Promote research and development to enable the secure and resilient design and construction of critical infrastructure and more secure accompanying cyber technology;

2. Enhance modeling capabilities to determine potential impact on critical infrastructure of an incident or threat scenario as well as cascading effects on other sectors;

3. Means to facilitate initiatives to incentivize cybersecurity investments and the adoption of critical infrastructure design features that strengthen all-hazards security and resilience; and

4. Prioritize efforts to support the strategic guidance issued by the Secretary of Homeland.

The NCISR R&D Plan will be written by coordinating with the full range of critical infrastructure partners and other stakeholders. This notice extends an invitation to the broader public to provide input on the technical content and foci for the NCISR R&D Plan needed to best achieve the goals established in the Presidential Executive Orders and Directives. To assist the reviewer, DHS has developed a proposed structure and outline for the NCISR R&D Plan which is included with this notice. The purpose of this notice is to request public comment on this draft outline indicating priority topics or ideas they believe should be included and why that are listed or not listed. These comments and inputs would help to ensure the NCISR R&D Plan mandated by PPD–21 is relevant and useful, guiding research and development that will strengthen the security and resilience of the Nation's critical physical and cyber infrastructure.

IV. NCISR R&D Plan Outline

Below is the list of the topic areas proposed for the NCISR R&D. This request for information solicits feedback on the proposed content, foci, and relevant high-priority subtopics. Recommendations on changes, additions or deletions to the proposed list are also encouraged. Justification for inclusion is requested to strengthen the value of the input received.

- Background and Problem
- Challenges and Milestones
- Future State and Vision
- Objectives
- Cyber-Physical Systems
- Interdependencies
- Operations, Modeling & Simulation
- Human Systems Elements
- Education
- Public/Private/Local Partnerships
- R&D Transition to Use
- Multi-domain R&D
- National R&D and Incentives
- Science Challenges
- Key Elements for Sector R&D Planning
- Execution and Coordination Strategy
- Tools and Methodologies
- Standards and Regulations
- Means to achieve R&D Objectives
- Priorities and Metrics
- Emerging Threats

Additional feedback on the document structure, priority topics, technical or discipline emphasis, and/or method of prioritization of research and development topics are welcomed.

V. Specific Questions

Answers to the below specific questions are desired to ensure the NCISR R&D Plan best addresses and covers what is needed to fulfill its intention and purpose:

1. What types of sector interdependencies of critical infrastructure entities and sectors are important to be included in the NCISR R&D Plan? How well do current analysis methods appropriately address the full operational impacts and complexities of sector interdependencies and the effects of cascading failures for individual assets and/or infrastructure sectors?

2. This is a national research and development plan. What are the highest priority regional, state, local, tribal or territorial issues and concerns that should be included or addressed through a comprehensive research and development agenda? Who are the key players and beneficiaries for such a research and development agenda? How should this research agenda be implemented so to solicit innovative solutions that are broadly accepted by the stakeholder community?

3. How should prioritization of research and development areas be best accomplished? What specific selection and performance criteria should be used to prioritize research and development topics within and between sectors?

4. What is a topic area or issue that you feel is essential to be included in a national NCISR R&D Plan?

Dated: November 27, 2013.

Robert Kolasky,

Director, Integrated Task Force, Cyber EO and PPD–21 Implementation, Office of Infrastructure Protection, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2013–29039 Filed 12–4–13; 8:45 am]

BILLING CODE 9110–9P–P

presidential-policy-directive-critical-infrastructure-security-and-resil.

[2] EO 13636 can be found at: *http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03915.pdf.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[FR–5745–N–01]

Announcement of Requirements and Registration for ''Innovation in Affordable Housing Student Design and Planning Competition''

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice announces the inaugural year of the Innovation in Affordable Housing Student Design and Planning Competition. The competition requires teams of graduate students from multiple disciplines to submit plans in response to a real life affordable housing design issue. The goals of this new competition are: To encourage research and innovation in quality affordable housing design that strengthens the social and physical fabric of low- and moderate-income communities and neighborhoods; to raise practitioner and future practitioner capacity to produce more livable and sustainable housing for low-and moderate-income people through disseminating best practices; and to foster cross-cutting team-work within the design and community development process.

DATES: February 24, 2014. Although teams may begin registering now, the competition will officially open on January 6, 2014, when the real life affordable housing design issue is released. The deadline for phase one of the competition will be February 10, 2014. Finalists will be announced on February 24, 2014, and will have until May 5, 2014, to prepare their presentations.

FOR FURTHER INFORMATION CONTACT: Claire Desjardins, Research Utilization Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8110, Washington, DC 20410, telephone 202–402–5945. Email: *Claire.Y.Desjardins@hud.gov.*

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Entrants in the Innovation in Affordable Housing Design are requested to present their plans for a site owned by a public housing authority (PHA). This presentation will include architectural designs, neighborhood planning, and financial plans.

Eligibility Rules for Participating in the Competition

The competition is open to any contestant, defined as a team of U.S. citizens or permanent residents of the United States who are currently enrolled in a graduate level program at a university in the United States. The team members must represent at least three related academic disciplines and will be supported by a faculty advisor. Individuals may not participate in more than one team.

To be eligible to win a prize under this challenge (Challenge), an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HUD;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States;

(4) May not be a Federal entity or Federal employee acting within the scope of their employment;

(5) Shall not be a HUD employee working on their applications or submissions during assigned duty hours;

(6) May not be a judge of the competition, or any other party involved with the design, production, execution, or distribution of the Challenge or their immediate family (spouse, parents or step-parents, siblings and step-siblings, and children and step-children);

(7) Federal grantees may not use Federal funds to develop challenge applications under the America COMPETES Reauthorization Act of 2011 (COMPETES Act) unless consistent with the purpose of their grant award;

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this Challenge, contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this Challenge, contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to Challenge activities.

Registration Process for Participants

All Contestants can register on the competition Web site, *http://www.huduser.org/portal/challenge/index.html.* Interested parties can also read all official rules and sign up to receive more information and competition updates on this site.

Submission Period Begins: 12:01 a.m., EDT, January 6, 2014.

Submission Period Ends: 11:59 p.m., EDT, February 10, 2014.

Amount of the Prize

The winning team of the competition will be awarded $10,000. The runner-up team will be awarded $5,000. Prizes awarded under this competition may be subject to Federal income taxes. HUD will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

Submissions to the competition will be assessed by an informed jury of approximately five practitioners and experts in the fields of architecture, urban planning, affordable housing, and other relevant areas, in compliance with the requirements of the COMPETES Act. Jury members will be named after the commencement of the competition.

The jury will make decisions based on the following criteria: completeness of design; applicability; financial and economic viability; planning criterion; and innovation and creativity.

Additional Information

The finalists will be invited to a site visit of the PHA in mid-March, with expenses paid for two team members. All rules and competition information and updates can be found at *http://www.huduser.org/portal/challenge/index.html.*

Copyright and Intellectual Property: Upon submission, each team warrants that the team members are the sole owners of the submission, and that the submission is wholly original to the team and does not infringe on any copyright or other rights of any third party of which the team is aware.

Submission Rights: By participating in this Challenge, each Team grants to HUD an irrevocable, paid-up, royalty-free, non-exclusive license to post, link to, share, and display publicly on the Web. The Public Housing Authority may use ideas from submissions in their future efforts to address the affordable housing design issue.

Compliance With Rules and Contacting Contest Winners

Finalists and the Contest Winners must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements herein. The initial finalists will be notified by email after the date of the judging.

Privacy

Personal information provided to HUD by Contestants registering or filling out the submission form through *huduser.org* is protected by the Privacy Act, and is used to respond to Contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the Contest. Winners are permitted to cite that they won this contest.

General Conditions

HUD reserves the right to cancel, suspend, and/or modify the Competition, or any part of it, for any reason, at HUD's sole discretion.

Participation in this competition constitutes a contestant's and team's full and unconditional agreement to abide by the competition's official rules found at *http://www.huduser.org/portal/challenge/index.html.*

Authority: 15 U.S.C. 3719

Dated: November 26, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–29067 Filed 12–4–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–EA–2013–N235; FF09D00000–FXGO1664091HCC0–145]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Meeting:* Wednesday January 29, 2014, from 8 a.m. to 4:30 p.m., and Thursday January 30, 2014, from 8 a.m. to 4:30 p.m. (Eastern standard time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held in the Room 104A at the USDA Whitten Building, 12th Street and Jefferson Drive SW., Washington DC 20250.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or email *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit wildlife resources;
2. Encourage partnership among the public, sporting conservation organizations, States, Native American tribes, and the Federal Government; and
3. Benefit recreational hunting.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Wildlife Restoration Program;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, tribal, and Federal governments; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and
8. When requested by the Designated Federal Officer in consultation with the Council Chairperson, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will convene to consider:

1. The Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Farm Bill;
3. Funding for public and private lands conservation; and
4. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

PUBLIC INPUT

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	January 20, 2014.
Submit written information or questions before the meeting for the council to consider during the meeting.	January 20, 2014.
Give an oral presentation during the meeting.	January 20, 2014.

Attendance

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the date listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date above, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Stephen Guertin,

Deputy Director.

[FR Doc. 2013–29002 Filed 12–4–13; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–033]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 10, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. No. 731–TA–1114 (Review)(Steel Nails from China). The Commission is currently scheduled to complete and file its determinations and views on or before December 19, 2013.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Dated: December 3, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–29205 Filed 12–3–13; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Safe Drinking Water Act

On November 23, 2013 the Department of Justice lodged a proposed Consent Decree (''Decree'') with the United States District Court for the District of Wyoming in the lawsuit entitled *United States* v. *Bryan Pownall,* Civil Action No. 13–CV–142–F. The action concerns the public water system the defendant, Bryan Pownall (''Defendant'') uses to provide water to the Bryan's Place bar and a few trailer homes located in Rozet, Campbell County, Wyoming, about 16 miles east of Gillette, Wyoming. The Decree resolves the claims alleged in the United States' Complaint that Defendant failed to comply with routine monitoring, reporting, and other requirements of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (''NPDWRs''), two administrative compliance orders issued by EPA on May 20, 2010 and July 24, 2011, and a final order issued by EPA on November 7, 2011 resolving an administrative complaint against Defendant. The Decree requires Defendant comply with a list of specific regulatory requirements for a period of four years, subject to an early termination provision. The Decree provides that if Defendant connects the Bryan's Place public water system to a new regional water system extended form Gillette, Wyoming to Rozet, Wyoming, and provides proof to EPA that Defendant is obtaining water from the new regional water system, the Decree can then be terminated.

The publication of this notice opens a period for public comment. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Bryan Pownall,* D.J. Ref. No. DOJ # 90–5–1–1–10737. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–29052 Filed 12–4–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0041]

Logging Operations; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and

Budget's (OMB) approval of the information collection requirements contained in the Logging Operations Standard (29 CFR 1910.266).

DATES: Comments must be submitted (postmarked, sent, or received) by February 3, 2014.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0041, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0041). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The collections of information contained in the Logging Operations Standard are necessary to reduce workers' risk of death or serious injury by requiring employers to assure that operating and maintenance instructions are available on machines or in the area where the machine is operated. For vehicles, employers must assure that operating and maintenance instructions are available for each vehicle.

Maintenance and Operating Instructions (§§ 1910.266(f)(1)(iii) and (g)(3))

Under paragraph (f)(1)(iii) and (g)(3) of the Standard, employers must assure that operating and maintenance instructions are available on machines or in the area where the machine is being operated, and in vehicles. For those machines with no operating instructions in the cab, the employer will be required to obtain and retain a manual within the immediate work area for each machine. Since the Logging Operations final rule has been in effect since 1995, OSHA assumes that all employers are in compliance with the provision to have operating and maintenance instructions available on machines or in the area where the machines are being operated.

Certification of Training (§ 1910.266(i)(10)(i) and (i)(10)(ii))

Paragraph (i)(10)(i) requires employers to certify in writing that a worker/supervisor received the training the Standard requires. Under paragraph (i)(10)(ii), employers need only maintain the most recent certification for training that a worker/supervisor has received.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Action

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Logging Operations Standard (29 CFR 1910.266). OSHA is proposing to decrease the burden hours in its currently approved information collection request from 25,957 burden hours to 1,622 burden hours (a total decrease of 24,335 hours). This decrease is due to updated data showing a decrease in the number of establishments affected by the Standard as well as the removal of burden hours associated with the requirement that employers provide training to workers. Upon further analysis, this provision is not considered to be a collection of information under PRA–95. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Logging Operations Standard (29 CFR 1910.266).

OMB Control Number: 1218–0198.

Affected Public: Business or other for-profits.

Number of Respondents: 8,286.

Number of Responses: 50,904.

Frequency of Responses: On occasion.

Estimated Total Burden Hours: 1,622 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0041). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publically available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 2, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–29053 Filed 12–4–13; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

Underwriters Laboratories, Inc.: Application for Expansion

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Underwriters Laboratories, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory and presents the Agency's preliminary finding to grant the application and request. Underwriters Laboratories, Inc., requests the addition of multiple test standards to its scope of recognition. This preliminary finding does not constitute an interim or temporary approval of the application and request.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 20, 2013. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES:

Electronically: Tender submissions electronically to the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions online for making electronic submissions.

Facsimile: If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

Regular or express mail, hand delivery, or messenger (courier) service: Tender submissions to the OSHA Docket Office, Docket No. OSHA–2009–0025, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving submissions sent by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by regular or express mail, hand delivery, or messenger (courier) service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the docket number for this notice (OSHA–2009–0025). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials may be available online at *http://www.regulations.gov*. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or to the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov*.

General and technical information: Contact David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110; email: *johnson.david.w@dol.gov*. OSHA's Web page includes information about the NRTL Program (see *http://www.osha.gov/otpca/nrtl/index.html*).

*Copies of the **Federal Register** notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as other relevant

information, is also available on OSHA's Web page at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration (OSHA) is providing notice that Underwriters Laboratories, Inc., (UL) is applying for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). UL requests the addition of multiple test standards to their NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in Title 29, Code of Federal Regulations, Section 1910.7 (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. Recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including UL, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*.

Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use. Each of these elements allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

UL currently has 34 facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062. A complete list of UL sites recognized by OSHA is available at *http://www.osha.gov/dts/otpca/nrtl/ul.html*.

II. General Background on the Application and Request

UL submitted an application, dated March 26, 2013 (Ex. 1: UL Application), to expand its recognition to include multiple additional test standards. The Office of Technical Programs and Coordination Activities (OTPCA) staff performed a comparability analysis and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application. The OTPCA staff determined that 23 of these standards are ''appropriate test standards'' within the meaning of 29 CFR 1910.7(c).

Table 1 below lists appropriate test standards found within UL's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 60730–1	Automatic Electrical Controls for Household and Similar Use, Part 1: General Requirements.
ANSI/UL 60730–2–2	Automatic Electrical Controls for Household and Similar Use; Part 2 Particular Requirements for Thermal Motor Protectors.
UL 60730–2–14	Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators.
ANSI/UL 1008A	Medium-Voltage Transfer Switches.
ANSI/UL 61010–1	Electrical Equipment for Measurement, Control, and Laboratory Use; Part 1: General Requirements.
ANSI/UL 61010–2–030	Safety Requirements for Electrical Equipment for Measurement, Control, and Laboratory Use—Part 2–030: Particular Requirements for Testing and Measuring Circuits.
ANSI/UL 61010–031	Electrical Equipment for Measurement, Control, and Laboratory Use; Part 031: Safety Requirements for Hand-Held Probe Assemblies for Electrical Measurement and Test.
ANSI/UL 60950–1	Information Technology Equipment Safety—Part 1: General Requirements.
ANSI/UL 60950–21	Information Technology Equipment—Safety—Part 21: Remote Power Feeding.
ANSI/UL 60950–22	Information Technology Equipment Safety—Part 22: Equipment to be Installed Outdoors.
ANSI/UL 60950–23	Information Technology Equipment Safety—Part 23: Large Data Storage Equipment.
ANSI/UL 60947–4–1A	Low-Voltage Switchgear and Controlgear—Part 4–1A: Contactors and Motor-Starters—Electromechanical Contactors and Motor-Starters.
ANSI/UL 2738	Induction Power Transmitters and Receivers for Use with Low Energy Products.
ANSI/UL 1990	Nonmetallic Underground Conduit with Conductors.
ANSI/UL 60947–5–2	Low-voltage Switchgear and Controlgear—Part 5–2: Control Circuit Devices and Switching Elements—Proximity Switches.
ANSI/UL 1691	Single Pole Locking-Type Separable Connectors.
ANSI/UL 61058–1	Switches for Appliances—Part 1: General Requirements.
ANSI/UL 2108	Low Voltage Lighting Systems.
ANSI/UL 60745–2–16	Hand-Held Motor-Operated Electric Tools—Safety—Part 2–16: Particular Requirements for Tackers.
ANSI/UL 60745–2–22	Hand-Held Motor-Operated electric Tools—Safety—Part 2–22: Particular Requirements for Cut-Off Machines.
ANSI/UL 60335–2–3	Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Irons.
ANSI/UL 962A	Furniture Power Distribution Units.
ANSI/UL 2438	Outdoor Seasonal-Use Cord-Connected Wiring Devices.

III. Preliminary Finding on the Application and Request

UL submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, and its comparability analysis, indicate that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include 23 test standards for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of UL's application and request.

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in UL's application and request, including pertinent documents (e.g., exhibits) and all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2009–0025.

The OTPCA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant UL's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application and request. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

IV. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on December 2, 2013.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–29054 Filed 12–4–13; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Institutional Advancement Committee will meet telephonically on December 10, 2013. The meeting will commence at 4:00 p.m., EST, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington, DC 20007.

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.

CALL-IN DIRECTIONS FOR OPEN SESSION:

- 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.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to consider and act on recommendation of new prospective funders to the Board of Directors, and to discuss prospective funders for LSC's 40th anniversary celebration and development activities and prospective members for LSC's 40th Campaign Cabinet and Honorary Committee.

A verbatim transcript will be made of the closed session meeting of the Institutional Advancement Committee. The transcript of any portion of the closed session falling within the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6) 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:

Open

1. Approval of Agenda
2. Approval of minutes of the Committee's open session meeting of October 1, 2013
3. Approval of minutes of the Committee's open session meeting of October 20, 2013
4. Consider and act on Pledge Agreement Form
5. Consider and act on proposed changes to LSC's case statement for fundraising
6. Presentation of LSC's online giving portal
   - Wendy Rhein, Chief Development Officer
7. Public Comment
8. Consider and act on other business

Closed

9. Approval of minutes of the Committee's closed session meeting of October 1, 2013
10. Approval of minutes of the Committee's closed session meeting of October 20, 2013
11. Consider and act on recommendation of new prospective funders to the Board of Directors
12. Discussion of prospective funders for LSC's 40th anniversary celebration and development activities
13. Discussion of prospective members for LSC's 40th Campaign Cabinet and Honorary Committee
14. Consider and act on adjournment of 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.*

ACCESSIBILITY: LSC complies with the Americans 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 needing 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: December 2, 2013.

Atitaya C. Rok,

Staff Attorney.

[FR Doc. 2013–29198 Filed 12–3–13; 4:15 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0256]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the Office of Management and Budget's (OMB's) approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Nuclear Education Grantee Survey.
2. *Current OMB approval number:* 3150–XXXX.
3. *How often the collection is required:* Once every 5 years.
4. *Who is required or asked to report:* NRC Grantees.
5. *The number of annual respondents:* 60.
6. *The number of hours needed annually to complete the requirement or request:* 45 hours.
7. *Abstract:* The NRC seeks to conduct a survey of grantees funded between 2007 and 2011 under NRC's Nuclear Education Grants. The survey will allow the NRC to collect information that is not otherwise available from all grantees to assess the impact of these funds on grantee programs, their faculty, and their students.

Submit, by February 3, 2014, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied, for a fee, publicly available documents, including the draft supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Office of Management and Budget clearance requests are available at *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's public Web site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket ID NRC–2013–0256. You may submit your comments by any of the following methods: Electronic comments: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0256. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by email to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 29th day of November, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–29048 Filed 12–4–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70961; File No. SR–CBOE–2013–113]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Multi-Class Spread Orders

November 29, 2013.

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 November 18, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''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 the Substance of the Proposed Rule Change

CBOE proposes to amend its rule related to Multi-Class Broad-Based Index Option Spread Orders (referred to herein as ''Multi-Class Spread Orders''). 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 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make changes regarding the trading of Multi-Class Spread Orders. The proposed changes to the rule update the definition of ''Broad-Based Index Option'' in Rule 24.19 in order to reflect the Broad-Based Index Options currently eligible to be used in Multi-Class Spread Orders under Rule 24.19.[3] An updated definition of ''Broad-Based Index Option'' necessarily requires an update to the definition of Multi-Class Spread Order to reflect the valid combinations of Broad-Based Index Options to which the rule applies.[4] The Exchange also proposes to update the definition of Multi-Class Spread Order to more clearly and accurately reflect what such an order is. Currently, the term Multi-Class Spread Order is defined as ''an order or quote to buy a stated number of contracts of a Broad-Based Index Option and to sell an equal number, or an equivalent number, of contracts of a different Broad-Based Index Option.'' [5] However, a Multi-Class Spread Order can be effected without necessarily buying contracts and selling other contracts. The key component of a Multi-Class Spread Order is really the establishment of an appropriate hedge between the two options classes. As such, a Multi-Class Spread Order could be effected by buying contracts in two different classes, without selling any contracts (or vice versa). For example, a market participant could buy 100 SPX calls and buy 200 OEX puts, thereby establishing an appropriate hedge (since the first leg creates a long position and the second leg creates a short position). Therefore, the Exchange proposes to amend this statement to replace the terms ''buy'' and ''sell'' with ''transact'', and to add the language regarding establishing of an appropriate hedge. Also, the description of a Multi-Class Spread Order being ''an order or quote'' is somewhat misleading, as a quote cannot be submitted for a Multi-Class Spread Order unless that quote is submitted in response to a Multi-Class Spread Order. As such, the Exchange proposes to clarify that it is an ''order or quote in response to an order . . .'' Going forward a Multi-Class Spread Order shall be defined as an order or quote in response to an order to transact a stated number of contracts of a Broad-Based Index Option and to transact an equal number, or an equivalent number, of contracts of a different Broad-Based Index Option to create an appropriate hedge.

Currently, Multi-Class Spread Orders are manually created and executed on the floor of the Exchange and may not be entered electronically. The Exchange is in the process of modifying its electronic order-entry systems to provide for the electronic entry and routing of Multi-Class Spread Orders to the floor of the Exchange. Accordingly, the Exchange is proposing changes to Rule 24.19(b) that will state that Multi-Class Spread Orders may be entered from on or off the CBOE floor. Consistent with the audit trail requirements that apply to all orders (in accordance with Rule 6.24), the proposed rule will require that all Multi-Class Spread Orders must be systematized as Multi-Class Spread Orders prior to representation at a trading station. An order is systematized if the order is sent electronically to the Exchange or the order is sent to the Exchange non-electronically and input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange.

Because the rule applies only to Multi-Class Spread Orders composed of certain combinations of Broad-Based Index Options, any Multi-Class Spread Order received by CBOE that contains an invalid combination of options will be rejected by the Exchange's systems. The market participant who sends such an error will receive notice of such rejection.

Because the current order creation process is a manual, on-floor process, the current language states that a Multi-Class Spread Order may be represented at the trading station of either Broad-Based Index Option involved, and also requires that the Trading Permit Holder (''TPH'') initiating the order in the trading crowd to contact an Order Book Official (''OBO''), Designated Primary Market-Maker (''DPM''), or Exchange staff, as applicable, at the other trading station to have a notice of such order disseminated to the other trading crowd. The proposed rule change will require a Multi-Class Spread Order must [sic] be represented at the primary trading station, and state that the TPH representing the order must contact an OBO, DPM, or Exchange staff (as applicable) at the other trading station in order to provide notice of such order for dissemination to the other trading crowd. This ensures that all market participants at both physical trading locations are aware of the terms of the order being processed. The proposed change recognizes that a Multi-Class Spread Order may be routed from off of the Exchange floor. Furthermore, the proposed rule change also makes minor changes to the text of the rule in order to enhance reader clarity.

The proposed rule change will simplify the process of creating and executing Multi-Class Spread Orders on the floor of the Exchange, and it will enhance the Exchange's audit trail with respect to such orders. No later than 90 days following the effective date of the proposed rule change, the Exchange will announce to TPHs via Regulatory Circular the implementation date by which TPHs must be in compliance with the changes described herein. The implementation date will be no later than 180 days following the effective date of the proposed rule change, and will be at least 60 days following the release of the abovementioned Regulatory Circular (in order to give TPHs ample time to come into compliance with the changes described herein).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the

[3] As such, the Exchange proposes to add options on the S&P 500 Index PM-Settled (SPXPM), Mini-SPX Index (XSP), CBOE Volatility Index (VIX), CBOE Binary Options on the S&P 500 Index (BSZ), CBOE Binary Options on the CBOE Volatility Index (BVZ), S&P 500 Range Options (SRO), and Russell 2000 Index (RUT) to the definition of ''Broad-Based Index Option'' described in CBOE Rule 24.19(a)(1) as well as clarify that the S&P 100 Index includes both the OEX and XEO classes.

[4] As such, the Exchange proposes to amend CBOE Rule 24.19(a)(2) to state that Multi-Class Spread Orders may be composed of (i) any combination of MNX, NDX, or QQQ; (ii) any combination of OEF, OEX, XEO or SPX; (iii) any combination of SPX (including SPXW and SPXQ), SPXPM, SPY, XSP, VIX, VXX, VXZ, BSZ, BVZ or SRO; (iv) any combination of IWM and RUT; and (v) any other combination of related Broad-Based Index Options as determined by the Exchange.

[5] *See* CBOE Rule 24.19(a)(2).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Automating the Multi-Class Spread Order creation process and allowing such orders to be routed from on or off of the floor of the Exchange serves to remove impediments to and to perfect the mechanism for a free and open market and a national market system by providing market participants the ability to route Multi-Class Spread Orders to the Exchange electronically. More accurately defining the term ''Multi-Class Spread Orders'' prevents confusion, thereby to [sic] removing impediments to and perfecting the mechanism for a free and open market. The Exchange believes the proposed changes, which include increasing the explicit list of the number of securities that can be included in Multi-Class Spread Orders, will increase opportunities for execution of Multi-Class Spread Orders, which will benefit investors. Finally, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among market participants as all market participants may participate in Multi-Class Spread Orders. Additionally, enhancing the audit trail with respect to Multi-Class Spread Orders promotes transparency and aids in surveillance, thereby protecting investors. Further, updating the definitions of ''Broad-Based Index Options'' and ''Multi-Class Spread Orders'' will reduce possible confusion regarding what Multi-Class Spread Orders are and which Broad-Based Index Options may be eligible for representation as a Multi-Class Spread Order in accordance with Rule 24.19, thereby removing impediments to and perfecting the mechanism for a free and open market and a national market system

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[9] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. Enhancing the audit trail with respect to Multi-Class Spread Orders will allow the Exchange to better enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange.

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.

The Exchange believes that automating the Multi-Class Spread Order creation process and allowing such orders to be routed from on or off of the floor of the Exchange promotes fair and orderly markets, as well as assists the Exchange in its ability to effectively attract order flow and liquidity to its market, and ultimately benefits all CBOE TPHs and all investors.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Multi-Class Spread Orders are available to all market participants through CBOE TPHs. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, again, Multi-Class Spread Orders are available to all market participants through CBOE TPHs, which makes CBOE a more effective marketplace. Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE more attractive to market participants at other exchanges, such market participants may elect to become CBOE market participants.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such 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 Number SR–CBOE–2013–113 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–2013–113. 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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 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–2013–113, and should be submitted on or before December 26, 2013.

[8] Id.

[9] 15 U.S.C. 78f(b)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29041 Filed 12–4–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70962; File No. SR–NYSE–2013–76]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Concerning Communications With the Public To Harmonize Them With Certain Financial Industry Regulatory Authority, Inc. Rules and Make Other Conforming Changes

November 29, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Exchange Act Rule 19b–4(f)(6),[3] which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules concerning communications with the public to harmonize them with certain Financial Industry Regulatory Authority, Inc. (''FINRA'') rules and make other conforming changes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules concerning communications with the public to harmonize them with certain FINRA rules and make other conforming changes. Set forth below are descriptions of the harmonization process, the current NYSE rules, and the proposed NYSE rules. Specifically, the Exchange proposes to (i) delete paragraphs (a)(1), (d), (i), (j) and (l) of NYSE Rule 472, Supplementary Materials 472.10(1), (3), (4) and (5), and 472.90, and Interpretations 472/01 and 472/03 through 472/11; (ii) adopt new rule text that is substantially similar to FINRA Rules 2210, 2212, and 9551; and (iii) make other conforming changes.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Exchange Act Rule 17d–2, the Exchange, NYSER, and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE MKT LLC (''NYSE MKT'') became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, the Exchange, and NYSE MKT of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6] FINRA recently harmonized NASD and FINRA Incorporated NYSE Rules and interpretations concerning communications with the public.[7] In that filing, FINRA adopted NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210–1 and 2210–3 through 2210–8 as FINRA Rules 2210 and 2212 through 2216 and deleted paragraphs (a)(1), (i), (j) and (l) of FINRA Incorporated NYSE Rule 472, FINRA Incorporated NYSE Rule Supplementary Materials 472.10(1), (3), (4) and (5) and 472.90, and FINRA Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11. FINRA's rule change became effective on February 4, 2013.[8]

Current Communications With the Public Rules and Interpretations

Rule 472(a)(1) requires that each advertisement, sales literature or other similar type of communication that is generally distributed or made available by a member organization to customers or the public be approved in advance by an allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

Rule 472(d) requires that communications with the public be retained in accordance with Rule 440.

Rule 472(i) provides that no member organization may use any communication that contains (i) any untrue statement or omission of a material fact or is otherwise false or misleading; (ii) promises of specific results, exaggerated or unwarranted claims; (iii) opinions for which there is

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] References to rules are to NYSE rules unless otherwise indicated. The remaining provisions of Rule 472 and supplementary material and interpretations not addressed in this proposal concern research and would remain in place because FINRA and NYSE have not yet harmonized their research rules.

[5] *See* Exchange Act Release No. 56148 (Jul. 26, 2007), 72 FR 42146 (Aug. 1, 2007) (order approving the Agreement); Exchange Act Release No. 56147 (Jul. 26, 2007), 72 FR 42166 (Aug. 1, 2007) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); Exchange Act Release No. 60409 (July 30, 2009), 74 FR 39353 (Aug. 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, see FINRA Information Notice, dated March 12, 2008.

[7] See Exchange Act Release No. 66681 (Mar. 29, 2012), 77 FR 20452 (Apr. 4, 2012).

[8] *See* FINRA Regulatory Notice 12–29.

no reasonable basis; or (iv) projections or forecasts of future events that are not clearly labeled as forecasts.

Rule 472(j) sets forth specific standards for recommendations, records of past performance, projections and predictions, comparisons, dating reports, identification of sources, and testimonials.

Rule 472(l) provides that other communications activities may include, but are not limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles, or making radio/TV appearances. Member organizations must establish specific written supervisory procedures applicable to allied members and employees who engage in these types of communications activities. These procedures must include provisions that require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1). These types of activities are subject to the general standards set forth in Rule 472(i). In addition, any activity that includes discussion of specific securities is subject to the specific standards in Rule 472(j).

Supplementary Materials 472.10(1), (3), (4) and (5) define ''communication,'' ''advertisement,'' ''market letter,'' and ''sales literature,'' respectively. Interpretations 472/01, 472/03, 472/04, and 472/05 provide additional interpretations relating to these definitions. For purposes of Rule 472(a)(1), Supplementary Material 472.90 defines a ''qualified person'' as one who has passed an examination acceptable to the Exchange. Rule Interpretation 472/06 addresses other communication activities, including public appearances. Rule Interpretations 472/08 and 472/09 set forth general and specific content standards. Rule Interpretations 472/07, 472/10, and 472/11 address material externally prepared, guidelines for ''discount'' communications, and other regulations, respectively.

Proposed Rule Change

The Exchange proposes to delete the foregoing rules and interpretations relating to communications with the public and adopt the text of FINRA Rules 2210, 2212, and 9551, subject to certain technical and conforming changes.[9] As noted in Rule 0, NYSE rules that refer to NYSER, NYSER staff or departments, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the Agreement, as applicable. The Exchange does not propose to adopt the text of FINRA Rules 2213, 2214, 2215, and 2216 because they cover products that are not traded on the Exchange or a limited exception for investment analysis tools that is not being adopted. These rules would continue to apply to all Dual Members.

Communication Categories

Under proposed Rule 2210(a), the following three communication categories would be established:

- ''Institutional communication'' would include any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member organization's internal communications. ''Institutional investor'' would include any (i) person described in FINRA Rule 4512(c), regardless of whether the person has an account with a member organization; (ii) governmental entity or subdivision thereof; (iii) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (iv) qualified plan, as defined in Exchange Act Section 3(a)(12)(C), or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (v) member organization or registered person of such a member organization; and (vi) person acting solely on behalf of any such institutional investor.
- ''Retail communication'' would include any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. ''Retail investor'' would include any person other than an institutional investor, regardless of whether the person has an account with the member organization.
- ''Correspondence'' would include any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

The proposed communication categories would replace the communication categories currently defined in Supplementary Material 472.10(1), (3), (4) and (5).

Approval, Review and Recordkeeping Requirements

Proposed Rule 2210(b)(1)(A) would require an appropriately qualified registered principal of the member organization to approve each retail communication before the earlier of its use or its filing with the Exchange's Advertising Regulation Department (''Department''). The principal registration required to approve particular communications would depend upon the permissible activities for each principal registration category. Current Rule 472(a)(1) requires prior approval of certain communications by an allied member, Supervisory Analyst, or qualified person designated under the provisions of Rule 342(b)(1), but the Exchange does not require member organizations to file communications with the Exchange.

Proposed Rule 2210(b)(1)(B) would provide that the requirements of proposed Rule 2210(b)(1)(A) could be met by a Supervisory Analyst approved pursuant to Rule 344 with respect to (i) research reports on debt and equity securities; (ii) retail communications as described in Rule 472.10(2)(a); and (iii) other research that does not meet the definition of ''research report'' under Rule 472.10(2), provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration. As stated above, current Rule 472(a)(1) requires prior approval of certain communications by an allied member, Supervisory Analyst, or qualified person designated under the provisions of Rule 342(b)(1). As such, the proposed rule would be limited to approval by Supervisory Analysts only and to certain types of communications.

Proposed Rule 2210(b)(1)(C) would provide an exception from the principal approval requirements of proposed Rule 2210(b)(1)(A) for retail communications, if at the time that a member organization intends to publish or distribute the retail communication (i) another member organization has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards and (ii) the member organization using the communication

[9] The technical and conforming changes are that the Exchange would (i) substitute the term ''member organization'' for ''member,'' (ii) substitute the term ''Exchange'' for ''FINRA,'' (iii) change certain cross-references to FINRA rules to cross-references to Exchange rules, and (iv) add supplementary material to define the term ''associated person.''

in reliance on this exception has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter. The Exchange does not currently have a comparable rule because the Exchange has not previously required member organizations to file communications with the Exchange.

Proposed Rule 2210(b)(1)(D) would except from the principal approval requirements of proposed Rule 2210(b)(1)(A) three additional categories of retail communications, provided that the member organization supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rule 342. These communications include (i) any retail communication that is excepted from the definition of ''research report'' pursuant to Rule 472.10(2)(a), unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member organization. Under current Rule 342, correspondence and communications with the public are subject to all supervisory provisions of the Exchange's rules. The proposed rule change would specifically delineate these three categories of retail communications that would be excepted from the additional principal approval requirements under proposed Rule 2210.

Proposed Rule 2210(b)(1)(E) would allow the Exchange, pursuant to the Rule 9600 Series, to grant an exemption from the principal approval requirements of proposed Rule 2210(b)(1)(A) for good cause shown after taking into consideration all relevant factors, to the extent that the exemption is consistent with the purposes of Rule 2210, the protection of investors, and the public interest. Current Rule 9610 sets forth procedures for exemptive relief; the Exchange proposes to amend Rule 9610 by adding a cross-reference to proposed Rule 2210, as described below.

Proposed Rule 2210(b)(1)(F) would require, notwithstanding any other provision of Rule 2210, a registered principal to approve a communication prior to the member organization's filing it with the Department. The Exchange does not currently have a comparable rule because the Exchange has not previously required member organizations to file communications with the Exchange.

Proposed Rules 2210(b)(2) and (3) generally would impose certain supervisory and review requirements with regard to a member organization's correspondence and institutional communications. Proposed Rule 2210(b)(2) would subject all correspondence to the supervision and review requirements already in place under Rule 342. Proposed Rule 2210(b)(3) would require each member organization to establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member organization and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Exchange upon request. These requirements are similar to current Rule 342.10(B)(v), which provides that correspondence and communications with the public are subject to all supervisory provisions of the Exchange's rules, and Rule 342.17, which requires member organizations to develop written policies and procedures that are appropriate for their business, size, structure and customers in connection with the review of communications with the public relating to their business. Rule 472(c) also requires each member organization to establish written procedures reasonably designed to ensure that allied members, member organizations and their employees are in compliance with Rule 472, which includes both communications with the public provisions and research provisions. While proposed Rule 2210(b)(3) would cover written procedures relating to communications with the public, the Exchange would maintain Rule 472(c) to cover written procedures for the research provisions that will remain in that rule.

Proposed Rule 2210(b)(4)(A) would set forth the recordkeeping requirements for retail and institutional communications. This provision would incorporate by reference the recordkeeping format, medium and retention period requirements of Exchange Act Rule 17a–4.[10]

Proposed Rule 2210(b)(4)(A) specifies that such records would have to include:

- A copy of the communication and the dates of first and (if applicable) last use;
- The name of any registered principal who approved the communication and the date that approval was given;
- In the case of a retail communication or institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication; [11]
- Information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and
- For retail communications that would rely on the exception under proposed Rule 2210(b)(1)(C), the name of the member organization that filed the retail communication with the Department and a copy of the Department's review letter.

Current Rule 440 also incorporates by reference the recordkeeping format, medium and retention period requirements of Exchange Act Rule 17a–4. Current Rule 472(d) provides that communications with the public prepared or issued by a member organization must be retained in accordance with Rule 440, and the names of the persons who prepared, reviewed, and approved the material must be ascertainable from the retained records, and those records must be

[10] Exchange Act Rule 17a–4(b) requires broker-dealers to preserve certain records for a period of not less than three years, the first two years in an easily accessible place. Among these records, pursuant to Exchange Act Rule 17a–4(b)(4), are ''[o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph, the term communications includes sales scripts.'' Exchange Act Rule 17a–4(f) permits broker-dealers to maintain and preserve these records on ''micrographic media'' or by means of ''electronic storage media,'' as defined in the rule and subject to a number of conditions.

[11] To the extent clerical staff is employed in the preparation or distribution of the communication, the records should include the name of the person on whose behalf the communication was prepared or distributed.

readily available to the Exchange upon request. The Exchange proposes to delete current Rule 472(d) because proposed Rule 2210(b)(4)(B) would address recordkeeping requirements and cross-reference Rule 440 with respect to correspondence recordkeeping requirements.

Filing Requirements and Review Procedures

Proposed Rule 2210(c) would set forth the filing requirements and review procedures for retail communications. The Exchange does not currently require member organizations to file communications with the Exchange, and as such, the Exchange does not currently have a comparable rule.

Proposed Rule 2210(c)(1)(A) would require a member organization to file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible Web site, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). This filing requirement continues for a period of one year beginning on the date reflected in the Central Registration Depository (''CRD'') system as the date that NYSE membership became effective. To the extent any retail communication is a free writing prospectus that has been filed with the Commission pursuant to Rule 433(d)(1)(ii), promulgated under the Securities Act of 1933 (''Securities Act''), the member organization may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

Proposed Rule 2210(c)(1)(B) would authorize the Department to require a member organization to file all of its communications, or the portion of the member organization's material relating to specific types or classes of securities or services, with the Department at least 10 business days prior to first use, if the Department determines that the member organization has departed from the standards of the proposed rule. The Department would notify the member organization in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed would take effect 21 calendar days after service of the written notice, during which time the member organization may request a hearing under proposed Rule 9551 [12] and Rule 9559.

Proposed Rule 2210(c)(2) would require member organizations to file retail communications concerning any registered investment company that include self-created rankings and retail communications concerning security futures at least 10 business days prior to first use and to withhold them from use until any changes specified by the Department have been made. The requirement to file retail communications concerning security futures prior to first use would not apply to (i) retail communications that are submitted to another self-regulatory organization having comparable standards pertaining to such communications and (ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member organization. The Exchange does not propose to adopt the text of FINRA 2210(c)(2)(C), which requires prior filing of retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings as defined in FINRA Rule 2213 (the text of which the Exchange also does not propose adopting) because it covers products that are not traded on the Exchange, and FINRA Rule 2213 would continue to apply to all Dual Members.

Proposed Rule 2210(c)(3)(A) would require retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) to be filed within 10 business days of first use or publication. In addition, the filing of any retail communication that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the retail communication. Proposed Rule 2210(c)(3)(B) would require retail communications concerning public direct participation programs to be filed within 10 business days of first use or publication. The Exchange does not propose to adopt the text of FINRA Rule 2210(c)(3)(C), which requires prior filing of first use templates for written reports produced by, or retail communications concerning an investment analysis tool, as such term is defined in FINRA Rule 2214 (the text of which the Exchange also does not propose adopting) because it covers a limited exception for investment analysis tools that is not being adopted, and FINRA Rule 2214 would continue to apply to all Dual Members. As such, proposed Rule 2210(c)(3)(C) would be marked ''Reserved.''

Proposed Rule 2210(c)(3)(D) would require member organizations to file within 10 business days of first use retail communications concerning collateralized mortgage obligations that are registered under the Securities Act.

Under proposed Rule 2210(c)(3)(E), member organizations would have to file within 10 business days of first use all retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (E) of paragraph (c)(3) of proposed Rule 2210. This provision would exclude retail communications that are already subject to a separate filing requirement found elsewhere in proposed paragraph (c), such as retail communications concerning registered investment companies or public direct participation programs.

Proposed Rule 2210(c)(4) would provide that, if a member organization has filed a draft version or ''story board'' of a television or video retail communication pursuant to a filing requirement, then the member organization also must file the final filmed version within 10 business days of first use or broadcast.

Proposed Rule 2210(c)(5) would specify that a member organization must provide with each filing the actual or anticipated date of first use, the name, title and CRD number of the registered principal who approved the communication, and the date of approval.

Proposed Rule 2210(c)(6) would provide that each member organization's written communications may be subject to a spot-check procedure, and that member organizations must submit requested material within the time frame specified by the Department.

Proposed Rule 2210(c)(7)(A) would create a filing exclusion for retail communications that previously have been filed with the Department and that are to be used without material change. Proposed Rule 2210(c)(7)(B) would create an exclusion for retail communications that are based on templates that were previously filed with the Department, the changes to

[12] As discussed below, the Exchange proposes to adopt Rule 9551, which is substantially similar to FINRA Rule 9551.

which are limited to updates of more recent statistical or other non-narrative information. Proposed Rule 2210(c)(7)(C) would exclude retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member organization.[13]

Paragraphs (c)(7)(D), (E), (G) and (H) of proposed Rule 2210 would create a filing exclusion for retail communications that do no more than identify a national securities exchange symbol of the member organization or identify a security for which the member organization is a registered market maker; advertisements and sales literature that do no more than identify the member organization or offer a specific security at a stated price; certain ''tombstone'' advertisements governed by Securities Act Rule 134; and press releases that are made available only to members of the media.

Proposed Rule 2210(c)(7)(F) would create a filing exclusion for prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the Commission or any state, or that are exempt from such registration, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the Commission pursuant to Securities Act Rule 433(d)(1)(ii) would not be considered a prospectus for purposes of this exclusion.[14]

Proposed Rule 2210(c)(7)(I) would create a filing exclusion for any reprint or excerpt of any article or report issued by a publisher (''reprint''), provided that the publisher is not an affiliate of the member organization using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member organization is promoting; neither the member organization using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and the member organization using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

Paragraphs (c)(7)(J) and (K) of proposed Rule 2210 would create filing exclusions for correspondence and institutional communications. Proposed paragraph (c)(7)(L) would exclude from filing communications that refer to types of investments solely as part of a listing of products or services offered by the member organization.

Proposed Rule 2210(c)(7)(M) would exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. Proposed Rule 2210(c)(7)(N) would exclude from the filing requirements press releases issued by closed-end investment companies that are listed on the Exchange pursuant to Section 202.06 of the NYSE Listed Company Manual (or any successor provision).

The Exchange does not propose to adopt FINRA Rule 2210(c)(8) because Section 24(b) of the Investment Company Act of 1940 and Rule 24b–3 thereunder only apply to a registered national securities association, *i.e.,* FINRA. As such, Rule 2210(c)(8) would be marked ''Reserved.''

Proposed Rule 2210(c)(9)(A) would allow the Exchange to exempt, pursuant to the Rule 9600 Series, a member organization from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown. Proposed Rule 2210(c)(9)(B) would allow the Exchange to grant an exemption from the filing requirements of paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, provided that the exemption is consistent with the purposes of the rule, the protection of investors, and the public interest. Generally, this relief would be limited to the same extent as in proposed paragraph (b)(1)(E), which would authorize the Exchange to grant exemptive relief from the principal approval requirements in proposed Rule 2210(b)(1)(A) for retail communications, subject to the same standards.

Content Standards

Proposed Rule 2210(d) would incorporate the current content standards applicable to communications with the public that are found in Rules 472(i) and (j) and Rule Interpretations 472/08 and 472/09, subject to certain changes. Proposed Rule 2210(d)(1) is comparable to the general standards for all communications in Rule 472(i) and Rule Interpretation 472/08; however, the proposed rule would expand upon these general standards.[15]

Proposed Rule 2210(d)(1)(A) would provide that all member organization communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. In addition, the proposed rule would provide that no member organization may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. Current Rule 472(i), which sets forth the general content standards for all communications, is comparable to the proposed rule.

As with current Rule 472(i), which specifically prohibits promissory statements, proposed Rule 2210(d)(1)(B) would prohibit a member organization from making any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. In addition, no member organization may publish, circulate or distribute any communication that the member organization knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Proposed Rule 2210(d)(1)(C) would allow information to be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(D) would provide that member organizations must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. In addition, communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(E) would provide that member organizations must consider the nature of the audience to

[13] This filing exception would have the same scope as the proposed exception from the principal pre-use approval requirements for retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member organization. *See* Proposed Rule 2210(b)(1)(D)(iii).

[14] Securities Act Rule 433(d)(1)(ii) requires any offering participant, other than the issuer, to file with the Commission a free writing prospectus that is used or referred to by such offering participant and distributed by or on behalf of such person in a manner reasonably designed to lead to its broad unrestricted dissemination.

[15] Consistent with the changes proposed by FINRA, the Exchange does not propose to incorporate Rule Interpretations 472/07, 472/10, and 472/11, which cover material externally prepared, guidelines for ''discount'' communications, and other regulations, respectively. The Exchange does not believe that it is necessary to address these types of communications with the public because they would be covered by the general standards of the proposed rule.

which the communication will be directed and must provide details and explanations appropriate to the audience. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(F) would provide that communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, the following would not be prohibited:

- A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; and
- A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

The Exchange does not propose to adopt the text of FINRA Rule 2210(d)(1)(F)(ii), which references an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214 (the text of which the Exchange also does not propose adopting) because it covers a limited exception for investment analysis tools that is not being adopted, and FINRA Rule 2214 would continue to apply to all Dual Members. As such, text of proposed Rule 2210(d)(1)(F)(ii) would correspond to the text of FINRA Rule 2210(d)(1)(F)(iii).

Current Rule 472(j)(3) provides that any projection or prediction must contain the bases or assumptions upon which they are made and must indicate that the bases or assumptions of the materials upon which such projections and predictions are made are available upon request. The proposed rule would make a blanket prohibition against predictions and projections and carve out certain exemptions.

Proposed Rule 2210(d)(2) would provide that any comparison in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features. Similarly, current Rule 472(j)(4) provides that any comparison of one member organization's service, personnel, facilities or charges with those of other firms must be factually supportable.

Rule 2210(d)(3) would require all retail communications and correspondence to (i) prominently disclose the name of the member organization, and would allow a fictional name by which the member organization is commonly recognized or which is required by any state or jurisdiction; (ii) reflect any relationship between the member organization and any non-member organization that, or individual who, also is named in the communication; and (iii) if the communication includes other names, reflect which products and services are offered by the member organization. Proposed Rule 2210(d)(3) would apply these standards to correspondence as well as to retail communications. A member organization would be permitted to use the name under which the member organization's broker-dealer business is conducted as disclosed on the member organization's Form BD, as well as a fictional name by which the member organization is commonly recognized or which is required by any state or jurisdiction. The proposed rule would not apply to ''blind'' advertisements used to recruit personnel. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(A) would specify that in retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes, and provides an example of income from an investment company investing in municipal bonds that is free from federal income tax but subject to state or local income taxes. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(B) would prohibit communications from characterizing income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(C) would add new language concerning comparative illustrations of the mathematical principles of tax-deferred versus taxable compounding. First, the illustration would have to depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum. Second, the illustration would have to use and identify actual federal income tax rates. Third, the illustration would be permitted (but not required) to reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state. Fourth, the tax rates used in the illustration that is intended for a target audience would have to reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income. Fifth, if the illustration covers an investment's payout period, the illustration would have to reflect the impact of taxes during this period. Sixth, the illustration could not assume an unreasonable period of tax deferral. Seventh, the illustration would have to include the following disclosures, as applicable:

- The degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;
- The possible effects of investment losses on the relative advantage of the taxable versus tax-deferred investments;
- The extent to which tax rates on capital gains and dividends would affect the taxable investment's return;
- The fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;
- Its underlying assumptions; [16]
- The potential impact resulting from federal or state tax penalties (*e.g.,* for early withdrawals or use on non-qualified expenses); and
- That an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(5) would require retail communications and correspondence that present the performance of a non-money market mutual fund, to disclose the fund's maximum sales charge and operating expense ratio as set forth in the fund's current prospectus fee table. The Exchange does not currently have a

[16] These assumptions may include, for example, the age at which an investor may begin withdrawing funds from a tax-deferred account, the actual federal tax rates applied in the hypothetical taxable illustration, any state income tax rate applied in the illustration, and the charges associated with the hypothetical investment.

comparable rule with these specific requirements.

Proposed Rule 2210(d)(6)(A) would provide that, if any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion. This requirement would be identical to current Rule 472(j)(7)(iv).

Proposed Rule 2210(d)(6)(B) would require any retail communications and correspondence that provide a testimonial concerning the investment advice or investment performance of a member organization or its products to prominently disclose (i) the fact that the testimonial may not be representative of the experience of other customers, (ii) the fact that the testimonial is no guarantee of future performance or success, and (iii) if more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial. The proposed rule would be substantially the same as current Rule 472(j)(7)(i)–(iii), except that Rule 472(j)(7)(iii) refers instead to a ''nominal amount.''

Proposed Rule 2210(d)(7) would apply to retail communications that contain a recommendation. Proposed Rule 2210(d)(7)(A) would require disclosure of certain specified conflicts of interest to the extent applicable. Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) That at the time the communication was published or distributed, the member organization was making a market in the security being recommended, or in the underlying security if the recommended security is an option or security future, or that the member organization or associated persons will sell to or buy from customers on a principal basis; (ii) that the member organization or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member organization was manager or co-manager of a public offering of any securities of the issuer whose securities were recommended within the past 12 months. The proposed rule would be more detailed than current Rule 472(j)(1), which covers recommendations.

Proposed Rule 2210(d)(7)(B) would require a member organization to provide, or offer to furnish upon request, available investment information supporting the recommendation, and if the recommendation is for a corporate equity security, to provide the price at the time the recommendation is made. The proposed rule is comparable to current Rule 472(j)(1), which provides that when recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered, and the market price at the time the recommendation is made must be indicated.

Proposed Rule 2210(d)(7)(C) would amend the provisions governing communications that include past recommendations, which are currently found in Rule 472(j)(2). The proposed standards mirror those found in Rule 206(4)–1(a)(2) under the Investment Advisers Act of 1940 (''Advisers Act''), which apply to investment adviser advertisements that contain past recommendations.[17]

Proposed Rule 2210(d)(7)(D) expressly would exclude from its coverage communications that meet the definition of ''research report'' or that are public appearances by a research analyst for purposes of Rule 472 and that include all of the applicable disclosures required by that rule. Proposed Rule 2210(d)(7)(D) also would exclude any communication that recommends only registered investment companies or variable insurance products.[18] The Exchange does not currently have a comparable rule regarding registered investment companies.

Under proposed Rule 2210(d)(8), prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the Commission would not be subject to the standards of proposed Rule 2210(d); provided, however, that the standards would apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the Commission pursuant to Securities Act Rule 433(d)(1)(ii). The Exchange does not currently have a comparable rule.

Certain Text Not Adopted

The Exchange does not propose to adopt the text of FINRA Rule 2210(e), which relates to limitations on the use of FINRA's name and any other corporate name owned by FINRA. The Exchange does not propose to adopt the text of FINRA Rule 2210(e)(2) because that provision relates to over-the-counter transactions, which the Exchange does not regulate. Lastly, the Exchange does not propose to adopt the text of FINRA Rule 2210(e)(3) because the Exchange has not previously imposed a requirement on member organizations to provide a link to the Exchange's Web site in connection with its indication of NYSE membership, and the Exchange does not believe it is necessary to impose such a restriction at this time. FINRA Rule 2210(e)(3) would continue to apply to all Dual Members. As such, Rule 2210(e) would be marked ''Reserved.''

Public Appearances

Proposed Rule 2210(f) sets forth the general standards that would apply to public appearances. Public appearances would have to meet the general ''fair and balanced'' standards of proposed Rule 2210(d)(1). The disclosure requirements applicable to recommendations in proposed Rule 2210(d)(7) would apply if the public appearance included a recommendation of a security. The proposed rule also would require member organizations to establish appropriate written policies and procedures to supervise public appearances, and clarify that scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of proposed Rule 2210. The proposed requirement to establish supervisory policies and procedures for public appearances would be consistent with Rule 472(l) and Rule Interpretation 472/06, which covers other communications activities.

Violations of Other Rules

Proposed Rule 2210(g) would provide that any violation by a member organization of any rule of the

[17] Proposed Rule 2210(d)(7)(C), like Advisers Act Rule 206(4)–1(a)(2), generally would prohibit retail communications from referring to past specific recommendations of the member organization that were or would have been profitable to any person. The proposed rule would allow, however, a retail communication or correspondence to set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member organization within the immediately preceding period of not less than one year. The list would have to provide certain information regarding each recommended security and include a prescribed cautionary legend warning investors not to assume that future recommendations will be profitable.

[18] The Exchange is proposing to exclude communications that recommend only registered investment companies or variable insurance products because it believes that recommendations of these products do not raise the same kinds of conflicts of interest as recommendations of other types of securities, since they are pooled investment vehicles rather than securities of a single issuer.

Commission or the Securities Investor Protection Corporation applicable to member organization communications would be deemed a violation of proposed Rule 2210. FINRA Rule 2210(g) also applies to violations of Municipal Securities Rulemaking Board (''MSRB'') rules because FINRA enforces such rules. Because the Exchange does not enforce MSRB rules, the reference to MSRB rules would not be included in proposed Rule 2210(g).

Use of Investment Companies Rankings in Retail Communications

The Exchange proposes to adopt the text of FINRA Rule 2212, which would cover the use of investment company rankings in retail communications. The Exchange currently does not have a comparable rule.

Proposed Rule 2212(a) would define ''Ranking Entity'' as ''any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.''

Proposed Rule 2212(b) would provide that member organizations may not use investment company rankings in any retail communication other than (i) rankings created and published by Ranking Entities or (ii) rankings created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity. Rankings in retail communications also would have to conform to the requirements described below.

Proposed Rule 2212(c) would require certain disclosures in retail communications. A headline or other prominent statement must not state or imply that an investment company or investment company family is the best performer in a category unless it is actually ranked first in the category. All retail communications containing an investment company ranking also would have to disclose prominently:

- The name of the category (*e.g.,* growth);
- The number of investment companies or, if applicable, investment company families, in the category;
- The name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;
- The length of the period (or the first day of the period) and its ending date; and
- Criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

In addition, all retail communications containing an investment company ranking would have to disclose:

- The fact that past performance is no guarantee of future results;
- For investment companies that assess front-end sales loads, whether the ranking takes those loads into account;
- If the ranking is based on total return or the current Commission standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;
- The publisher of the ranking data (*e.g.,* ''ABC Magazine, June 2011''); and
- If the ranking consists of a symbol (*e.g.,* a star system) rather than a number, the meaning of the symbol (*e.g.,* a four-star ranking indicates that the fund is in the top 30% of all investment companies).

Proposed Rule 2212(d) would provide that any investment company ranking included in a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member organization would only be able to use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used. In addition, except for money market mutual funds:

- Retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;
- An investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and
- An investment company ranking based on yield may be based only on the current Commission standardized yield and must be accompanied by total return rankings for the time periods specified in Rule 2212(d)(2)(B).

Proposed Rule 2212(e) would provide specific requirements with respect to categories. The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company. An investment company ranking must be based only on (i) a published category or subcategory created by a Ranking Entity or (ii) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity. Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

Proposed Rule 2212(f) would provide that investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

Proposed Rule 2212(g) would provide that retail communications may contain rankings of investment company families, provided that these rankings comply with proposed Rule 2212, and further provided that no retail communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in proposed Rule 2212(d)(2)(B). For purposes of Rule 2212, the term ''investment company family'' would mean any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

Proposed Rule 2212(h) would specify that Rule 2212 would not apply to any reprint or excerpt of any article or report that is excluded from the Exchange's Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(I).

Failure To Comply With Public Communication Standards

The Exchange recently adopted certain disciplinary and procedural rules modeled on the rules of FINRA; however, at that time, the Exchange did not propose to adopt the text of FINRA Rule 9551, which then concerned failure to comply with public communication standards in NASD Rule 2210.[19] As such, Rule 9551 is currently marked ''Reserved.'' As a result of the Exchange's proposed adoption of Rule 2210, the Exchange proposes to adopt the text of FINRA Rule 9551 as Rule 9551, with certain conforming changes.

Proposed Rule 9551(a) would provide that the Exchange staff may issue a written notice requiring a member organization to file communications with the Department at least 10 days prior to use if the Exchange staff determines that the member organization has departed from the standards of Rule 2210. Proposed Rule 9551(b) would provide that, except as otherwise provided, the Exchange staff would serve the member organization with such notice in accordance with NYSE Rule 9134. When counsel for the member organization or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then the Exchange staff may serve notice on counsel or such other person authorized to represent others under Rule 9141 as specified in Rule 9134.

Proposed Rule 9551(c) would provide that a notice issued under the proposed rule would state the specific grounds and include the factual basis for the Exchange action. The notice would state when the Exchange action will take effect. The notice would state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also would inform the respondent of the applicable deadline for filing a request for a hearing and would state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice would explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

Proposed Rule 9551(d) would provide that pursuant to proposed Rule 2210(c)(1)(B), the pre-use filing requirement referenced in a notice issued and served under the proposed rule would become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559. FINRA Rule 9551(e) also includes a cross-reference to FINRA Rule 2220(c)(2), which relates to options communications. The Exchange does not propose to adopt the text of FINRA Rule 2220 so this cross-reference is not included in the proposed rule.

Proposed Rule 9551(e) would provide that a member organization served with a notice under the proposed rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing would be made before the effective date of the notice, as indicated in proposed Rule 9551(d). A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

Proposed Rule 9551(f) would provide that if a member organization does not timely request a hearing, the pre-use filing requirements specified in the notice would become effective 21 days after service of the notice and the notice would constitute final Exchange action.

Proposed Rule 9551(g) would provide that a member organization that is subject to a pre-use filing requirement under the proposed rule may file a written request for modification or termination of the requirement. Such request would be filed with the head of the Exchange department or office that issued the notice or, if another Exchange department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

Conforming Changes

The Exchange also proposes to make certain conforming changes to Rules 342, 9559, and 9610. Specifically, the Exchange proposes to amend Supplementary Materials .10(B) and .17 to Rule 342, which covers the approval, supervision, and control of offices, to include a cross-reference to proposed Rule 2210 in addition to the current cross-references to Rule 472 in that rule. The Exchange also proposes to amend the definition of ''branch office'' in Supplementary Material .10 to Rule 342 to replace references to ''advertisements'' and ''sales literature'' with references to ''retail communications.'' The Exchange proposes to amend Rule 9559, which covers hearing procedures for expedited proceedings under the Rule 9550 Series, to include cross-references to proposed Rule 9551. The Exchange proposes to amend Rule 9610(a), which permits member organizations to apply for exemptive relief from other NYSE rules, to include a cross-reference to proposed Rule 2210. The Exchange notes that FINRA Rules 9559 and 9610 include cross-references to FINRA Rules 9551 and 2210, respectively.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Exchange Act Section 6(b),[20] in general, and furthers the objectives of Exchange Act Section 6(b)(5),[21] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by providing greater harmonization between NYSE rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE member organizations that are also FINRA members are subject to Rule 472 and FINRA Rules 2210, 2212, and 9551, and harmonizing these rules by adopting proposed Rules 2210, 2212, and 9551 would promote just and equitable principles of trade by requiring a single standard for communications with the public. The Exchange believes that to the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE rules, such changes are generally technical in nature and do not change the substance of the proposed rules. The Exchange also believes that the proposed rule change would update and add specificity to the requirements governing communications with the public, which would promote just and equitable principles of trade and help to protect investors. As such, the Exchange believes the proposed rule change meets the requirements of Exchange Act Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 Exchange Act. The Exchange believes that the proposed rule change is not intended to address competitive issues but rather to achieve greater consistency between the Exchange's rules and FINRA's rules.

[19] *See* Exchange Act Release No. 69045 (Mar 5, 2013), 78 FR 15394 (Mar 11, 2013).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Exchange Act Section 19(b)(3)(A)(iii) [22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Exchange Act Section 19(b)(3)(A) and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it would allow the Exchange to immediately conform its rules to corresponding FINRA rules. This will ensure that Dual Members generally will be subject to a single set of rules governing communications with the public. As noted by the Exchange, the proposal would harmonize NYSE and FINRA rules. In addition, the proposal would update and add specificity to the Exchange's requirements governing communications with the public, which are designed to help protect customers of all NYSE members. For these reasons, the Commission designates the proposed rule change to be operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings under Exchange Act Section 19(b)(2)(B) [27] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2013–76 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–76. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 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–NYSE–2013–76 and should be submitted on or before December 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29042 Filed 12–4–13; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–70963; File No. SR–NYSEMKT–2013–95]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Concerning Communications With the Public To Harmonize Them With Certain Financial Industry Regulatory Authority, Inc. Rules and Make Other Conforming Changes

November 29, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Exchange Act Rule 19b–4(f)(6),[3] which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules concerning communications with the public to harmonize them with

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

certain Financial Industry Regulatory Authority, Inc. (''FINRA'') rules and make other conforming changes. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.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 and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules concerning communications with the public to harmonize them with certain FINRA rules and make other conforming changes. Set forth below are descriptions of the harmonization process, the current NYSE MKT rules, and the proposed NYSE MKT rules. Specifically, the Exchange proposes to (i) delete paragraphs (a)(1), (d), (i), (j) and (l) of NYSE MKT Rule 472—Equities and Supplementary Materials 472.10(1), (3), (4) and (5)—Equities, and 472.90—Equities; (ii) adopt new rule text that is substantially similar to FINRA Rules 2210 and 2212; and (iii) make other conforming changes.[4]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Exchange Act Rule 17d–2, New York Stock Exchange LLC (''NYSE''), NYSER, and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). NYSE MKT became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, the Exchange, and NYSE of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6] FINRA recently harmonized NASD and FINRA Incorporated NYSE Rules and interpretations concerning communications with the public.[7] In that filing, FINRA adopted NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210–1 and 2210–3 through 2210–8 as FINRA Rules 2210 and 2212 through 2216 and deleted paragraphs (a)(1), (i), (j) and (l) of FINRA Incorporated NYSE Rule 472, FINRA Incorporated NYSE Rule Supplementary Materials 472.10(1), (3), (4) and (5) and 472.90, and FINRA Incorporated NYSE Rule Interpretations 472/01 and 472/03 through 472/11.

NYSE Rule 472 is virtually identical to Rule 472—Equities except for certain technical differences. FINRA's rule change became effective on February 4, 2013.[8]

Current Communications With the Public Rules

Rule 472(a)(1)—Equities requires that each advertisement, sales literature or other similar type of communication that is generally distributed or made available by a member organization to customers or the public be approved in advance by an allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1)—Equities.

Rule 472(d)—Equities requires that communications with the public be retained in accordance with Rule 440—Equities.

Rule 472(i)—Equities provides that no member organization may use any communication that contains (i) any untrue statement or omission of a material fact or is otherwise false or misleading; (ii) promises of specific results, exaggerated or unwarranted claims; (iii) opinions for which there is no reasonable basis; or (iv) projections or forecasts of future events that are not clearly labeled as forecasts.

Rule 472(j)—Equities sets forth specific standards for recommendations, records of past performance, projections and predictions, comparisons, dating reports, identification of sources, and testimonials.

Rule 472(l)—Equities provides that other communications activities may include, but are not limited to, conducting interviews with the media, writing books, conducting seminars or lecture courses, writing newspaper or magazine articles, or making radio/TV appearances. Member organizations must establish specific written supervisory procedures applicable to allied members and employees who engage in these types of communications activities. These procedures must include provisions that require prior approval of such activity by a person designated under the provisions of Rule 342(b)(1)—Equities. These types of activities are subject to the general standards set forth in Rule 472(i)—Equities. In addition, any activity that includes discussion of specific securities is subject to the specific standards in Rule 472(j)—Equities.

Supplementary Materials 472.10(1), (3), (4) and (5)—Equities define ''communication,'' ''advertisement,'' ''market letter,'' and ''sales literature,'' respectively. For purposes of Rule 472(a)(1)—Equities, Supplementary Material 472.90—Equities defines a ''qualified person'' as one who has passed an examination acceptable to the Exchange.

Proposed Rule Change

The Exchange proposes to delete the foregoing rules relating to communications with the public and adopt the text of FINRA Rules 2210 and 2212, subject to certain technical and conforming changes.[9] As noted in Rule

[4] References to rules are to NYSE MKT rules unless otherwise indicated. The remaining provisions of Rule 472—Equities and supplementary material not addressed in this proposal concern research and would remain in place because FINRA and NYSE MKT have not yet harmonized their research rules.

[5] *See* Exchange Act Release No. 56148 (Jul. 26, 2007), 72 FR 42146 (Aug. 1, 2007) (order approving the Agreement); Exchange Act Release No. 56147 (Jul. 26, 2007), 72 FR 42166 (Aug. 1, 2007) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); Exchange Act Release No. 60409 (July 30, 2009), 74 FR 39353 (Aug. 6, 2009) (order approving the amended and restated Agreement, adding NYSE MKT LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE MKT to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, dated March 12, 2008.

[7] *See* Exchange Act Release No. 66681 (Mar. 29, 2012), 77 FR 20452 (Apr. 4, 2012).

[8] *See* FINRA Regulatory Notice 12–29.

[9] The technical and conforming changes are that the Exchange would (i) substitute the term ''member organization'' for ''member,'' (ii)

0—Equities, Exchange rules that refer to NYSER, NYSER staff or departments, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the Agreement, as applicable. The Exchange does not propose to adopt the text of FINRA Rules 2213, 2214, 2215, and 2216 because they cover products that are not traded on the Exchange or a limited exception for investment analysis tools that is not being adopted. These rules would continue to apply to all Dual Members.

Communication Categories

Under proposed Rule 2210(a)—Equities, the following three communication categories would be established:

• ''Institutional communication'' would include any written (including electronic) communication that is distributed or made available only to institutional investors, but does not include a member organization's internal communications. ''Institutional investor'' would include any (i) person described in FINRA Rule 4512(c), regardless of whether the person has an account with a member organization; (ii) governmental entity or subdivision thereof; (iii) employee benefit plan, or multiple employee benefit plans offered to employees of the same employer, that meet the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and in the aggregate have at least 100 participants, but does not include any participant of such plans; (iv) qualified plan, as defined in Exchange Act Section 3(a)(12)(C), or multiple qualified plans offered to employees of the same employer, that in the aggregate have at least 100 participants, but does not include any participant of such plans; (v) member organization or registered person of such a member organization; and (vi) person acting solely on behalf of any such institutional investor.

• ''Retail communication'' would include any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. ''Retail investor'' would include any person other than an institutional investor, regardless of whether the person has an account with the member organization.

• ''Correspondence'' would include any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period.

The proposed communication categories would replace the communication categories currently defined in Supplementary Material 472.10(1), (3), (4) and (5)—Equities.

Approval, Review and Recordkeeping Requirements

Proposed Rule 2210(b)(1)(A)—Equities would require an appropriately qualified registered principal of the member organization to approve each retail communication before the earlier of its use or its filing with the Exchange's Advertising Regulation Department (''Department''). The principal registration required to approve particular communications would depend upon the permissible activities for each principal registration category. Current Rule 472(a)(1)—Equities requires prior approval of certain communications by an allied member, Supervisory Analyst, or qualified person designated under the provisions of Rule 342(b)(1)—Equities, but the Exchange does not require member organizations to file communications with the Exchange.

Proposed Rule 2210(b)(1)(B)—Equities would provide that the requirements of proposed Rule 2210(b)(1)(A)—Equities could be met by a Supervisory Analyst approved pursuant to Rule 344—Equities with respect to (i) research reports on debt and equity securities; (ii) retail communications as described in Rule 472.10(2)(a)—Equities; and (iii) other research that does not meet the definition of ''research report'' under Rule 472.10(2)—Equities, provided that the Supervisory Analyst has technical expertise in the particular product area. A Supervisory Analyst may not approve a retail communication that requires a separate registration unless the Supervisory Analyst also has such other registration. As stated above, current Rule 472(a)(1)—Equities requires prior approval of certain communications by an allied member, Supervisory Analyst, or qualified person designated under the provisions of Rule 342(b)(1)—Equities. As such, the proposed rule would be limited to approval by Supervisory Analysts only and to certain types of communications.

Proposed Rule 2210(b)(1)(C)—Equities would provide an exception from the principal approval requirements of proposed Rule 2210(b)(1)(A)—Equities for retail communications, if at the time that a member organization intends to publish or distribute the retail communication (i) another member organization has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards and (ii) the member organization using the communication in reliance on this exception has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter. The Exchange does not currently have a comparable rule because the Exchange has not previously required member organizations to file communications with the Exchange.

Proposed Rule 2210(b)(1)(D)—Equities would except from the principal approval requirements of proposed Rule 2210(b)(1)(A)—Equities three additional categories of retail communications, provided that the member organization supervises and reviews such communications in the same manner as required for supervising and reviewing correspondence pursuant to Rule 342—Equities. These communications include (i) any retail communication that is excepted from the definition of ''research report'' pursuant to Rule 472.10(2)(a)—Equities, unless the communication makes any financial or investment recommendation; (ii) any retail communication that is posted on an online interactive electronic forum; and (iii) any retail communication that does not make any financial or investment recommendation or otherwise promote a product or service of the member organization. Under current Rule 342—Equities, correspondence and communications with the public are subject to all supervisory provisions of the Exchange's rules. The proposed rule change would specifically delineate these three categories of retail communications that would be excepted from the additional principal approval requirements under proposed Rule 2210—Equities.

Proposed Rule 2210(b)(1)(E)—Equities would allow FINRA, pursuant to the FINRA Rule 9600 Series, to grant an exemption from the principal approval requirements of proposed Rule 2210(b)(1)(A)—Equities for good cause shown after taking into consideration all relevant factors, to the extent that the exemption is consistent with the purposes of Rule 2210—Equities, the protection of investors, and the public interest.[10] FINRA Rule 9610 sets forth procedures for exemptive relief.

substitute the term ''Exchange'' for ''FINRA,'' (iii) change certain cross-references to FINRA rules to cross-references to Exchange rules, and (iv) add supplementary material to define the term ''associated person.''

[10] Similarly, the Exchange's affiliate, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), has FINRA

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Proposed Rule 2210(b)(1)(F)—Equities would require, notwithstanding any other provision of Rule 2210—Equities, a registered principal to approve a communication prior to the member organization's filing it with the Department. The Exchange does not currently have a comparable rule because the Exchange has not previously required member organizations to file communications with the Exchange.

Proposed Rules 2210(b)(2) and (3)—Equities generally would impose certain supervisory and review requirements with regard to a member organization's correspondence and institutional communications. Proposed Rule 2210(b)(2)—Equities would subject all correspondence to the supervision and review requirements already in place under Rule 342—Equities. Proposed Rule 2210(b)(3)—Equities would require each member organization to establish written procedures that are appropriate to its business, size, structure, and customers for the review by an appropriately qualified registered principal of institutional communications used by the member organization and its associated persons. Such procedures must be reasonably designed to ensure that institutional communications comply with applicable standards. When such procedures do not require review of all institutional communications prior to first use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional communications, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Exchange upon request. These requirements are similar to current Rule 342.10(B)(v)—Equities, which provides that correspondence and communications with the public are subject to all supervisory provisions of the Exchange's rules, and Rule 342.17—Equities, which requires member organizations to develop written policies and procedures that are appropriate for their business, size, structure and customers in connection with the review of communications with the public relating to their business. Rule 472(c)—Equities also requires each member organization to establish written procedures reasonably designed to ensure that allied members, member organizations and their employees are in compliance with Rule 472—Equities, which includes both communications with the public provisions and research provisions. While proposed Rule 2210(b)(3)—Equities would cover written procedures relating to communications with the public, the Exchange would maintain Rule 472(c)—Equities to cover written procedures for the research provisions that will remain in that rule.

Proposed Rule 2210(b)(4)(A)—Equities would set forth the recordkeeping requirements for retail and institutional communications. This provision would incorporate by reference the recordkeeping format, medium and retention period requirements of Exchange Act Rule 17a–4.[11]

Proposed Rule 2210(b)(4)(A)—Equities specifies that such records would have to include:

- A copy of the communication and the dates of first and (if applicable) last use;
- The name of any registered principal who approved the communication and the date that approval was given;
- In the case of a retail communication or institutional communication that is not approved prior to first use by a registered principal, the name of the person who prepared or distributed the communication;[12]
- Information concerning the source of any statistical table, chart, graph or other illustration used in the communication; and
- For retail communications that would rely on the exception under proposed Rule 2210(b)(1)(C)—Equities, the name of the member organization that filed the retail communication with the Department and a copy of the Department's review letter.

Current Rule 440—Equities also incorporates by reference the recordkeeping format, medium and retention period requirements of Exchange Act Rule 17a–4. Current Rule 472(d)—Equities provides that communications with the public prepared or issued by a member organization must be retained in accordance with Rule 440—Equities, and the names of the persons who prepared, reviewed, and approved the material must be ascertainable from the retained records, and those records must be readily available to the Exchange upon request. The Exchange proposes to delete current Rule 472(d)—Equities because proposed Rule 2210(b)(4)(B)—Equities would address recordkeeping requirements and cross-reference Rule 440—Equities with respect to correspondence recordkeeping requirements.

Filing Requirements and Review Procedures

Proposed Rule 2210(c)—Equities would set forth the filing requirements and review procedures for retail communications. The Exchange does not currently require member organizations to file communications with the Exchange, and as such, the Exchange does not currently have a comparable rule.

Proposed Rule 2210(c)(1)(A)—Equities would require a member organization to file with the Department at least 10 business days prior to first use any retail communication that is published or used in any electronic or other public media, including any generally accessible Web site, newspaper, magazine or other periodical, radio, television, telephone or audio recording, video display, signs or billboards, motion pictures, or telephone directories (other than routine listings). This filing requirement continues for a period of one year beginning on the date reflected in the Central Registration Depository (''CRD'') system as the date that Exchange membership became effective. To the extent any retail communication is a free writing prospectus that has been filed with the Commission pursuant to Rule 433(d)(1)(ii), promulgated under the Securities Act of 1933 (''Securities Act''), the member organization may file such retail communication within 10 business days of first use rather than at least 10 business days prior to first use.

process certain exemptions under FINRA Rule 9610. *See* NYSE Arca Equities Rule 9.21(c)(10). The Exchange will propose to adopt its own rules for exemptions when the Exchange conforms its disciplinary rules to FINRA's and NYSE's disciplinary rules.

[11] Exchange Act Rule 17a–4(b) requires broker-dealers to preserve certain records for a period of not less than three years, the first two years in an easily accessible place. Among these records, pursuant to Exchange Act Rule 17a–4(b)(4), are ''[o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph, the term communications includes sales scripts.'' Exchange Act Rule 17a–4(f) permits broker-dealers to maintain and preserve these records on ''micrographic media'' or by means of ''electronic storage media,'' as defined in the rule and subject to a number of conditions.

[12] To the extent clerical staff is employed in the preparation or distribution of the communication, the records should include the name of the person on whose behalf the communication was prepared or distributed.

Proposed Rule 2210(c)(1)(B)—Equities would authorize the Department to require a member organization to file all of its communications, or the portion of the member organization's material relating to specific types or classes of securities or services, with the Department at least 10 business days prior to first use, if the Department determines that the member organization has departed from the standards of the proposed rule. The Department would notify the member organization in writing of the types of communications to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed would take effect 21 calendar days after service of the written notice, during which time the member organization may request a hearing under FINRA Rules 9551 and 9559.[13]

Proposed Rule 2210(c)(2)—Equities would require member organizations to file retail communications concerning any registered investment company that include self-created rankings and retail communications concerning security futures at least 10 business days prior to first use and to withhold them from use until any changes specified by the Department have been made. The requirement to file retail communications concerning security futures prior to first use would not apply to (i) retail communications that are submitted to another self-regulatory organization having comparable standards pertaining to such communications and (ii) retail communications in which the only reference to security futures is contained in a listing of the services of a member organization. The Exchange does not propose to adopt the text of FINRA 2210(c)(2)(C), which requires prior filing of retail communications concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings as defined in FINRA Rule 2213 because, as stated above, the Exchange does not propose to adopt the text of FINRA Rule 2213 (the text of which the Exchange also does not propose adopting) because it covers products that are not traded on the Exchange, and FINRA Rule 2213 would continue to apply to all Dual Members.

Proposed Rule 2210(c)(3)(A)—Equities would require retail communications concerning registered investment companies (including mutual funds, exchange-traded funds, variable insurance products, closed-end funds, and unit investment trusts) to be filed within 10 business days of first use or publication. In addition, the filing of any retail communication that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the retail communication. Proposed Rule 2210(c)(3)(B)—Equities would require retail communications concerning public direct participation programs to be filed within 10 business days of first use or publication. The Exchange does not propose to adopt the text of FINRA Rule 2210(c)(3)(C), which requires prior filing of first use templates for written reports produced by, or retail communications concerning an investment analysis tool, as such term is defined in FINRA Rule 2214 (the text of which the Exchange also does not propose adopting) because it covers a limited exception for investment analysis tools that is not being adopted, and FINRA Rule 2214 would continue to apply to all Dual Members. As such, proposed Rule 2210(c)(3)(C)—Equities would be marked ''Reserved.'' Proposed Rule 2210(c)(3)(D)—Equities would require member organizations to file within 10 business days of first use retail communications concerning collateralized mortgage obligations that are registered under the Securities Act.

Under proposed Rule 2210(c)(3)(E)—Equities, member organizations would have to file within 10 business days of first use all retail communications concerning any security that is registered under the Securities Act and that is derived from or based on a single security, a basket of securities, an index, a commodity, a debt issuance or a foreign currency, not included within the requirements of paragraphs (c)(1), (c)(2) or subparagraphs (A) through (E) of paragraph (c)(3) of proposed Rule 2210—Equities. This provision would exclude retail communications that are already subject to a separate filing requirement found elsewhere in proposed paragraph (c), such as retail communications concerning registered investment companies or public direct participation programs.

Proposed Rule 2210(c)(4)—Equities would provide that, if a member organization has filed a draft version or ''story board'' of a television or video retail communication pursuant to a filing requirement, then the member organization also must file the final filmed version within 10 business days of first use or broadcast.

Proposed Rule 2210(c)(5)—Equities would specify that a member organization must provide with each filing the actual or anticipated date of first use, the name, title and CRD number of the registered principal who approved the communication, and the date of approval.

Proposed Rule 2210(c)(6)—Equities would provide that each member organization's written communications may be subject to a spot-check procedure, and that member organizations must submit requested material within the time frame specified by the Department.

Proposed Rule 2210(c)(7)(A)—Equities would create a filing exclusion for retail communications that previously have been filed with the Department and that are to be used without material change. Proposed Rule 2210(c)(7)(B)—Equities would create an exclusion for retail communications that are based on templates that were previously filed with the Department, the changes to which are limited to updates of more recent statistical or other non-narrative information. Proposed Rule 2210(c)(7)(C)—Equities would exclude retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member organization.[14]

Paragraphs (c)(7)(D), (E), (G) and (H) of proposed Rule 2210—Equities would create a filing exclusion for retail communications that do no more than identify a national securities exchange symbol of the member organization or identify a security for which the member organization is a registered market maker; advertisements and sales literature that do no more than identify the member organization or offer a specific security at a stated price; certain ''tombstone'' advertisements governed by Securities Act Rule 134; and press releases that are made available only to members of the media.

Proposed Rule 2210(c)(7)(F)—Equities would create a filing exclusion for prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the Commission or any state, or that are exempt from such registration, except that an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the Commission pursuant to Securities Act Rule 433(d)(1)(ii) would

[13] FINRA currently performs this function for requesting NYSE Arca ETP Holders under NYSE Arca Equities Rule 9.21(c)(5)(B). The Exchange will propose to adopt comparable rules when the Exchange conforms its disciplinary rules to FINRA's and NYSE's disciplinary rules.

[14] This filing exception would have the same scope as the proposed exception from the principal pre-use approval requirements for retail communications that do not make any financial or investment recommendation or otherwise promote a product or service of the member organization. *See* Proposed Rule 2210(b)(1)(D)(iii)—Equities.

not be considered a prospectus for purposes of this exclusion.[15]

Proposed Rule 2210(c)(7)(I)—Equities would create a filing exclusion for any reprint or excerpt of any article or report issued by a publisher (''reprint''), provided that the publisher is not an affiliate of the member organization using the reprint or any underwriter or issuer of a security mentioned in the reprint that the member organization is promoting; neither the member organization using the reprint nor any underwriter or issuer of a security mentioned in the reprint has commissioned the reprinted article or report; and the member organization using the reprint has not materially altered its contents except as necessary to make the reprint consistent with applicable regulatory standards or to correct factual errors.

Paragraphs (c)(7)(J) and (K) of proposed Rule 2210—Equities would create filing exclusions for correspondence and institutional communications. Proposed paragraph (c)(7)(L) would exclude from filing communications that refer to types of investments solely as part of a listing of products or services offered by the member organization.

Proposed Rule 2210(c)(7)(M)—Equities would exclude from the filing requirements retail communications that are posted on an online interactive electronic forum. Proposed Rule 2210(c)(7)(N)—Equities would exclude from the filing requirements press releases issued by closed-end investment companies that are listed on the Exchange pursuant to Section 401 of the NYSE MKT Company Guide (or any successor provision).

The Exchange does not propose to adopt FINRA Rule 2210(c)(8) because Section 24(b) of the Investment Company Act and Rule 24b–3 thereunder only apply to a registered national securities association, i.e., FINRA. As such, Rule 2210(c)(8)—Equities would be marked ''Reserved.''

Proposed Rule 2210(c)(9)(A)—Equities would allow FINRA to exempt, pursuant to the FINRA Rule 9600 Series, a member organization from the pre-use filing requirements of paragraph (c)(1)(A) for good cause shown. Proposed Rule 2210(c)(9)(B)—Equities would allow FINRA to grant an exemption from the filing requirements of paragraph (c)(3) for good cause shown after taking into consideration all relevant factors, provided that the exemption is consistent with the purposes of the rule, the protection of investors, and the public interest. Generally, this relief would be limited to the same extent as in proposed paragraph (b)(1)(E), which would authorize FINRA to grant exemptive relief from the principal approval requirements in proposed Rule 2210(b)(1)(A)—Equities for retail communications, subject to the same standards.[16]

Content Standards

Proposed Rule 2210(d)—Equities would incorporate the current content standards applicable to communications with the public that are found in Rules 472(i) and (j)—Equities, subject to certain changes. Proposed Rule 2210(d)(1)—Equities is comparable to the general standards for all communications in Rule 472(i)—Equities; however, the proposed rule would expand upon these general standards.

Proposed Rule 2210(d)(1)(A)—Equities would provide that all member organization communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. In addition, the proposed rule would provide that no member organization may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communications to be misleading. Current Rule 472(i)—Equities, which sets forth the general content standards for all communications, is comparable to the proposed rule.

As with current Rule 472(i)—Equities, which specifically prohibits promissory statements, proposed Rule 2210(d)(1)(B)—Equities would prohibit a member organization from making any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. In addition, no member organization may publish, circulate or distribute any communication that the member organization knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Proposed Rule 2210(d)(1)(C)—Equities would allow information to be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(D)—Equities would provide that member organizations must ensure that statements are clear and not misleading within the context in which they are made, and that they provide balanced treatment of risks and potential benefits. In addition, communications must be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(E)—Equities would provide that member organizations must consider the nature of the audience to which the communication will be directed and must provide details and explanations appropriate to the audience. The Exchange does not currently have a comparable rule with this specific requirement.

Proposed Rule 2210(d)(1)(F)—Equities would provide that communications may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast; provided, however, the following would not be prohibited:

- A hypothetical illustration of mathematical principles, provided that it does not predict or project the performance of an investment or investment strategy; and
- A price target contained in a research report on debt or equity securities, provided that the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the price target.

The Exchange does not propose to adopt the text of FINRA Rule 2210(d)(1)(F)(ii), which references an investment analysis tool, or a written report produced by an investment analysis tool, that meets the requirements of FINRA Rule 2214 (the text of which the Exchange also does not propose adopting) because it covers a limited exception for investment analysis tools that is not being adopted, and FINRA Rule 2214 would continue to apply to all Dual Members. As such, text of proposed Rule 2210(d)(1)(F)(ii)—Equities would correspond to the text of FINRA Rule 2210(d)(1)(F)(iii).

Current Rule 472(j)(3)—Equities provides that any projection or prediction must contain the bases or assumptions upon which they are made

[15] Securities Act Rule 433(d)(1)(ii) requires any offering participant, other than the issuer, to file with the Commission a free writing prospectus that is used or referred to by such offering participant and distributed by or on behalf of such person in a manner reasonably designed to lead to its broad unrestricted dissemination.

[16] *See supra* note 8.

and must indicate that the bases or assumptions of the materials upon which such projections and predictions are made are available upon request. The proposed rule would make a blanket prohibition against predictions and projections and carve out certain exemptions.

Proposed Rule 2210(d)(2)—Equities would provide that any comparison in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features. Similarly, current Rule 472(j)(4)—Equities provides that any comparison of one member organization's service, personnel, facilities or charges with those of other firms must be factually supportable.

Rule 2210(d)(3)—Equities would require all retail communications and correspondence to (i) prominently disclose the name of the member organization, and would allow a fictional name by which the member organization is commonly recognized or which is required by any state or jurisdiction; (ii) reflect any relationship between the member organization and any non-member organization that, or individual who, also is named in the communication; and (iii) if the communication includes other names, reflect which products and services are offered by the member organization. Proposed Rule 2210(d)(3)—Equities would apply these standards to correspondence as well as to retail communications. A member organization would be permitted to use the name under which the member organization's broker-dealer business is conducted as disclosed on the member organization's Form BD, as well as a fictional name by which the member organization is commonly recognized or which is required by any state or jurisdiction. The proposed rule would not apply to ''blind'' advertisements used to recruit personnel. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(A)—Equities would specify that in retail communications and correspondence, references to tax-free or tax-exempt income must indicate which income taxes apply, or which do not, unless income is free from all applicable taxes, and provides an example of income from an investment company investing in municipal bonds that is free from federal income tax but subject to state or local income taxes. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(B)—Equities would prohibit communications from characterizing income or investment returns as tax-free or exempt from income tax when tax liability is merely postponed or deferred, such as when taxes are payable upon redemption. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(4)(C)—Equities would add new language concerning comparative illustrations of the mathematical principles of tax-deferred versus taxable compounding. First, the illustration would have to depict both the taxable investment and the tax-deferred investment using identical investment amounts and identical assumed gross investment rates of return, which may not exceed 10 percent per annum. Second, the illustration would have to use and identify actual federal income tax rates. Third, the illustration would be permitted (but not required) to reflect an actual state income tax rate, provided that the communication prominently discloses that the illustration is applicable only to investors that reside in the identified state. Fourth, the tax rates used in the illustration that is intended for a target audience would have to reasonably reflect its tax bracket or brackets as well as the tax character of capital gains and ordinary income. Fifth, if the illustration covers an investment's payout period, the illustration would have to reflect the impact of taxes during this period. Sixth, the illustration could not assume an unreasonable period of tax deferral. Seventh, the illustration would have to include the following disclosures, as applicable:

- The degree of risk in the investment's assumed rate of return, including a statement that the assumed rate of return is not guaranteed;
- The possible effects of investment losses on the relative advantage of the taxable versus tax-deferred investments;
- The extent to which tax rates on capital gains and dividends would affect the taxable investment's return;
- The fact that ordinary income tax rates will apply to withdrawals from a tax-deferred investment;
- Its underlying assumptions; [17]
- The potential impact resulting from federal or state tax penalties (e.g., for early withdrawals or use on non-qualified expenses); and
- That an investor should consider his or her current and anticipated investment horizon and income tax bracket when making an investment decision, as the illustration may not reflect these factors.

The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(5)—Equities would require retail communications and correspondence that present the performance of a non-money market mutual fund, to disclose the fund's maximum sales charge and operating expense ratio as set forth in the fund's current prospectus fee table. The Exchange does not currently have a comparable rule with these specific requirements.

Proposed Rule 2210(d)(6)(A)—Equities would provide that, if any testimonial in a communication concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion. This requirement would be identical to current Rule 472(j)(7)(iv)—Equities.

Proposed Rule 2210(d)(6)(B)—Equities would require any retail communications and correspondence that provide a testimonial concerning the investment advice or investment performance of a member organization or its products to prominently disclose (i) the fact that the testimonial may not be representative of the experience of other customers, (ii) the fact that the testimonial is no guarantee of future performance or success, and (iii) if more than $100 in value is paid for the testimonial, the fact that it is a paid testimonial. The proposed rule would be substantially the same as current Rule 472(j)(7)(i)–(iii)—Equities, except that Rule 472(j)(7)(iii)—Equities refers instead to a ''nominal amount.''

Proposed Rule 2210(d)(7)—Equities would apply to retail communications that contain a recommendation. Proposed Rule 2210(d)(7)(A)—Equities would require disclosure of certain specified conflicts of interest to the extent applicable. Retail communications that include a recommendation of securities must have a reasonable basis for the recommendation and must disclose, if applicable, the following: (i) That at the time the communication was published or distributed, the member organization was making a market in the security being recommended, or in the underlying security if the recommended

[17] These assumptions may include, for example, the age at which an investor may begin withdrawing funds from a tax-deferred account, the actual federal tax rates applied in the hypothetical taxable illustration, any state income tax rate applied in the illustration, and the charges associated with the hypothetical investment.

security is an option or security future, or that the member organization or associated persons will sell to or buy from customers on a principal basis; (ii) that the member organization or any associated person that is directly and materially involved in the preparation of the content of the communication has a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal; and (iii) that the member organization was manager or co-manager of a public offering of any securities of the issuer whose securities were recommended within the past 12 months. The proposed rule would be more detailed than current Rule 472(j)(1)—Equities, which covers recommendations.

Proposed Rule 2210(d)(7)(B)—Equities would require a member organization to provide, or offer to furnish upon request, available investment information supporting the recommendation, and if the recommendation is for a corporate equity security, to provide the price at the time the recommendation is made. The proposed rule would be comparable to current Rule 472(j)(1)—Equities, which provides that when recommending the purchase, sale or switch of specific securities, supporting information must be provided or offered, and the market price at the time the recommendation is made must be indicated.

Proposed Rule 2210(d)(7)(C)—Equities would amend the provisions governing communications that include past recommendations, which are currently found in Rule 472(j)(2)—Equities. The proposed standards mirror those found in Rule 206(4)–1(a)(2) under the Investment Advisers Act of 1940 (''Advisers Act''), which apply to investment adviser advertisements that contain past recommendations.[18]

Proposed Rule 2210(d)(7)(D)—Equities expressly would exclude from its coverage communications that meet the definition of ''research report'' or that are public appearances by a research analyst for purposes of Rule 472—Equities and that include all of the applicable disclosures required by that rule. Proposed Rule 2210(d)(7)(D)—Equities also would exclude any communication that recommends only registered investment companies or variable insurance products.[19] The Exchange does not currently have a comparable rule regarding registered investment companies.

Under proposed Rule 2210(d)(8)—Equities, prospectuses, preliminary prospectuses, fund profiles and similar documents that have been filed with the Commission would not be subject to the standards of proposed Rule 2210(d)—Equities; provided, however, that the standards would apply to an investment company prospectus published pursuant to Securities Act Rule 482 and a free writing prospectus that has been filed with the Commission pursuant to Securities Act Rule 433(d)(1)(ii). The Exchange does not currently have a comparable rule.

Certain Text Not Adopted

The Exchange does not propose to adopt the text of FINRA Rule 2210(e), which relates to limitations on the use of FINRA's name and any other corporate name owned by FINRA. The Exchange does not propose to adopt the text of FINRA Rule 2210(e)(2) because that provision relates to over-the-counter transactions, which the Exchange does not regulate. Lastly, the Exchange does not propose to adopt the text of FINRA Rule 2210(e)(3) because the Exchange has not previously imposed a requirement on member organizations to provide a link to the Exchange's Web site in connection with its indication of NYSE MKT membership, and the Exchange does not believe it is necessary to impose such a restriction at this time. FINRA Rule 2210(e)(3) would continue to apply to all Dual Members. As such, Rule 2210(e)—Equities would be marked ''Reserved.''

Public Appearances

Proposed Rule 2210(f)—Equities sets forth the general standards that would apply to public appearances. Public appearances would have to meet the general ''fair and balanced'' standards of proposed Rule 2210(d)(1)—Equities. The disclosure requirements applicable to recommendations in proposed Rule 2210(d)(7)—Equities would apply if the public appearance included a recommendation of a security. The proposed rule also would require member organizations to establish appropriate written policies and procedures to supervise public appearances, and clarify that scripts, slides, handouts or other written (including electronic) materials used in connection with public appearances are considered communications for purposes of proposed Rule 2210—Equities. The proposed requirement to establish supervisory policies and procedures for public appearances would be consistent with Rule 472(l)—Equities, which covers other communications activities.

Violations of Other Rules

Proposed Rule 2210(g)—Equities would provide that any violation by a member organization of any rule of the Commission or the Securities Investor Protection Corporation applicable to member organization communications would be deemed a violation of proposed Rule 2210—Equities. FINRA Rule 2210(g) also applies to violations of Municipal Securities Rulemaking Board (''MSRB'') rules because FINRA enforces such rules. Because the Exchange does not enforce MSRB rules, the reference to MSRB rules would not be included in proposed Rule 2210(g)—Equities.

Use of Investment Companies Rankings in Retail Communications

The Exchange proposes to adopt the text of FINRA Rule 2212, which would cover the use of investment company rankings in retail communications. The Exchange currently does not have a comparable rule.

Proposed Rule 2212(a)—Equities would define ''Ranking Entity'' as ''any entity that provides general information about investment companies to the public, that is independent of the investment company and its affiliates, and whose services are not procured by the investment company or any of its affiliates to assign the investment company a ranking.''

Proposed Rule 2212(b)—Equities would provide that member organizations may not use investment company rankings in any retail communication other than (i) rankings created and published by Ranking Entities or (ii) rankings created by an investment company or an investment

[18] Proposed Rule 2210(d)(7)(C)—Equities, like Advisers Act Rule 206(4)–1(a)(2), generally would prohibit retail communications from referring to past specific recommendations of the member organization that were or would have been profitable to any person. The proposed rule would allow, however, a retail communication or correspondence to set out or offer to furnish a list of all recommendations as to the same type, kind, grade or classification of securities made by the member organization within the immediately preceding period of not less than one year. The list would have to provide certain information regarding each recommended security and include a prescribed cautionary legend warning investors not to assume that future recommendations will be profitable.

[19] The Exchange is proposing to exclude communications that recommend only registered investment companies or variable insurance products because it believes that recommendations of these products do not raise the same kinds of conflicts of interest as recommendations of other types of securities, since they are pooled investment vehicles rather than securities of a single issuer.

company affiliate but based on the performance measurements of a Ranking Entity. Rankings in retail communications also would have to conform to the requirements described below.

Proposed Rule 2212(c)—Equities would require certain disclosures in retail communications. A headline or other prominent statement must not state or imply that an investment company or investment company family is the best performer in a category unless it is actually ranked first in the category. All retail communications containing an investment company ranking also would have to disclose prominently:

- The name of the category (e.g., growth);
- The number of investment companies or, if applicable, investment company families, in the category;
- The name of the Ranking Entity and, if applicable, the fact that the investment company or an affiliate created the category or subcategory;
- The length of the period (or the first day of the period) and its ending date; and
- Criteria on which the ranking is based (e.g., total return, risk-adjusted performance).

In addition, all retail communications containing an investment company ranking also would have to disclose:

- The fact that past performance is no guarantee of future results;
- For investment companies that assess front-end sales loads, whether the ranking takes those loads into account;
- If the ranking is based on total return or the current Commission standardized yield, and fees have been waived or expenses advanced during the period on which the ranking is based, and the waiver or advancement had a material effect on the total return or yield for that period, a statement to that effect;
- The publisher of the ranking data (e.g., ''ABC Magazine, June 2011''); and
- If the ranking consists of a symbol (e.g., a star system) rather than a number, the meaning of the symbol (e.g., a four-star ranking indicates that the fund is in the top 30% of all investment companies).

Proposed Rule 2212(d)—Equities would provide that any investment company ranking included in a retail communication must be, at a minimum, current to the most recent calendar quarter ended prior to use or submission for publication. If no ranking that meets this requirement is available from the Ranking Entity, then a member organization would only be able to use the most current ranking available from the Ranking Entity unless use of the most current ranking would be misleading, in which case no ranking from the Ranking Entity may be used. In addition, except for money market mutual funds:

- Retail communications may not present any ranking that covers a period of less than one year, unless the ranking is based on yield;
- An investment company ranking based on total return must be accompanied by rankings based on total return for a one year period for investment companies in existence for at least one year; one and five year periods for investment companies in existence for at least five years; and one, five and ten year periods for investment companies in existence for at least ten years supplied by the same Ranking Entity, relating to the same investment category, and based on the same time period; provided that, if rankings for such one, five and ten year time periods are not published by the Ranking Entity, then rankings representing short, medium and long term performance must be provided in place of rankings for the required time periods; and
- An investment company ranking based on yield may be based only on the current Commission standardized yield and must be accompanied by total return rankings for the time periods specified in Rule 2212(d)(2)(B)—Equities.

Proposed Rule 2212(e)—Equities would provide specific requirements with respect to categories. The choice of category (including a subcategory of a broader category) on which the investment company ranking is based must be one that provides a sound basis for evaluating the performance of the investment company. An investment company ranking must be based only on (i) a published category or subcategory created by a Ranking Entity or (ii) a category or subcategory created by an investment company or an investment company affiliate, but based on the performance measurements of a Ranking Entity. Retail communications must not use any category or subcategory that is based upon the asset size of an investment company or investment company family, whether or not it has been created by a Ranking Entity.

Proposed Rule 2212(f)—Equities would provide that investment company rankings for more than one class of investment company with the same portfolio must be accompanied by prominent disclosure of the fact that the investment companies or classes have a common portfolio and different expense structures.

Proposed Rule 2212(g)—Equities would provide that retail communications may contain rankings of investment company families, provided that these rankings comply with proposed Rule 2212—Equities, and further provided that no retail communication for an individual investment company may provide a ranking of an investment company family unless it also prominently discloses the various rankings for the individual investment company supplied by the same Ranking Entity, as described in proposed Rule 2212(d)(2)(B)—Equities. For purposes of Rule 2212—Equities, the term ''investment company family'' would mean any two or more registered investment companies or series thereof that hold themselves out to investors as related companies for purposes of investment and investor services.

Proposed Rule 2212(h)—Equities would specify that Rule 2212—Equities would not apply to any reprint or excerpt of any article or report that is excluded from the Exchange's Advertising Regulation Department filing requirements pursuant to Rule 2210(c)(7)(I)—Equities.

Conforming Changes

The Exchange also proposes to make certain conforming changes to Rule 342—Equities. Specifically, the Exchange proposes to amend Supplementary Materials .10(B) and .17 to Rule 342—Equities, which covers the approval, supervision, and control of offices, to include a cross-reference to proposed Rule 2210—Equities in addition to the current cross-references to Rule 472—Equities in that rule. The Exchange also proposes to amend the definition of ''branch office'' in Supplementary Material .10 to Rule 342—Equities to replace references to ''advertisements'' and ''sales literature'' with references to ''retail communications.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Exchange Act Section 6(b),[20] in general, and furthers the objectives of Exchange Act Section 6(b)(5),[21] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Exchange Act by

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

providing greater harmonization between NYSE MKT rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, NYSE MKT member organizations that are also FINRA members are subject to Rule 472—Equities and FINRA Rules 2210 and 2212, and harmonizing these rules by adopting proposed Rules 2210—Equities and 2212—Equities would promote just and equitable principles of trade by requiring a single standard for communications with the public. The Exchange believes that to the extent the Exchange has proposed changes that differ from the FINRA version of the NYSE MKT rules, such changes are generally technical in nature and do not change the substance of the proposed rules. The Exchange also believes that the proposed rule change would update and add specificity to the requirements governing communications with the public, which would promote just and equitable principles of trade and help to protect investors. The Exchange further believes that using FINRA's procedures in the event that a member wishes to obtain an exemption or contest a pre-filing requirement would create greater efficiency and consistency while providing members with appropriate procedural protections until the Exchange adopts comparable procedures. As such, the Exchange believes the proposed rule change meets the requirements of Exchange Act Section 6(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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 Exchange Act. The Exchange believes that the proposed rule change is not intended to address competitive issues but rather to achieve greater consistency between the Exchange's rules and FINRA's rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Exchange Act Section 19(b)(3)(A)(iii) [22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Exchange Act Section 19(b)(3)(A) and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it would allow the Exchange to immediately conform its rules to corresponding FINRA rules. This will ensure that Dual Members generally will be subject to a single set of rules governing communications with the public. As noted by the Exchange, the proposal would harmonize NYSE and FINRA rules. In addition, the proposal would update and add specificity to the Exchange's requirements governing communications with the public, which are designed to help protect customers of all NYSE members. For these reasons, the Commission designates the proposed rule change to be operative upon filing.[26]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. If the Commission takes such action, the Commission shall institute proceedings under Exchange Act Section 19(b)(2)(B) [27] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2013–95 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–NYSEMKT–2013–95. 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 Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 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–NYSEMKT–2013–95 and should be submitted on or before December 26, 2013.

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–29043 Filed 12–4–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8543]

60-Day Notice of Proposed Information Collection: Online Application for Nonimmigrant Visa

AGENCY: Department of State.

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to February 3, 2014.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to www.Regulations.gov. You can search for the document by entering ''Public Notice 8543'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: PRA_BurdenComments@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Sydney Taylor, who may be reached at *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Online Application for Nonimmigrant Visa
- *OMB Control Number:* 1405–0182
- *Type of Request:* Extension of a currently approved collection
- *Originating Office:* CA/VO/L/R
- *Form Number:* DS–160
- *Respondents:* All Nonimmigrant Visa Applicants
- *Estimated Number of Respondents:* 11,100,276
- *Estimated Number of Responses:* 11,100,276
- *Average Time per Response:* 75 minutes
- *Total Estimated Burden Time:* 13,875,345
- *Frequency:* Once per respondent
- *Obligation to Respond:* Required to Obtain or Retain a Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The Online Application for Nonimmigrant Visa (DS–160) will be used to collect biographical information from individuals seeking a nonimmigrant visa. The consular officer uses the information collected to determine the applicant's eligibility for a visa. This collection combines questions from current information collections DS–156 Nonimmigrant Visa Application, DS–156E Nonimmigrant Treaty Trader Investor Application (for certain qualifiers), DS–156K Nonimmigrant Fiancé Application, DS–157 Nonimmigrant Supplemental Visa Application, and DS–158 Contact Information and Work History Application.

Methodology

The DS–160 will be submitted electronically to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing. Applicants who submit the electronic application will no longer submit paper-based applications to the Department.

Dated: November 26, 2013.

Edward Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–29077 Filed 12–04–13; 8:45 am]

BILLING CODE 4710–06–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September 19, 2013, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 19, 2013, in Binghamton, New York, the Commission took the following actions: (1) Approved or tabled the applications of certain water resources projects; (2) rescinded approvals for three projects; (3) took additional actions, as set forth in the Supplementary Information below.

DATES: September 19, 2013.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 1306; fax: (717) 238–2436; email: *rcairo@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Honored retiring Executive Director Paul O. Swartz for his almost 22 years of dedicated service to the Commission; (2) appointed Andrew D. Dehoff as the new Executive Director of the Commission; (3) heard a presentation from SRBC staff member Luanne Steffy on the Whitney Point Adaptive Management Plan; (4) delegated authority to the Executive Director on certain regulatory matters; and (5) approved/ratified four grants and one service contract.

Rescission of Project Approvals

The Commission rescinded approvals for the following projects:

1. Project Sponsor and Facility: Chevron Appalachia, LLC (Cambria Somerset Authority), Summerhill

[28] 17 CFR 200.30–3(a)(12).

Township, Cambria County, PA (Docket No. 20110630).

2. Project Sponsor and Facility: Chevron Appalachia, LLC (Highland Sewer and Water Authority), Portage Township, Cambria County, PA (Docket No. 20110631).

3. Project Sponsor and Facility: Clark Trucking, LLC, Northeast Division, Muncy Creek Township, Lycoming County, PA (Docket No. 20111208).

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: Borough of Akron, Lancaster County, Pa. Renewal of groundwater withdrawal of up to 0.226 mgd (30-day average) from Well 5A (Docket No. 19811201); renewal of groundwater withdrawal of up to 0.166 mgd (30-day average) from Well 6 (Docket No. 19820101); and renewal of groundwater withdrawal of up to 0.148 mgd (30-day average) from Well 8 (Docket No. 19820101).

2. Project Sponsor and Facility: Bending River Estates (Tioga River), Town of Lindley, Steuben County, N.Y. Surface water withdrawal of up to 0.300 mgd (peak day).

3. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek), Lemon Township, Wyoming County, Pa. Increase surface water withdrawal by an additional 0.446 mgd (peak day), for a total of 0.500 mgd (peak day) (Docket No. 20121202).

4. Project Sponsor and Facility: Cabot Oil & Gas Corporation (Meshoppen Creek), Springville Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.500 mgd (peak day).

5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Chemung River), Athens Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20090603).

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Sugar Creek), Burlington Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20090604).

7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 1.440 mgd (peak day) (Docket No. 20090605).

8. Project Sponsor and Facility: Town of Erwin, City of Corning, Steuben County, N.Y. Groundwater withdrawal of up to 0.504 mgd (30-day average) from Well 5R.

9. Project Sponsor and Facility: Global Tungsten & Powders Corp., Towanda Borough, Bradford County, Pa. Groundwater withdrawal of up to 4.800 mgd (30-day average) from a Well Field (Wells 1, 2, 6, 7, 8, 9, 10, 11, and 12).

10. Project Sponsor and Facility: Southwestern Energy Production Company (Wyalusing Creek), Wyalusing Township, Bradford County, Pa. Renewal of surface water withdrawal with modification to increase by an additional 0.500 mgd (peak day), for a total of 2.000 mgd (peak day) (Docket No. 20090914).

11. Project Sponsor and Facility: State College Borough Water Authority, Ferguson Township, Centre County, Pa. Renewal of groundwater withdrawal of up to 0.605 mgd (30-day average) from Well 41 (Docket No. 19820501); renewal of groundwater withdrawal of up to 1.480 mgd (30-day average) from Well 43 (Docket No. 19820501); and renewal of groundwater withdrawal of up to 1.520 mgd (30-day average) from Well 53 (Docket No. 19820501).

12. Project Sponsor and Facility: Susquehanna Gas Field Services, L.L.C. (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Renewal of surface water withdrawal of up to 0.145 mgd (peak day) (Docket No. 20090628).

13. Project Sponsor: SWEPI LP (Tioga River), Richmond Township, Tioga County, Pa. Renewal of surface water withdrawal with modification to increase by an additional 0.843 mgd (peak day), for a total of 0.950 mgd (peak day) (Docket No. 20090612).

Project Application Approved Involving a Diversion

The Commission approved the following project application:

1. Project Sponsor: Winner Water Services, Inc. Project Facility: Sykesville Mine AMD, Borough of Sykesville, Jefferson County, Pa. Into-basin diversion of up to 1.000 mgd from the Ohio River Basin.

Project Applications Tabled

The Commission tabled the following project applications:

1. Project Sponsor and Facility: Aqua Infrastructure, LLC (Tioga River), Hamilton Township, Tioga County, Pa. Application for surface water withdrawal of up to 2.500 mgd (peak day).

2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.440 mgd (peak day) (Docket No. 20080906).

3. Project Sponsor and Facility: DS Waters of America, Inc., Clay Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.115 mgd (30-day average) from Well 6 (Docket No. 20000203).

4. Project Sponsor and Facility: Houtzdale Municipal Authority, Gulich Township, Clearfield County, Pa. Application for groundwater withdrawal of up to 0.537 mgd (30-day average) from Well 14R.

5. Project Sponsor and Facility: LHP Management, LLC (Fishing Creek—Clinton Country Club), Bald Eagle Township, Clinton County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20090906).

6. Project Sponsor and Facility: Millersburg Area Authority, Upper Paxton Township, Dauphin County, Pa. Application for renewal of groundwater withdrawal of up to 0.173 mgd (30-day average) from Well 10 (Docket No. 19830309).

7. Project Sponsor and Facility: Millersburg Area Authority, Upper Paxton Township, Dauphin County, Pa. Application for renewal of groundwater withdrawal of up to 0.187 mgd (30-day average) from Well 11 (Docket No. 19830309).

8. Project Sponsor and Facility: Winner Water Services, Inc. (Manor #44 Deep Mine), Girard Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.144 mgd (peak day).

Authority: Pub. L. 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: November 27, 2013.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2013–29049 Filed 12–4–13; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with relevant provisions of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar and syrup goods

and sugar-containing products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama. As described below, the level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) the United States-Chile Free Trade Agreement (Chile FTA); (ii) the United States-Morocco Free Trade Agreement (Morocco FTA); (iii) the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR); (iv) the United States-Peru Trade Promotion Agreement (Peru TPA); (v) the United States-Colombia Trade Promotion Agreement (Colombia TPA); and (vi) the United States-Panama Trade Promotion Agreement (Panama TPA).

DATES: Effective January 1, 2014.

ADDRESSES: Inquiries may be mailed or delivered to Ann Heilman-Dahl, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ann Heilman-Dahl, Office of Agricultural Affairs, telephone: (202) 395–9582 or facsimile: (202) 395–4579.

SUPPLEMENTARY INFORMATION:

Chile: Pursuant to section 201 of the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Chile FTA.

Note 12(a) to subchapter XI of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus.

Note 12(b) to subchapter XI of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.05 in an amount equal to the lesser of Chile's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XI of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.10 through 9911.17.85 in an amount equal to the amount by which Chile's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During calendar year (CY) 2012, the most recent year for which data is available, *Chile's* imports of sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 517,065 metric tons according to data published by the *Servicio Nacional de Aduana (Chile Customs).* Based on this data, USTR determines that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XI of HTS chapter 99, goods of Chile are not eligible to enter the United States duty-free under subheading 9911.17.05 or at preferential tariff rates under subheading 9911.17.10 through 9911.17.85 in CY 2014.

Morocco: Pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented the Morocco FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Morocco FTA.

Note 12(a) to subchapter XII of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus.

Note 12(b) to subchapter XII of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.05 in an amount equal to the lesser of Morocco's trade surplus or the specific quantity set out in that note for that calendar year.

Note 12(c) to subchapter XII of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.10 through 9912.17.85 in an amount equal to the amount by which Morocco's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During CY 2012, the most recent year for which data is available, *Morocco's* imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 1,002,662 metric tons according to data published by its customs authority, the *Office des Changes.* Based on this data, USTR determines that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XII of HTS chapter 99, goods of Morocco are not eligible to enter the United States duty-free under subheading 9912.17.05 or at preferential tariff rates under subheading 9912.17.10 through 9912.17.85 in CY 2014.

CAFTA–DR: Pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025), Presidential Proclamation No. 8331 of December 23, 2008 (73 FR 79585), and Presidential Proclamation No. 8536 of June 12, 2010 (75 FR 34311) implemented the CAFTA–DR on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the CAFTA–DR.

Note 25(b)(i) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 and its imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar and syrup

goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that calendar year.

During CY 2012, the most recent year for which data is available, *Costa Rica's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 41,312 metric tons according to data published by the *Costa Rican Customs Department, Ministry of Finance.* Based on this data, USTR determines that Costa Rica's trade surplus is 41,312 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Costa Rica for CY 2014 is 12,760 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Costa Rica that may be entered duty-free under subheading 9822.05.20 in CY 2014 is 12,760 metric tons (i.e., the amount that is the lesser of Costa Rica's trade surplus and the specific quantity set out in that note for Costa Rica for CY 2014).

During CY 2012, the most recent year for which data is available, the *Dominican Republic's* imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 36,360 metric tons according to data published by the *Instituto Azucarero Dominicano and the National Statistics Office of the Dominican Republic.* Based on this data, USTR determines that the Dominican Republic's trade surplus is negative. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, goods of the Dominican Republic are not eligible to enter the United States duty-free under subheading 9822.05.20 in CY 2014.

During CY 2012, the most recent year for which data is available, *El Salvador's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 133,154 metric tons according to data published by the *Central Bank of El Salvador.* Based on this data, USTR determines that El Salvador's trade surplus is 133,154 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for El Salvador for CY 2014 is 31,620 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY 2014 is 31,620 metric tons (i.e., the amount that is the lesser of El Salvador's trade surplus and the specific quantity set out in that note for El Salvador for CY 2014).

During CY 2012, the most recent year for which data is available, *Guatemala's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 1,337,435 metric tons according to data published by the *Asociacio´n de Azucareros de Guatemala (ASAZGUA).* Based on this data, USTR determines that Guatemala's trade surplus is 1,337,435 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Guatemala for CY 2014 is 42,840 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY 2014 is 42,840 metric tons (i.e., the amount that is the lesser of Guatemala's trade surplus and the specific quantity set out in that note for Guatemala for CY 2014).

During CY 2012, the most recent year for which data is available, *Honduras'* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 48,339 metric tons according to data published by the *Central Bank of Honduras.* Based on this data, USTR determines that Honduras' trade surplus is 48,339 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Honduras for CY 2014 is 9,280 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Honduras that may be entered duty-free under subheading 9822.05.20 in CY 2014 is 9,280 metric tons (i.e., the amount that is the lesser of Honduras' trade surplus and the specific quantity set out in that note for Honduras for CY 2014).

During CY 2012, the most recent year for which data is available, *Nicaragua's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 209,946 metric tons according to data published by the *Ministry of Development, Industry and Trade (MIFIC).* Based on this data, USTR determines that Nicaragua's trade surplus is 209,946 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Nicaragua for CY 2014 is 25,520 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY 2014 is 25,520 metric tons (i.e., the amount that is the lesser of Nicaragua's trade surplus and the specific quantity set out in that note for Nicaragua for CY 2014).

Peru: Pursuant to section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note), Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105) implemented the Peru TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Peru TPA.

Note 28(c) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus.

Note 28(d) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2012, the most recent year for which data is available, *Peru's* imports of the sugar goods described above exceeded its exports of those goods by 303,225 metric tons according to data published by the *Superintendencia Nacional de Administracion Tributaria.* Based on this data, USTR determines that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY 2014.

Colombia: Pursuant to section 201 of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42; 19 U.S.C. 3805 note), Presidential Proclamation No. 8818 of May 14, 2012 (77 FR 29519) implemented the Colombia TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Colombia TPA.

Note 32(b) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Colombia's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60,

except that Colombia's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Colombia TPA and Colombia's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Colombia's trade surplus.

Note 32(c)(i) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Colombia entered under subheading 9822.08.01 in an amount equal to the lesser of Colombia's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2012, the most recent year for which data is available, *Colombia's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 369,367 metric tons according to data published by *Global Trade Atlas.* Based on this data, USTR determines that Colombia's trade surplus is 369,367 metric tons. The specific quantity set out in U.S. Note 32(c)(i) to subchapter XXII of HTS chapter 98 for CY 2014 is 51,500 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Colombia that may be entered duty-free under subheading 9822.08.01 in CY 2014 is 51,500 metric tons (i.e., the amount that is the lesser of Colombia's trade surplus and the specific quantity set out in that note for Colombia for CY 2014).

Panama: Pursuant to section 201 of the United States-Panama Trade Promotion Agreement Implementation Act (Pub. L. 112–43; 19 U.S.C. 3805 note), Presidential Proclamation No. 8894 of October 29, 2012 (77 FR 66505) implemented the Panama TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Panama TPA.

Note 35(a) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Panama's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Panama's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Panama TPA and Panama's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Panama's trade surplus.

Note 35(c) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Panama entered under subheading 9822.09.17 in an amount equal to the lesser of Panama's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2012, the most recent year for which data is available, *Panama's* imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 1,152 metric tons according to data published by *National Institute of Statistics and Census, Office of the General Comptroller of Panama.* Based on this data, USTR determines that Panama's trade surplus is negative. Therefore, in accordance with U.S. Note 35(c) to subchapter XXII of HTS chapter 98, goods of Panama are not eligible to enter the United States duty-free under subheading 9822.09.17.

Islam A. Siddiqui,

Chief Agricultural Negotiator, Office of the U.S. Trade Representative.

[FR Doc. 2013–29100 Filed 12–4–13; 8:45 am]

BILLING CODE 3290–F4–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0088]

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on September 5, 2013 (78 FR 54722).

DATES: Comments must be submitted on or before January 6, 2014.

ADDRESSES: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Otto Matheke, National Highway Traffic Safety Administration, Office of the Chief Counsel (NCC–111), (202) 366–5263, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Confidential Business Information.

Type of Request: Extension of a currently approved collection.

Form Number: This collection of information uses no standard forms.

OMB Control Number: 2127–0025.

Frequency: Submission of information pursuant to this regulation will depend on the frequency with which a given entity, such as a manufacturer of motor vehicles or motor vehicle equipment, submits information and a request that the agency hold the information confidential, generally pursuant to Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4).

Affected Public: This collection of information would apply to any person who seeks to have the agency treat as confidential information submitted to the agency either voluntarily or pursuant to a mandatory information request issued by the agency. Thus, the collection of information could apply to any of the entities over which the agency exercises regulatory authority. Recent trends lead the agency to estimate that NHTSA will receive approximately 460 requests for confidential treatment in 2014 and subsequent years. Large manufacturers make the vast majority of requests for confidential treatment.

Abstract: NHTSA's Confidential Business Information (CBI) rule, coupled with case law, has governed the submission of requests for confidential treatment of information for over 20 years.

Estimated Annual Burden: Using the above estimate of approximately 460 requests for confidentiality per year, with an estimated eight hours of preparation to collect and provide the information, at an assumed rate of $24.15 per hour, the annual estimated cost of collecting and preparing the information necessary for 460 complete requests for confidential treatment is about $88,872 (8 hours of preparation × 460 requests × $24.15). Adding in a postage cost of $2,576 (460 requests at a cost of $5.60 for postage (priority flat rate envelope from USPS)), we estimate that it will cost $91,448 per year for persons to prepare and submit the information necessary to satisfy the confidential business information provisions of 49 CFR Part 512.

Requesters are not required to keep copies of any records or reports

submitted to us. As a result, the cost imposed to keep records would be zero hours and zero costs.

Number of Respondents: We estimate that there will be approximately 460 requests per year.

Summary of the Collection of Information: Any entity seeking confidential treatment for information submitted to the agency will be required to request confidential treatment from the agency and to justify that request. To obtain confidential treatment of submitted information, the submitting entity must comply with the requirements in NHTSA's CBI regulation and satisfy the requirements for one of the exemptions provided under the FOIA, 5 U.S.C. 552(b).

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2013–29045 Filed 12–4–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

United States Mint

Currently Approved Information Collection: Comment Request for Customer Satisfaction and Opinion Surveys and Focus Group Interviews

AGENCY: United States Mint, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to take this opportunity to comment on currently approved information collection 1525–0015, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the United States Mint, a bureau of the Department of the Treasury, is soliciting comments on the United States Mint customer satisfaction and opinion surveys and focus group interviews.

DATES: Written comments should be received on or before February 3, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvonne Pollard, Compliance Branch, United States Mint, 801 9th Street NW., 6th Floor, Washington, DC 20220; (202) 354–6784 (this is not a toll-free number); *YPollard@usmint.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection package should be directed to Yvonne Pollard, Compliance Branch, United States Mint, 801 9th Street NW., 6th Floor, Washington, DC 20220; (202) 354–8400 (this is not a toll-free number); *YPollard@usmint.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Quantitative Consumer Research—United States Mint Customer Spend Trajectory Research Survey.

OMB Number: 1525–0015.

Abstract: The proposed customer satisfaction and opinion surveys will allow the United States Mint to assess the acceptance of, potential demand for, and barriers to acceptance of and increased demand for current and future United States Mint products, and the needs and desires of customers for more efficient, economical services.

Current Actions: The United States Mint conducts surveys, focus groups, and interviews to measure customer opinion and assess acceptance of, potential demand for, and barriers to acceptance of and increased demand for United States Mint products, and to determine the level of satisfaction of United States Mint customers and the public.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit or not-for-profit institutions; state, local, or tribal Governments; and individuals or households.

Estimated Number of Respondents: The estimated number of annual respondents is 3000.

Estimated Total Annual Burden Hours: The estimated number of annual burden hours is 1000.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, (b) the accuracy of the agency's estimate of the burden of the collection of information, (c) ways to enhance the quality, utility, and clarity of the information to be collected, (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 21, 2013.

Richard A. Peterson,

Deputy Director, United State Mint.

[FR Doc. 2013–28487 Filed 12–4–13; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Small Generator Interconnection Agreements and Procedures; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[RM13–2–000; Order No. 792]

Small Generator Interconnection Agreements and Procedures

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending the *pro forma* Small Generator Interconnection Procedures (SGIP) and *pro forma* Small Generator Interconnection Agreement (SGIA) to: Incorporate provisions that provide an Interconnection Customer with the option of requesting from the Transmission Provider a pre-application report providing existing information about system conditions at a possible Point of Interconnection; revise the 2 megawatt (MW) threshold for participation in the Fast Track Process included in section 2 of the *pro forma* SGIP; revise the customer options meeting and the supplemental review following failure of the Fast Track screens so that the supplemental review is performed at the discretion of the Interconnection Customer and includes minimum load and other screens to determine if a Small Generating Facility may be interconnected safely and reliably; revise the *pro forma* SGIP Facilities Study Agreement to allow the Interconnection Customer the opportunity to provide written comments to the Transmission Provider on the upgrades required for interconnection; revise the *pro forma* SGIP and the *pro forma* SGIA to specifically include energy storage devices; and clarify certain sections of the *pro forma* SGIP and the *pro forma* SGIA. The reforms should ensure interconnection time and costs for Interconnection Customers and Transmission Providers are just and reasonable and help remedy undue discrimination, while continuing to ensure safety and reliability.

DATES: This rule is effective February 3, 2014.

FOR FURTHER INFORMATION CONTACT:

Leslie Kerr (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8540, *Leslie.Kerr@ferc.gov*.

Monica Taba (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6789, *Monica.Taba@ferc.gov*.

Christopher Kempley (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8442, *Christopher.Kempley@ferc.gov*.

SUPPLEMENTARY INFORMATION:

145 FERC ¶ 61,159

Before Commissioners: Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony Clark.

Final Rule

(Issued November 22, 2013)

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I. Introduction

1. In this Final Rule, the Federal Energy Regulatory Commission (Commission) is amending the *pro forma* Small Generator Interconnection Procedures (SGIP) and *pro forma* Small Generator Interconnection Agreement (SGIA) to: (1) Incorporate provisions that provide an Interconnection Customer with the option of requesting from the Transmission Provider a pre-application report providing existing information about system conditions at a possible Point of Interconnection; (2) revise the 2 megawatt (MW) threshold for participation in the Fast Track Process included in section 2 of the *pro forma* SGIP; (3) revise the customer options meeting and the supplemental review following failure of the Fast Track screens so that the supplemental review is performed at the discretion of the Interconnection Customer and includes minimum load and other screens to determine if a Small Generating Facility may be interconnected safely and reliably; (4) revise the *pro forma* SGIP Facilities Study Agreement to allow the Interconnection Customer the opportunity to provide written comments to the Transmission Provider on the upgrades required for interconnection; (5) revise the *pro forma* SGIP and the *pro forma* SGIA to specifically include energy storage devices; and (6) clarify certain sections of the *pro forma* SGIP and the *pro forma* SGIA. The reforms should ensure interconnection time and costs for Interconnection Customers and Transmission Providers are just and reasonable and help remedy undue discrimination, while continuing to ensure safety and reliability.

2. Originally adopted in Order No. 2006,[1] the *pro forma* SGIP and the *pro forma* SGIA establish the terms and conditions under which public utilities[2] must provide interconnection service to Small Generating Facilities[3] of no more than 20 MW. Based on the record in this proceeding, the Commission finds it necessary under section 206 of the Federal Power Act[4] (FPA) to revise the *pro forma* SGIP and the *pro forma* SGIA to ensure that the rates, terms and conditions under which public utilities provide interconnection service to Small Generating Facilities remain just and reasonable and not unduly discriminatory. The Commission believes that taking these actions at this time is in the public interest. The Commission routinely evaluates the effectiveness of its regulations and policies in light of changing industry conditions to determine if reforms are necessary to satisfy its statutory obligation of ensuring just and reasonable and not unduly discriminatory rates, terms and conditions of service.[5] As concerns generator interconnection, regions of the country are experiencing significant penetrations of small generation and increasing requests for small generator interconnection. In Order No. 2006, the Commission anticipated the need to revisit its small generator interconnection regulations as the industry evolves, requesting stakeholders to convene informal meetings ''to consider and recommend consensus proposals for changes in the Commission's rules for small generator interconnection.''[6] The time is ripe to promulgate such changes in light of the increased penetration of small generator resources, the continued focus by states and others on the development of distributed resources,[7] and the need for this Commission to have its regulations and policies ensure just and reasonable rates, terms and conditions of service.

3. The reforms we adopt largely track the proposals set forth in the Notice of Proposed Rulemaking issued in this proceeding on January 17, 2013,[8] with modifications to address suggestions and concerns raised in comments. Among other things, the Commission has revised aspects of the pre-application report requirement, the Fast Track eligibility threshold, and the supplemental review requirement to balance the interests of the Interconnection Customer with those of the Transmission Provider. With these modifications, the Commission concludes that the package of reforms adopted in this Final Rule will reduce the time and cost to process small generator interconnection requests for Interconnection Customers and Transmission Providers, maintain reliability, increase energy supply, and remove barriers to the development of new energy resources. This fulfills our statutory obligation to ensure that rates, terms and conditions for Commission-jurisdictional services are just and reasonable and not unduly discriminatory, as sections 205 and 206 of the FPA require.[9]

II. Background

A. Order No. 2006

4. In Order No. 2006, the Commission established a *pro forma* SGIP and SGIA for the interconnection of generation resources no larger than 20 MW, continuing the process begun in Order No. 2003[10] of standardizing the terms and conditions of Commission-jurisdictional interconnection service. The Commission adopted the *pro forma* SGIA and the *pro forma* SGIP to respond to business and technology changes in the electric industry. Where the electric industry was once primarily the domain of vertically integrated utilities generating power at large centralized plants, the Commission noted in Order No. 2006 that advances in technology had created a burgeoning market for small power plants that may offer economic, reliability or environmental benefits.[11]

5. The *pro forma* SGIP describes how an Interconnection Customer's interconnection request (application) should be evaluated, and includes three alternative procedures for evaluating an interconnection request. These procedures include the Study Process, which can be used by any generating facility with a capacity no larger than 20 MW, and two procedures that use certain technical screens to quickly identify any safety or reliability issues associated with proposed interconnections: (1) The Fast Track Process for certified[12] Small Generating Facilities no larger than 2 MW; and (2) the 10 kilowatt (kW) Inverter Process for certified inverter-based[13] Small Generating Facilities no larger than 10 kW.

6. The Study Process in section 3 of the *pro forma* SGIP, which can be used by any generating facility with a capacity no larger than 20 MW, is used to evaluate small generator interconnection requests that do not qualify for either the Fast Track Process or the 10 kW Inverter Process. The Study Process is similar to the process under the Large Generator Interconnection Procedures (LGIP) set forth in Order No. 2003. The Study Process normally consists of a scoping meeting, a feasibility study, a system impact study, and a facilities study. These studies identify any adverse system impacts[14] that must be

[1] *Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh 'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order on clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006).

[2] For purposes of this Final Rule, a public utility is a utility that owns, controls, or operates facilities used for transmitting electric energy in interstate commerce, as defined by the FPA. *See* 16 U.S.C. 824(e) (2012). A non-public utility that seeks voluntary compliance with the reciprocity condition of an Open Access Transmission Tariff (OATT) may satisfy that condition by filing an OATT, which includes the *pro forma* SGIP and the *pro forma* SGIA.

[3] Capitalized terms used in this Final Rule have the meanings specified in the Glossaries of Terms or the text of the *pro forma* SGIP or SGIA. A Small Generating Facility is the device for which the Interconnection Customer has requested interconnection. The owner of the Small Generating Facility is the Interconnection Customer. The utility entity with which the Small Generating Facility is interconnecting is the Transmission Provider.

[4] 16 U.S.C. 824e (2012).

[5] *See* Plan for Retrospective Analysis of Existing Rules, Docket No. AD12–6–000, *available at http://www.ferc.gov/legal/maj-ord-reg/retro-analysis/ferc-eo-13579.pdf. See also Integration of Variable Energy Resources,* Order No. 764, FERC Stats. & Regs. ¶ 31,331 (2012).

[6] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 118.

[7] Distributed resources are sources of electric power that are not directly connected to a bulk power transmission system. Distributed resources include both generators and energy storage technologies. (Institute of Electrical and Electronics Engineers (IEEE) Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems, p. 3).

[8] *Small Generator Interconnection Agreements and Procedures,* 78 FR 7524 (Feb. 1, 2013) (NOPR), FERC Stats. & Regs. ¶ 32,697 (2013).

[9] 16 U.S.C. 824d and 824e (2012).

[10] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied,* 552 U.S. 1230 (2008).

[11] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 9.

[12] *See* Attachments 3 and 4 of the *pro forma* SGIP, which specify the codes, standards, and certification requirements that Small Generating Facilities must meet. Order No. 2006, FERC Stats. & Regs. ¶ 31,180.

[13] An inverter is a device that converts the direct current (DC) voltage and current of a DC generator to alternating voltage and current. For example, the output of a solar panel is DC. The solar panel's output must be converted by an inverter to alternating current (AC) before it can be interconnected with a utility's AC electric system. Such inverters, particularly newer inverters, often incorporate additional power electronics that can provide other safety or power quality functions.

[14] An adverse system impact means that technical or operational limits on conductors or equipment

addressed before the Small Generating Facility may be interconnected as well as any equipment modifications that may be required to accommodate the interconnection. Once the Interconnection Customer agrees to fund any needed upgrades, an SGIA is executed that, among other things, formalizes responsibility for construction and payment for interconnection facilities and upgrades.[15]

7. The Fast Track Process eliminates the scoping meeting and three interconnection studies and instead uses technical screens to quickly identify reliability or safety issues. If the proposed interconnection passes the screens, the Transmission Provider offers the Interconnection Customer an SGIA without further study. If the proposed interconnection fails the screens, but the Transmission Provider nevertheless determines that the Small Generating Facility may be interconnected without affecting safety and reliability, the Transmission Provider provides the Interconnection Customer with an SGIA. If the Transmission Provider does not or cannot determine that the Small Generating Facility may be interconnected without affecting safety and reliability, the Transmission Provider offers the Interconnection Customer the opportunity to attend a customer options meeting to discuss how to proceed. In that meeting, the Transmission Provider must: (1) Offer to perform facility modifications or minor modifications to the Transmission Provider's system (e.g., changing meters, fuses, relay settings) that would allow interconnection and provide a non-binding good faith estimate of the cost to make such modifications; (2) offer to perform a supplemental review if the Transmission Provider concludes that the supplemental review might determine that the Small Generating Facility could continue to qualify for interconnection pursuant to the Fast Track Process, where such supplemental review is paid for by the Interconnection Customer, and provide a non-binding good faith estimate of the cost of that review; [16] or (3) obtain the Interconnection Customer's agreement to continue evaluating the interconnection request under the Study Process. If the Transmission Provider determines in the supplemental review that the Small Generating Facility can be interconnected safely and reliably and the Interconnection Customer agrees to pay for any upgrades identified in the supplemental review, the Transmission Provider and the Interconnection Customer execute an SGIA. If, after the supplemental review, the Transmission Provider still is unable to determine that the proposed interconnection would not degrade the safety and reliability of its electric system, the interconnection request is evaluated using the Study Process.

8. The 10 kW Inverter Process is available for the interconnection of certified inverter-based generators no larger than 10 kW. The 10 kW Inverter Process includes a simplified application form, interconnection procedures, and a brief set of terms and conditions (rather than a separate interconnection agreement). The 10 kW Inverter Process uses the same technical screens as the Fast Track Process. If the results of the analysis using the technical screens indicate that the generator can be interconnected safely and reliably, the interconnection application is approved. To simplify the 10 kW Inverter Process, the Interconnection Customer agrees to the terms and conditions of the interconnection at the time the interconnection request is made.[17]

9. The ten technical screens used in the Fast Track and 10 kW Inverter Processes are included in section 2.2.1 of the *pro forma* SGIP. The screen in section 2.2.1.2 of the *pro forma* SGIP, which is referred to in this Final Rule as the 15 Percent Screen, will be discussed at some length below:

> For interconnection of a proposed Small Generating Facility to a radial distribution circuit, the aggregated generation, including the proposed Small Generating Facility, on the circuit shall not exceed 15 [percent] of the line section annual peak load as most recently measured at the substation. A line section is that portion of a Transmission Provider's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

B. Solar Energy Industries Association Petition and the Notice of Proposed Rulemaking

10. On February 16, 2012, pursuant to sections 205 and 206 of the FPA and Rule 207 of the Commission's Rules of Practice and Procedure,[18] and noting that the Commission encouraged stakeholders to submit proposed revisions to the regulations set forth in Order No. 2006, the Solar Energy Industries Association (SEIA) filed a Petition to Initiate Rulemaking (Petition) requesting that the Commission revise the *pro forma* SGIA and SGIP set forth in Order No. 2006.[19] In its Petition, SEIA asserted that the *pro forma* SGIP and SGIA as applied to small solar generation are no longer just and reasonable, have become unduly discriminatory, and present unreasonable barriers to market entry.[20] SEIA noted that its Petition applies exclusively to solar electric generation due to its unique characteristics.[21]

11. On February 28, 2012, the Commission issued a Notice of Petition for Rulemaking in Docket No. RM12–10–000, seeking public comment on SEIA's Petition. The Commission received a number of comments, protests, and answers in response.

12. On July 17, 2012, the Commission convened a technical conference in Docket Nos. RM12–10–000 and AD12–17–000 in order to discuss issues related to SEIA's Petition. The Commission received nine post-technical conference comments, including clarifying comments from SEIA.

13. On January 17, 2013, the Commission issued the NOPR in this proceeding, proposing a package of reforms to the *pro forma* SGIA and the *pro forma* SGIP.[22] Commission staff held a workshop on March 27, 2013, at which stakeholders discussed the NOPR proposals. In addition to the Commission staff workshop, some stakeholders formed a stakeholder working group (SWG) to develop revisions to the NOPR proposals.[23] Comments on the NOPR as well as comments generated by the Commission staff workshop were due June 3, 2013. The Commission received thirty-three timely comments, four comments out of time and two reply comments out of time.[24]

14. The stakeholders that participated in the SWG indicated in their comments

are exceeded under the interconnection, which may compromise the safety or reliability of the electric system.

[15] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 44.

[16] The purpose of the supplemental review is to determine if the Small Generating Facility can be interconnected safely and reliably, however, the *pro forma* SGIP does not include details regarding how the Transmission Provider is to perform the supplemental review.

[17] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 46.

[18] 18 CFR 385.207 (2013).

[19] SEIA Petition at 4 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 118).

[20] *Id.* at 12.

[21] *Id.* at 4 (explaining that solar generation occurs only during daylight hours when peak load typically occurs, and solar photovoltaic technology utilizes inverters with built-in functions that protect the safety and reliability of the electric system).

[22] NOPR, FERC Stats. & Regs. ¶ 32,697. While SEIA's Petition was specific to small solar generation, the NOPR included all Small Generating Facilities.

[23] The SWG included EEI, NRECA, APPA, IREC, SEIA, NREL, and other stakeholders.

[24] *See* Appendix A, List of Short Names of Commenters on the Notice of Proposed Rulemaking.

that the SWG came to agreement on certain revisions to the proposals for the pre-application report and the threshold for participation in the Fast Track Process. The National Rural Electric Cooperative Association, Edison Electric Institute and the American Public Power Association (NRECA, EEI & APPA), the Interstate Renewable Energy Council (IREC), SEIA, and National Renewable Energy Laboratory (NREL) submitted SWG proposed revisions with their comments.

III. Need for Reform

A. Commission Proposal

15. In light of changes in the energy industry since the issuance of Order No. 2006, and based on the comments submitted in response to the SEIA Petition and the July 17, 2012 Technical Conference, the Commission preliminarily found that proposed reforms were needed to ensure that the rates, terms, and conditions of interconnection service for Small Generating Facilities are just and reasonable and not unduly discriminatory or preferential.[25] In particular, the Commission cited the growth in grid-connected solar photovoltaic (PV) generation since the issuance of Order No. 2006 and the growth in small generator interconnection requests driven by state renewable portfolio standards as the impetus for re-examining the *pro forma* SGIP.[26] The Commission reasoned that if generation penetration levels are causing projects to fail the 15 Percent Screen, the screen should be re-examined to determine if revisions could be made to allow projects to continue to participate in the less costly and time-consuming Fast Track Process while maintaining the safety and reliability of the Transmission Provider's system.[27] Further, the Commission noted that in addition to the proposed reforms applying to Commission-jurisdictional interconnections, the Commission intended that the proposed reforms serve as a model for state interconnection rules.[28]

B. Comments

16. Many commenters support the Commission's proposed reforms.[29] Commenters state that the recent rapid growth in small generators and expected significant growth in coming years, driven by public policies such as state renewable portfolio standards, requires revising the SGIP and SGIA.[30] For example, Public Interest Organizations[31] note that state solar initiatives are resulting in penetrations of distributed generation in excess of 15 percent on some line sections[32] and that the public policies driving the increase in Small Generating Facilities, together with lower prices for solar panels, smart grid enhancements and other factors, have ''given rise to barriers like lengthy interconnection queues and a lack of transparency about system conditions.''[33] Public Interest Organizations believe that these facts clearly demonstrate the need to reconsider the SGIP and to enact the proposed reforms to reduce the time and cost of processing the increasing volume of distributed generation projects.[34] IREC and SEIA similarly assert that reforming the SGIP and SGIA is essential to support the continued growth of the wholesale market for solar and other distributed resources.[35] Public Interest Organizations go on to state that:

> The increased volume of applications along with the higher penetration levels that will result from these policy changes necessitate updating SGIP to enable providers to continue processing applications efficiently and without imposing unnecessary financial or regulatory hurdles to [distributed generation] development. Since in some instances existing SGIP act as regulatory barriers to further reliable deployment of [distributed generation] resources, the SGIP have become unduly discriminatory and can no longer be assumed to be just and reasonable.[36]

17. CREA and ESA support the effort to reform the SGIP and assert that the current system results in delays and unnecessarily increases project costs. AWEA and ELCON[37] similarly state that the proposed reforms ensure that small generator interconnection requests are processed in a just and reasonable and not unduly discriminatory manner.[38]

18. International Transmission Company (ITC) supports streamlining the SGIP in ways that maintain safety and reliability.[39]

19. Independent System Operators (ISO) and Regional Transmission Organizations (RTO) generally support the NOPR objectives,[40] but request, in recognition of regional differences and existing ISO/RTO interconnection processes, that they be allowed to meet those objectives under either the independent entity variation standard[41] or the regional differences standard.[42] Similarly, the National Association of Regulatory Utility Commissioners (NARUC) supports the Commission's efforts to update the *pro forma* SGIP and SGIA, but requests flexibility in the revisions to account for regional differences.[43] NARUC also states that

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[25] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 18.

[26] *Id.* P 20.

[27] *Id.* P 22.

[28] *Id.* P 23.

[29] *See, e.g.,* American Wind Energy Association (AWEA) at 2–3; Clean Coalition at 2; ClearEdge Power (CEP) at 1–2; ComRent International (ComRent) at 1; Community Renewable Energy Association (CREA) at 1–2; Office of the People's Counsel for the District of Columbia (DCOPC) at 1; Duke Energy Corporation (Duke Energy) at 1; ELCON at 3; Electricity Storage Association (ESA) at 3; Fuel Cell & Hydrogen Energy Association (FCHEA) at 1–2; Max Hensley at 1–2; Industrial Energy Consumers of America (IECA) at 4; IREC at 2; NRG at 2; Public Interest Organizations at 6–9; SEIA at 1; Union of Concerned Scientists (UCS) at 3, 8–9; and Lucia Villaran at 1–2.

[30] IREC at 3 (citing Solar Electric Power Association, 2012 SEPA Utility Solar Rankings Executive Summary 2 (2013)), *available at http://www.solarelectricpower.org/media/279520/sepa-top-10-executive-summary_final-v2.pdf*); AWEA at 3; DCOPC at 3–4; ELCON at 5; NRG at 2; Public Interest Organizations at 3–4, 6–9; and UCS at 9.

[31] The Center for Rural Affairs, Climate + Energy Project, Conservation Law Foundation, Energy Future Coalition, Environmental Defense Fund, Environmental Law & Policy Center, Environment Northeast, Fresh Energy, Great Plains Institute, National Audubon Society, Natural Resources Defense Council, Northwest Energy Coalition, Pace Energy and Climate Center, Piedmont Environmental Council, Sierra Club, Southern Alliance for Clean Energy, Southern Environmental Law Center, Sustainable FERC Project, Union of Concerned Scientists, Utah Clean Energy, Western Grid Group, Western Resource Advocates, The Wilderness Society and Wind on the Wires are referred to collectively as Public Interest Organizations in this Final Rule.

[32] Public Interest Organizations at 4–5.

[33] *Id.* at 1.

[34] *Id.* at 5–9.

[35] IREC at 4 and SEIA at 1.

[36] Public Interest Organizations at 5.

[37] The Electricity Consumers Resource Council, American Chemistry Council, American Forest & Paper Association, American Iron and Steel Institute, CHP Association and Council of Industrial Boiler Owners are collectively referred to as ELCON in this Final Rule.

[38] AWEA at 2 and ELCON at 3.

[39] ITC at 6.

[40] CAISO at 1, 9; IRC at 1; ISO–NE at 8, 15; MISO at 4–5; NYISO & NYTO at 2; and PJM at 1, 3–4.

[41] CAISO at 2 and 7 and NYISO & NYTO at 4, 24–25. The independent entity variation is a balanced approach that provides RTOs and ISOs greater flexibility to customize their interconnection procedures and agreements to accommodate regional needs. It recognizes that an RTO or ISO has differing operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is also a market participant. *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 822–827.

[42] ISO–NE at 2, 5–7; PJM at 4; and IRC at 1, 3–6. A regional differences standard would allow variations based on regional differences resulting from regional interconnection standards or reliability requirements. For non-independent Transmission Providers, Order No. 2006 recognizes regional reliability variations based on established regional reliability requirements when supported by reference to established regional reliability requirements and including the text of the reliability requirement. *See* Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 546.

[43] NARUC at 10.

the reforms should not impinge on successful state interconnection procedures.[44]

20. NRECA, EEI & APPA believe that the *pro forma* SGIP and SGIA adopted in Order No. 2006 continue to be just and reasonable and strike a fair balance between the competing goals of uniformity and flexibility while ensuring safety and reliability.[45] NRECA, EEI & APPA further assert that the current record cannot support a finding that existing Order No. 2006 procedures are unjust, unreasonable or unduly preferential, nor can the record support a finding that the Commission's proposals are just and reasonable, not unduly preferential, or would not impair reliability or safety.[46] Specifically, NRECA, EEI & APPA contend that before modifications to the Fast Track Process are considered, there must be evidence to suggest that the 15 Percent Screen no longer serves to adequately reduce interconnection costs and time compared to the full Study Process. They further argue that there also must be evidence showing that higher penetrations of generation can be safely and reliably accommodated without the need for the Study Process.[47] They also believe, however, that the *pro forma* SGIP and SGIA can be revised to enable the growth of renewable energy while continuing to facilitate jurisdictional interconnections in a just and reasonable manner and to benefit consumers and other stakeholders.[48]

C. Commission Determination

21. The Commission is persuaded to adopt its proposed revisions to the *pro forma* SGIP and the *pro forma* SGIA, as modified herein.[49] Without these reforms, the continued growth in Small Generating Facilities could cause inefficient interconnection queue backlogs and require some Small Generating Facilities to undergo the more costly Study Process when they could be interconnected under the Fast Track Process safely and reliably. Costs resulting from such inefficiencies in the interconnection process would ultimately be borne by consumers. The record in this proceeding does not refute the nature of the changes now occurring and expected to continue.

22. For example, approximately 3,300 MW of grid-connected PV capacity were installed in the U.S. in 2012,[50] compared to 79 MW in 2005, the year Order No. 2006 was issued.[51] The cumulative capacity of U.S. distributed PV is projected to double from mid-2013 to the end of 2015.[52] Similarly, installed wind generation with a capacity of 20 MW or less has increased in the contiguous United States from 1,185 MW in 2005 to 2,961 MW in 2012.[53] The growth in Small Generating Facilities is leading to an increase in small generator interconnection requests. In the NOPR, the Commission cited Commission filings that referenced higher volumes of small generator interconnection requests.[54] In its comments, IREC cited an unprecedented level of small solar interconnections.[55]

23. As noted by some commenters [56] and as the Commission noted in the NOPR, state renewable portfolio standards are driving small generator interconnection requests.[57] As of March 2013, 29 states and the District of Columbia had renewable portfolio standards, and an additional eight states had renewable portfolio goals.[58] Some state renewable portfolio standards include increasing percentages of renewable energy resources over time, which will lead to increasing penetrations of these resources. Some states have also adopted goals and policies to promote distributed generation.[59] Commenters also attribute the increase in PV to a decline in capital costs.[60] Installed costs for distributed PV installations fell by approximately 12 percent from 2011 to 2012, and have fallen 33 percent since 2009.[61]

24. The needs of Small Generating Facility developers, however, must be balanced against the concerns of the Transmission Providers, and the Commission has taken these concerns into consideration in developing this Final Rule. For example, the Commission notes that this Final Rule does not modify the 15 Percent Screen or any of the existing Fast Track screens. Rather, the Commission modifies the optional supplemental review process following failure of any of the Fast Track screens to include three supplemental review screens. In regions of the country where penetration levels are not high enough to cause Interconnection Customers to fail the 15 Percent Screen, Transmission Providers will generally continue to evaluate the penetration level of generation based on the 15 Percent Screen. However, in regions of the country where the 15 Percent Screen is causing Interconnection Customers to fail the Fast Track screens, the revised supplemental review will offer an opportunity to continue to be evaluated under the Fast Track Process.

25. The Commission therefore finds that our actions in this Final Rule are consistent with the standards that the court set forth in *National Fuel* v. *FERC*[62] and therefore disagrees with EEI, NRECA, and APPA that the existing record does not support the finding that the current SGIP and SGIA are unjust, unreasonable and unduly discriminatory. In the terminology of *National Fuel,* we find that a theoretical threat exists and we show herein how this threat justifies the costs that this Final Rule would create.[63] We conclude that, in light of the increasing small generator interconnection requests referenced in Commission filings [64] and

[44] *Id.*

[45] NRECA, EEI & APPA at 9.

[46] Id. at 10.

[47] *Id.* at 11.

[48] *Id.* at 1, 10. Duquesne Light supports the comments submitted by NRECA, EEI & APPA. (Duquesne Light at 3.)

[49] The Commission concludes that the revisions to the *pro forma* SGIP and *pro forma* SGIA adopted herein were reasonably foreseeable based on the NOPR, the March 2013 workshop and the comments received on the NOPR.

[50] Sherwood, Larry, U.S. Solar Market Trends 2012 at 4, *available at http://www.irecusa.org/wp-content/uploads/2013/07/Solar-Report-Final-July-2013-1.pdf.*

[51] U.S. Solar Market Insight Report, 2012 Year in Review, Executive Summary Table 2.1, *available at http://www.seia.org/research-resources/us-solar-market-insight-2012-year-in-review.*

[52] *See* Lacey, Stephen, Chart: 2/3rds of Global Solar PV Has Been Installed in the Last 2.5 Years, *available at http://www.greentechmedia.com/articles/read/chart-2-3rds-of-global-solar-pv-has-been-connected-in-the-last-2.5-years.*

[53] SNL Financial, *Power Plant Summary* (2013).

[54] *See, e.g., Cal. Indep. Sys. Operator Corp.,* 133 FERC ¶ 61,223, at P 3 (2010) (stating that an increasing volume of small generator interconnection requests had created inefficiencies); *Pacific Gas & Elec. Co.,* 135 FERC ¶ 61,094, at P 4 (2011) (stating that increased small generator interconnection requests resulted in a backlog of 170 requests over three years); *PJM Interconnection, LLC,* 139 FERC ¶ 61,079, at P 12 (2012) (stating that smaller projects comprised 66 percent of recent queue volume).

[55] IREC at 3 (citing Becky Campbell & Mike Taylor, 2011 Solar Electric Power Association Utility Solar Rankings at 7 (May 2012)).

[56] Public Interest Organizations at 3–5; IREC at 2; UCS at 3; and DCOPC at 3.

[57] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 20.

[58] *See* Dep't of Energy, IREC & North Carolina Solar Center, Renewable Portfolio Standard Policies (2013), *available at http://www.dsireusa.org/documents/summarymaps/RPS_map.pdf.*

[59] *See* Dep't of Energy, IREC & North Carolina Solar Center, Renewable Portfolio Standard Policies with Solar/Distributed Generation Provisions (2013), *available at http://www.dsireusa.org/documents/summarymaps/Solar_DG_RPS_map.pdf.*

[60] VSI at 1–2 and Public Interest Organizations at 1.

[61] Sherwood, Larry, U.S. Solar Market Trends 2012 at 2, *available at http://www.irecusa.org/wp-content/uploads/2013/07/Solar-Report-Final-July-2013-1.pdf.*

[62] 468 F.3d 831, 839–44 (D.C. Cir. 2006) (*National Fuel*).

[63] *Id.* at 844.

[64] *See, e.g., Cal. Indep. Sys. Operator Corp.,* 133 FERC ¶ 61,223, at P 3 (2010) (stating that an increasing volume of small generator

Continued

in this proceeding,[65] the state renewable portfolio standards driving these requests,[66] and the growth in solar PV installations,[67] the reforms adopted herein are necessary to correct operational practices that can unnecessarily limit, and increase the cost of,[68] Commission-jurisdictional interconnections under the SGIP and SGIA. The Commission believes that adopting the reforms in this Final Rule will reduce the time and cost to process small generator interconnection requests for Interconnection Customers and Transmission Providers alike.

26. Specifically, as discussed above, the Commission believes that the current SGIP and SGIA inhibit the continued growth in Small Generating Facilities and cause unnecessary costs to be passed on to consumers. We agree with commenters that assert that the proposed reforms are necessary to avoid delays and unnecessary project costs (*e.g.,* under the SGIP originally adopted in Order No. 2006, generators that could be interconnected safely and reliably under the Fast Track Process are required to undergo the more costly and time-consuming Study Process).[69] Hence, we conclude that such delays and increased project costs are likely without the reforms proposed herein and that this threat is significant enough to justify the reforms imposed by this Final Rule. The threat is not one that can be addressed adequately or efficiently through the adjudication of individual complaints.[70] The remedy we adopt is justified sufficiently by the theoretical threat identified herein and based on the comments received, the identified theoretical threat represents a reasonable prediction of future market conditions.[71]

27. As acknowledged in the NOPR, the need for implementation of the reforms may not be uniform across the country.[72] The reforms adopted in this Final Rule will likely have a greater impact on Transmission Providers in areas with a significant penetration of distributed resources and a larger number of small generator interconnection requests.[73]

The Commission believes that this Final Rule balances the needs of Small Generating Facilities and public utility Transmission Providers, while providing flexibility to different regions of the country. Moreover, to further accommodate regional differences and in response to the comments submitted by RTOs and ISOs, the Commission is allowing independent Transmission Providers to comply with this Final Rule under the independent entity variation standard or the regional differences standard, consistent with the approach adopted in Order No. 2006.[74] Finally, we affirm that it is not our intent in this Final Rule to interfere with state interconnection procedures and agreements in any way. Similar to our approach in Order No. 2006,[75] our hope is that states may find this rule helpful in formulating or updating their own interconnection rules, but states are under no obligation to adopt the provisions of this Final Rule.

IV. Proposed Reforms

A. Pre-Application Report

1. Commission Proposal

28. According to the reforms included in the NOPR, Transmission Providers would be required to provide Interconnection Customers the option to request a pre-application report that would contain readily available information about system conditions at a Point of Interconnection in order to help that customer select the best site for its Small Generating Facility. The Commission proposed the pre-application report to promote transparency and efficiency in the interconnection process and to provide information to Interconnection Customers about system conditions at a particular Point of Interconnection.[76]

29. To the extent available, the proposed pre-application report would include the following items:

a. Total capacity and available capacity of the facilities that serve the Point of Interconnection;

b. Existing and queued generation at the facilities likely serving the Point of Interconnection;

c. Voltage of the facilities that serve the Point of Interconnection;

d. Circuit distance between the proposed Point of Interconnection and the substation likely to serve the Point of Interconnection (Substation);

e. Number and rating of protective devices and number and type of voltage regulating devices between the proposed Point of Interconnection and the Substation;

f. Number of phases available at the proposed Point of Interconnection;

g. Limiting conductor ratings from the proposed Point of Interconnection to the Substation;

h. Peak and minimum load data; and

i. Existing or known constraints associated with the Point of Interconnection.

30. The Commission proposed a non-refundable $300 fee for the pre-application report and required that the report be provided within 10 business days of the initial request.[77] The Commission proposed that the pre-application report would only include information already available to the Transmission Provider.[78] Additionally, the proposed revisions to the *pro forma* SGIP, which were attached to the NOPR, state that ''The pre-application report request does not obligate the Transmission Provider to conduct a

interconnection requests had created inefficiencies); *Pacific Gas & Elec. Co.,* 135 FERC ¶ 61,094, at P 4 (2011) (stating that increased small generator interconnection requests resulted in a backlog of 170 requests over three years); *PJM Interconnection, LLC,* 139 FERC ¶ 61,079, at P 12 (2012) (stating that smaller projects comprised 66 percent of recent queue volume).

[65] IREC at 3, citing Becky Campbell & Mike Taylor, 2011 Solar Electric Power Association Utility Solar Rankings at 7 (May 2012).

[66] As noted above, as of March 2013, 29 states and the District of Columbia had renewable portfolio standards, and an additional eight states had renewable portfolio goals. *See supra* P 0.

[67] As noted above, approximately 3,300 MW of grid-connected PV capacity were installed in the U.S. in 2012 compared to 79 MW in 2005. Further, the cumulative capacity of U.S. distributed PV is projected to double from mid-2013 to the end of 2015. *See supra* P 0.

[68] *E.g.,* some of the reforms adopted herein are intended to increase the number of Small Generating Facilities that may be interconnected under the Fast Track Process rather than the Study Process. The cost to be evaluated under the *pro forma* SGIP Fast Track Process (without supplemental review) is $500. Under the *pro forma* SGIP Study Process, the Interconnection Customer must pay a deposit not to exceed $1,000 toward the cost of the feasibility study with its interconnection request and pay the actual cost of any required studies (normally a feasibility study, a system impact study, and a facilities study).

[69] *See supra* P 0.

[70] Individual adjudications by their nature focus on discrete questions of a specific case. Rules setting forth general principles are necessary to ensure that adequate processes are in place.

[71] *See, e.g., Black Oak Energy, LLC* v. *FERC,* Nos. 08–1386, 11–1275, 12–1286, 2013 WL 3988709, at *8 (D.C. Cir. Aug. 6, 2013) (stating ''[W]e defer to reasonable and cogent explanations of predictable economic outcomes, even in the absence of retrospective data''); *Sacramento Mun. Util. Dist.* v. *FERC,* 616 F.3d 520, 542 (D.C. Cir. 2010); Louisiana *Pub. Serv. Comm'n* v. *FERC,* 551 F.3d 1042, 1045 (D.C. Cir. 2008); *Envtl. Action, Inc.* v. *FERC,* 939 F.2d 1057, 1064 (D.C. Cir. 1991) (stating, ''[I]t is within the scope of the agency's expertise to make . . . a prediction about the market it regulates, and a reasonable prediction deserves . . . deference notwithstanding that there might also be another reasonable view'').

[72] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 24.

[73] *Id.* at P 4.

[74] *See infra* section V.

[75] Order No. 2006, FERC Stats. & Regs. ¶ 31,380 at P 8.

[76] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 26.

[77] *Id.* at P 28 and proposed *pro forma* SGIP at section 1.2.2.

[78] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 27.

study or other analysis of the proposed generator in the event that data is not readily available.'' [79]

2. Need for a Pre-Application Report

a. Comments

31. Many commenters support the concept of a pre-application report.[80] The California Public Utilities Commission (CPUC) supports the pre-application report and states that it will increase transparency and efficiency, reduce costs, and provide necessary information to Interconnection Customers.[81] Other commenters assert that the pre-application report is critical for developers to determine the best Points of Interconnection because it will eliminate some of the uncertainties involved in the interconnection process and thus reduce developer costs and schedule delays.[82] FCHEA states that the pre-application report will alert a project developer to potential issues at a Point of Interconnection prior to making a significant financial commitment.[83]

32. A number of commenters state that the pre-application report will likely reduce the number of interconnection requests submitted to Transmission Providers because developers frequently submit multiple interconnection requests for a single project in an effort to determine the most advantageous Point of Interconnection.[84] Similarly, IREC and SEIA contend that a pre-application report would benefit Transmission Providers by reducing the volume of interconnection requests that are either non-viable or difficult to accommodate.[85] Finally, Sandia National Laboratories (Sandia) and SEIA state that the pre-application report will foster communication between developers and Transmission Providers and will improve the interconnection process.[86]

33. Several RTOs and ISOs,[87] however, contend that they already offer various opportunities for Interconnection Customers to ask questions and request information that is similar to the information in the pre-application report. These commenters state that information related to the type, amount and location of interconnected and pending projects and studies is readily available by phone, on their Web sites, or through their Critical Energy Infrastructure Information (CEII) process.[88] ISO New England (ISO–NE) asserts that there is no indication that the information it currently makes available to Interconnection Customers is insufficient.[89]

34. Midcontinent Independent System Operator (MISO) states that its existing procedures, including a pre-application meeting, may be more effective than the proposed pre-application report procedures.[90] MISO asserts that a pre-application meeting achieves the same goals of transparency and data sharing without the cost and inefficient expenditure of resources that a pre-application report would require.[91] MISO further asserts that requiring the Transmission Provider to contact the Transmission Owner to collect information may be inefficient and that permitting the Interconnection Customer to directly contact the Transmission Owner may be more efficient.[92]

35. The California Independent System Operator Corporation (CAISO) states that it supports the provision of a pre-application report, but in some cases the pre-application report information is only available from the participating Transmission Owner and in other cases it does not exist for networked transmission systems. CAISO requests that the Commission allow ISOs and RTOs to provide a pre-application report that is appropriate to interconnecting to a networked transmission system, such as existing and queued generation not at the same Point of Interconnection but affected by the same transmission constraints.[93]

36. San Diego Gas & Electric Company, Southern California Edison Company and Pacific Gas and Electric Company (California Utilities) state that larger interconnection projects should be required to obtain a pre-application report because it will increase the likelihood that these projects will select Points of Interconnection that qualify for Fast Track evaluation.[94]

b. Commission Determination

37. The Commission concludes that providing the Interconnection Customer with the opportunity to request the pre-application report will benefit the interconnection process by helping Interconnection Customers make more informed siting decisions and may diminish the practice of requesting multiple interconnection requests for a single project, which benefits both Transmission Providers and Interconnection Customers. As such, the Commission adopts its proposal to require the Transmission Provider to provide Interconnection Customers with the opportunity to request a pre-application report, as modified herein.

38. While the Commission appreciates that some Transmission Providers may already make available some of the information in the pre-application report, commenters suggest that this information may not be available from all Transmission Providers. Therefore, the Commission finds it just and reasonable to include the pre-application report in the *pro forma* SGIP.

39. With regard to MISO's assertion that requiring the Transmission Provider to contact the Transmission Owner to collect information may be less efficient than permitting the Interconnection Customer to directly contact the Transmission Owner, we note that the Transmission Provider is generally the point of contact for the Interconnection Customer that coordinates the various SGIP processes (e.g., interconnection requests and the studies in the section 3 Study Process). As such, the Transmission Provider is expected to coordinate with the Transmission Owner and the Interconnection Customer, so we are not persuaded that we should adopt SGIP language requiring the Interconnection Customer to contact the Transmission Owner directly in the case of the pre-application report.

40. Finally, with regard to MISO's comment that its existing pre-application procedures may be more effective than the pre-application report proposed in the NOPR, as discussed below, in cases where provisions in public utility Transmission Providers' existing interconnection procedures would be modified by the Final Rule, public utility Transmission Providers must either comply with the Final Rule or demonstrate that previously approved variations meet one of the standards for variance provided for in this Final Rule.[95]

[79] *Id.,* Appendix C, SGIP section 1.2.4.

[80] NREL at 2; Clean Coalition at 3; CPUC at 4; CREA at 2; DCOPC at 4; Duke Energy at 3; ELCON at 4; FCHEA at 1; IECA at 4; LES at 1; NRECA, EEI & APPA at 6; and NRG at 5.

[81] CPUC at 5.

[82] CEP at 1; CREA at 2; DCOPC at 4; Duke Energy at 3; IREC at 9; NRG at 4; and Public Interest Organizations at 9.

[83] FCHEA at 1.

[84] AWEA at 3–4; CREA at 2; IREC at 9; ITC at 8; and NRG at 5.

[85] IREC at 9 and SEIA at 10.

[86] Sandia at 2 and SEIA at 12.

[87] ISO–NE., MISO, PJM, and NYISO.

[88] ISO–NE at 8; MISO at 5–6; NYISO & NYTO at 13–14; and PJM at 5.

[89] ISO–NE at 8.

[90] MISO at 4 (referencing section 6.1 of MISO's Generator Interconnection Procedure).

[91] *Id.* at 5.

[92] *Id.* at 5–6.

[93] CAISO at 4.

[94] California Utilities at 4.

[95] *See infra* section V.

3. Pre-Application Report Fee

a. Comments

41. Several commenters support the proposed $300 fee for the pre-application report.[96] IREC asserts that the $300 fee is appropriate for the effort required to provide the report, noting that there is currently no fee for the provision of similar system information under section 1.2.1 of the SGIP.[97] NREL states that the proposed $300 fee only allows the Transmission Provider to provide information that is quickly accessible.[98]

42. Several commenters, including many Transmission Providers, recommend that the Commission set the cost of the pre-application report equal to the Transmission Provider's actual incurred cost rather than a fixed $300 fee.[99]

43. PJM Interconnection (PJM) estimates that the processing and preparation of a single report will take ten to twelve hours in administration, preparation, and final review and cost at least $1,500.[100] NRECA, EEI & APPA similarly state that, on average, the processing and preparation of a single report will likely require at least eight hours of an engineer's time, at a cost of $150 per hour, resulting in a minimum initial pre-application report fee of $1,200, not including time spent coordinating with the distribution utility to gather system information.[101] IREC, on the other hand, contends that the coordination between the Transmission Provider and the utility should not be overly burdensome for either party, and it is not significantly different from the coordination required during the SGIP Study Process.[102]

44. NRECA, EEI & APPA also request that the $300 fee be adjusted annually based on an inflation index, such as the Consumer Price or Handy-Whitman index, so that fees charged reflect the actual cost to prepare the pre-application report.[103] ITC proposes a ''deposit/not-to-exceed'' fee structure for the pre-application report whereby the Interconnection Customer submits a $300 deposit and designates a dollar amount that the Transmission Provider is not to exceed when preparing the report.[104] ITC proposes that the cost of the pre-application report be trued-up upon completion based on the Transmission Provider's actual incurred costs.[105]

b. Commission Determination

45. The Commission finds that a fixed pre-application report fee will both provide cost certainty to Interconnection Customers and result in lower administrative costs than other fee structures. The Commission notes that this approach is similar to Commission treatment of other fixed processing fees in Order No. 2006.[106] Thus, the Commission will not adopt NRECA, EEI & APPA's proposal to index the pre-application report fee because Transmission Providers will have the opportunity to propose revisions to the fixed pre-application report fee in the compliance filing and in any subsequent FPA section 205 filings.

46. While the Commission believes that the $300 fee often will be adequate to recover Transmission Providers' costs of preparing the pre-application report given that Transmission Providers are only asked to provide ''readily available'' information, the Commission finds it would be unjust and unreasonable for Transmission Providers not to recover their actual pre-application report preparation costs. Accordingly, the Commission will adopt the $300 fee as the default fee in the *pro forma* SGIP and give Transmission Providers the opportunity to propose a different fixed cost-based fee for preparing pre-application reports supported by a cost justification as part of the compliance filing required by this Final Rule. The Commission notes that the Transmission Provider already provides information to the Interconnection Customer under section 1.2 of the *pro forma* SGIP. Therefore the pre-application report fee should only include the cost of providing the incremental information required under this Final Rule.

4. Pre-Application Report Timeline

a. Comments

47. The Commission received multiple comments about the ten-business-day timeline for providing the proposed pre-application report. MISO and Public Interest Organizations support the proposed ten-business-day timeframe for the pre-application report.[107] SEIA contends that a predictable date certain for the pre-application report is crucial for developers.[108] SEIA finds the proposed timeline reasonable, but requests that if the Commission extends the timeline, it allow Transmission Providers to request a one-time ten-day extension if necessary.[109]

48. NRECA, EEI & APPA assert that SEIA's ten-day extension proposal would lead to inefficient use of Commission and utility resources, and that ten additional days would likely be insufficient in many circumstances.[110] Instead, NRECA, EEI & APPA request that the Commission clarify that section 4.1 of the current *pro forma* SGIP (''Reasonable Efforts'') provides the Transmission Provider with the option of promptly communicating to the Interconnection Customer the nature of any delays, including force majeure events,[111] in preparing a pre-application report and allows for both parties to agree on the Transmission Provider delivering the pre-application report on a different date.[112] NRECA, EEI & APPA state that this arrangement will give the developer some degree of certainty as to when it can expect to see a pre-application report, while allowing the utility reasonable flexibility given the realities of staffing and work load.[113] ISO–NE., PJM and the ISO/RTO Council (IRC) also ask the Commission to affirmatively state that section 4.1 of the SGIP applies to the pre-application report timeline.[114]

49. Duke Energy proposes that when a Transmission Provider has reached its maximum ability to process pre-application requests within the prescribed ten-business-day deadline, any subsequent requests received during that heavy volume period would be placed in a queue. Under Duke Energy's proposal, Interconnection Customers would be notified of the likely timing of the Transmission Provider's processing of their requests. Once the backlog of requests has been processed, the Transmission Provider would resume

[96] CPUC at 4; CREA at 2; IREC at 12; MISO at 3–4; NRG at 5; and Public Interest Organizations at 9.

[97] IREC at 12. Under section 1.2 of the *pro forma* SGIP, the Interconnection Customer may request from the Transmission Provider ''relevant system studies, interconnection studies, and other materials useful to an understanding of an interconnection'' at a specific proposed Point of Interconnection.

[98] NREL at 3.

[99] ISO–NE at 13–14; ITC at 7–8; NARUC at 5; NRECA, EEI & APPA at 16; and NREL at 3.

[100] PJM at 8.

[101] NRECA, EEI & APPA at 16.

[102] IREC at 12.

[103] NRECA, EEI & APPA at 16.

[104] ITC at 8.

[105] *Id.* at 8–9.

[106] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 126.

[107] MISO Comments at 3–4; Public Interest Organizations at 9.

[108] SEIA Reply Comments at 6.

[109] *Id.* at 7.

[110] NRECA, EEI & APPA Reply Comments at 13–14.

[111] NRECA, EEI & APPA at 18, Appendix C (requesting that the Commission include language in the SGIP to cover delays related to force majeure events).

[112] *Id.* at 18–19.

[113] *Id.* at 19.

[114] IRC at 9–10; ISO–NE at 12; and PJM at 10.

processing pre-application requests within the ten-business-day period.[115]

50. ISO–NE also requests that the Commission allow for additional time for providing the pre-application report.[116] New York Independent System Operator and New York Transmission Owners (NYISO & NYTO) and PJM recommend that the Commission extend the proposed time period for processing the pre-application report to 20 business days.[117] IRC also states that ten business days is not enough time to produce the pre-application report and therefore asks the Commission to provide each region with the flexibility to propose its own time frame.[118]

b. Commission Determination

51. The Commission is persuaded by Transmission Provider comments that certain circumstances could make the ten-business-day timeline difficult to meet. The Commission will therefore modify its proposal and extend the pre-application report due date from 10 to 20 business days, as proposed by NYISO & NYTO and PJM.[119] We find that this deadline balances Transmission Provider concerns about having adequate time to prepare the report with Interconnection Customer concerns regarding the importance of knowing when they will receive the report. As such, Transmission Providers will be required to provide the pre-application report within 20 business days of the initial request.

52. With regard to the request of ISO–NE., IRC, PJM, and NRECA, EEI & APPA for clarification about whether section 4.1 (''Reasonable Efforts'') of the existing *pro forma* SGIP will apply to the pre-application report timeline,[120] we affirm that section 4.1 of the *pro forma* SGIP applies to the pre-application report. To not do so would mean that the Reasonable Efforts section would apply to some items in the SGIP and not others. As such, the Commission declines to adopt Duke Energy's proposal to establish a pre-application queue when a Transmission Provider experiences heavy volumes of pre-application report requests and is unable to meet the pre-application report timeline because such situations may be addressed under section 4.1 of the *pro forma* SGIP in a comparable, not unduly discriminatory manner. Nonetheless, the Commission notes that the pre-application report contains only readily available information, so we expect that the Transmission Provider should be able to produce a pre-application report within 20 business days in most circumstances.

5. Pre-Application Report Request Form

a. Comments

53. Several commenters recommend that Interconnection Customers complete a pre-application report request form to facilitate report preparation.[121] ITC offers as a basis for such a form that Interconnection Customers could designate broad geographic areas as proposed Points of Interconnection when requesting a pre-application report, thus requiring the Transmission Provider to select the exact Point of Interconnection for the Interconnection Customer.[122]

54. Such a form is also supported by the SWG[123] and PJM.[124] They suggest that the proposed pre-application request form seeks the following information from Interconnection Customers: (1) Project contact information; (2) project location, including street address with nearby cross streets and town; (3) meter number, pole number, or other equivalent information identifying the proposed Point of Interconnection; (4) type of generator; (5) size of generator; (6) single or three-phase generator configuration; (7) whether the generator is stand-alone or serves on-site load; and (8) whether the project requires new service or is an expansion of existing service.[125]

55. ITC, IRC and NYISO & NYTO also support a standardized pre-application report request form.[126] IRC states that, although it supports including a standard request form in each Transmission Provider's tariff, the Final Rule should allow the request form to vary by region if needed.[127]

b. Commission Determination

56. In response to commenter requests, the Commission adopts the standardized pre-application report request form as proposed by the SWG in section 1.2.2 of the *pro forma* SGIP, as modified herein[128] and with certain minor clarifying modifications, to use when requesting a pre-application report. The Commission believes the request form will resolve uncertainty about the precise location of the Point of Interconnection and expedite the pre-application report process.

6. Readily Available Information

a. Comments

57. SEIA and DCOPC state that the proposed pre-application report will not burden Transmission Providers because it will be compiled from existing material.[129] IREC claims that utilities have made significant investments in smart grid infrastructure, SCADA and other methods of gathering system information so that minimum and peak load data will be available in the future, and the SGIP should encourage the collection of such information.[130] Sandia and UCS raise similar arguments about the availability of this data.[131]

58. Several commenters request that the Commission affirm that Transmission Providers are only required to provide existing information that is readily available in the pre-application report.[132] Additionally, multiple commenters request that the Commission define the terms ''already available'' and/or ''readily available'' as they relate to information provided in the pre-application report.[133] MISO suggests it means providing existing data in its existing form.[134] IRC further requests that the Commission clearly state in section 1.2.4 or add a new section 1.2.5 stating that ''[a]ny further analysis related to the proposed generator or in follow-up to the information contained in the report shall be conducted pursuant to an interconnection request.''[135]

59. ISO–NE and NYISO & NYTO state that notwithstanding the caveat in section 1.2.4, the pre-application report only need include existing data and note that the inclusion of all of the categories of data listed in section 1.2.3 of the *pro forma* SGIP could create an unreasonable expectation regarding the information to be included in the pre-

[115] Duke Energy at 4–5.

[116] ISO–NE at 12–13.

[117] NYISO & NYTO at 16; and PJM at 10.

[118] IRC at 9.

[119] NYISO & NYTO at 16; and PJM at 10.

[120] IRC at 10; ISO–NE at 12; NRECA, EEI & APPA Reply Comments at 14; and PJM at 10.

[121] IREC at 10; ISO–NE at 11; ITC at 10; NRECA, EEI and APPA at 13; NYISO & NYTO at 16; SEIA at 2; NREL at 2; and PJM at 9.

[122] ITC at 10.

[123] *See supra* note 23. The group drafted proposed revisions to the pre-application report proposal that were submitted by several commenters.

[124] IREC at 10 and PJM at 9.

[125] PJM at 9; IREC, Attachment A, §§ 1.2.2.1–1.2.2.8; NRECA, EEI & APPA, Attachment A, §§ 1.2.2.1–1.2.2.8; NREL, attachment to comments, §§ 1.2.2.1–1.2.2.8; and SEIA, Attachment B, §§ 1.2.2.1–1.2.2.8.

[126] ITC at 10; IRC at 9; NRECA, EEI & APPA at 13; and NYISO & NYTO at 16.

[127] IRC at 9.

[128] *See, e.g., supra* P 0.

[129] DCOPC at 4 and SEIA at 11.

[130] IREC at 10.

[131] Sandia at 2 and UCS at 14–15.

[132] Bonneville at 2–3; Duke Energy at 4; ISO–NE at 14; and MISO at 6.

[133] Clean Coalition at 3; Duke Energy at 4; IRC at 10; and MISO at 6.

[134] MISO at 6.

[135] IRC at 10–11.

application report.[136] ISO–NE and NYISO & NYTO therefore ask the Commission to clarify that the items proposed to be included in the pre-application report are examples that may be amended by the Transmission Provider based on readily available information.[137] IRC asks that the Commission allow each region to specify what information is actually available in a pre-application process to assist prospective Interconnection Customers.[138]

60. NREL comments that the proposed SGIP states that minimum daytime load information will be provided in the pre-application report ''when available'' and that this should be modified to state that load information ''will be measured or calculated.'' [139] FCHEA and CEP assert that one of the key pieces of information that should be included in the pre-application report is whether the 15 Percent Screen has been exceeded or is close to being exceeded on a particular line segment.[140] NRECA, EEI & APPA submitted proposed revisions to the information included in the pre-application report, including removing some items from the report.[141] IREC states that striking relevant pieces of information, such as minimum or peak load data, from the report because it may not be currently available would be inconsistent with policy goals and fails to recognize that grid investments may make the information possible to collect in the future.[142]

61. NRECA, EEI & APPA state that they are particularly concerned with the Commission's proposal to require that utilities provide minimum load and available capacity in the pre-application report when such data are not currently available.[143] They assert that collection of minimum load data is burdensome to most utilities because it is not a critical system operating criteria and is difficult to determine accurately.[144]

62. Duke Energy states that although daytime minimum load data may be available where there are electronic meters and communication equipment, in many instances the data are available only at the substation circuit breaker and not by line section. Duke Energy therefore asserts that in some cases it would have to estimate the minimum load.[145] ITC suggests that the Commission explain how Transmission Providers should calculate minimum load for the purposes of the pre-application report.[146]

b. Commission Determination

63. The Commission appreciates Transmission Provider concerns about the burden associated with creating new information (either form or substance) for the purposes of the pre-application report. We reaffirm that Transmission Providers are only required to provide the items in the *pro forma* SGIP section 1.2.3 if they are readily available, in accordance with section 1.2.4 of the SGIP. Accordingly, in response to NRECA, EEI & APPA and Duke Energy, the provision of actual or estimated minimum load data is not required unless it is readily available. To address concerns with the definition of ''readily available,'' we clarify that ''readily available'' means information that the Transmission Provider currently has on hand. That is, the Transmission Provider is not required to create new data.[147] However, the Transmission Provider is required to compile, gather, and summarize the information that it has readily available to it in a format that presents useful information.[148] The costs associated with that effort should be commensurate with the fee the Transmission Provider charges for the pre-application report. If providing some of the items in the pre-application report would require the Transmission Provider to undertake studies or analysis beyond gathering and presenting existing information, then the information is not readily available and the Transmission Provider is not obligated to include this information in the report. We note, however, that performing simple calculations with existing information, such as calculating available capacity as described below, falls within the meaning of readily available information.[149] The Commission finds that requiring Transmission Providers to provide information in pre-application reports beyond what is readily available would increase Transmission Provider costs and likely result in the under-recovery of report preparation costs. The Commission believes the default $300 fixed fee is consistent with the readily available standard, which limits the effort required by Transmission Providers.

64. The Commission is also persuaded by IREC's comments that pre-application report items should not be struck from the report due to current unavailability because the items may become available in the future. Thus, the Commission finds that the default pre-application report should include the items listed from section 1.2.3 of the proposed SGIP while at the same time reaffirming that Transmission Providers are not obligated to provide information that is not readily available.

7. Other Issues

a. Comments

65. IREC, Pepco [150] and SEIA propose adding a new section 1.2.3.1 to the *pro forma* SGIP stating that the Transmission Provider will identify the substation/area bus, bank or circuit likely to serve the proposed Point of Interconnection and clarifying how the Transmission Provider will select which circuit to include as the Point of Interconnection in the pre-application report if there is more than one circuit to which the Interconnection Customer could connect.[151] The commenters also propose to clarify in section 1.2.3.1 that the Transmission Provider will not be liable if the selected circuit is not the most cost-effective option and explains that customers who want information on all options must request multiple pre-application reports.[152]

66. Several commenters,[153] including the SWG, note that the electric system is constantly changing and the information provided in the pre-application report might quickly become out of date. As a result, they request that the SGIP and each pre-application report that a utility

[136] ISO–NE at 9 and NYISO & NYTO at 15.

[137] NYISO & NYTO at 14.

[138] IRC at 10.

[139] NREL at 3.

[140] CEP at 2 and FCHEA at 2.

[141] NRECA, EEI & APPA, Appendix B at 1–2.

[142] IREC at 9–10.

[143] NRECA, EEI & APPA at 14.

[144] *Id.* at 14.

[145] Duke Energy at 5.

[146] ITC at 9–10.

[147] The Commission declines to prescribe a methodology for calculating minimum load for the purpose of the pre-application report, as requested by ITC, because such a calculation is not required for the sole purpose of the pre-application report. The provision of minimum load data in the pre-application report, whether actual or estimated, is only required if this information is readily available. Further, to the extent such a calculation is made under section 2.4.4.1 of the SGIP adopted herein, the Commission leaves the methodology to the discretion of the Transmission Provider.

[148] *See supra* P 0. The Commission clarifies that the Transmission Provider shall be the point of contact for the Interconnection Customer and may be required to coordinate with the Transmission Owner to execute the requirements of the SGIP adopted herein, including the pre-application report. Accordingly, we find that information that is readily available to the Transmission Owner shall be deemed readily available to the Transmission Provider as well.

[149] *See infra* P 0.

[150] Pepco Holdings Inc., Atlantic City Electric Company, Delmarva Power & Light Company, and Potomac Electric Power Company are referred to collectively as Pepco in this Final Rule.

[151] IREC at 10; Pepco, Appendix to comment at section 1.2.3.1; SEIA at Attachment A section 1.2.3.1.

[152] IREC at 10–11; Pepco at 6.

[153] Duke Energy at 6; IREC Attachment A, section 1.2.2 presenting the SWG recommendations; and NRECA, EEI & APPA at 12.

produces include a disclaimer indicating that the pre-application report is for informational purposes, is non-binding, and does not convey any rights in the interconnection process.[154]

67. ITC argues that given its dynamic nature, Transmission Providers may not be able to accurately predict the available capacity of the substation/area bus or bank circuit most likely to serve the proposed Point of Interconnection at every point in time.[155] ITC proposes that the Commission specify that the Transmission Provider's base-case estimate of available capacity is sufficient for the pre-application report.[156] Duke Energy states that Interconnection Customers can calculate this available capacity from the information provided in sections 1.2.3.1 through 1.2.3.3 of the SGIP; therefore, the Transmission Provider should not be required to provide available capacity in the pre-application report.[157]

68. Various commenters request that the pre-application report contain information that the Commission did not include in the NOPR. For example, several commenters propose to add the following items to the pre-application report: (1) Distance from a three-phase circuit if the Point of Interconnection is on a single-phase circuit; and (2) whether the Point of Interconnection is located on an area network, spot network, grid network, or radial supply.[158] IREC asserts that this approach will provide relevant system information to developers.[159] SEIA also proposes to include the substation/area bus, bank or circuit most likely to serve the Point of Interconnection.[160] NARUC states that the pre-application report should include a simple ''yes'' or ''no'' question as to whether minimum load data would be readily available should it be needed to help a developer remain in the Fast Track Process.[161]

69. Landfill Energy Systems (LES) state that the pre-application report should identify the type of existing relays that are currently being utilized and any known, or likely, need to replace those relays.[162] LES states that if, for example, the Transmission Owner is likely to require the Interconnection Customer to replace and/or upgrade existing equipment, such as a relay system, a reclosing system, or a breaker failure protection system, or to install fiber optic cable, it should be noted in the pre-application report.[163] LES also requests that the pre-application report include a map that shows the Transmission Provider's lines in the area for the Interconnection Customer to consider as alternative Points of Interconnection.[164]

70. Clean Coalition recommends that the Commission require that Transmission Providers maintain information about all distribution interconnection applications in a public spreadsheet/database for easy review and tracking by developers, advocates, and policymakers.[165] Clean Coalition further asserts that, where warranted by demand, existing grid information should be made available in map and spreadsheet formats on the utility's Web site.[166] NRECA, EEI & APPA claim that the Clean Coalition's proposal is unduly burdensome, overbroad, ambiguous, may result in the release of CEII, and would constitute jurisdictional overreach by the Commission.[167]

71. NRECA, EEI & APPA state that any information that is required to be included in the pre-application report must be consistent with existing safeguards against the public disclosure of non-public transmission system information, confidential information, or CEII.[168] CAISO similarly notes that some of the information may be proprietary to participating Transmission Owners or might be CEII, which could require a non-disclosure and limited use agreement.[169]

72. PJM asks the Commission to clarify that although there may be some limited follow-up on the pre-application report (e.g., questions about the report from the Interconnection Customer), more detailed inquiries would need to be addressed through the submission of an interconnection request by the Interconnection Customer.[170] Duke Energy requests that the Commission clarify that any transmission information provided in the report would not be required to be posted on the OASIS.[171] NRECA, EEI & APPA state that each request related to a particular Point of Interconnection should be treated as a request for a separate pre-application report and the Transmission Provider must be able to collect a fee for each report it prepares.[172] NRECA, EEI & APPA assert that this is appropriate because requests for multiple interconnection points may require companies to gather information from various sources for each Point of Interconnection.[173] IREC and Pepco also propose SGIP language which states that customers who want information on multiple circuits at a single Point of Interconnection must request a separate pre-application report for each circuit.[174]

73. CAISO suggests that the Commission may want to provide greater flexibility for Transmission Providers to fashion a pre-application process to exchange information with developers following issuance of a pre-application report if developers have any follow-up questions.[175] NYISO & NYTO suggest that Transmission Providers might provide the Interconnection Customer the option of a follow-up meeting to discuss the pre-application report.[176] Finally, ISO–NE proposes to refer to entities that request pre-application reports as ''potential Interconnection Customers'' rather than ''Interconnection Customers'' in section 1.2 of the SGIP, which outlines the pre-application report.[177]

b. Commission Determination

74. The Commission agrees with commenters that the information provided in pre-application reports should be for informational purposes only given the dynamic nature of system conditions. Accordingly, the Commission will include a disclaimer in the *pro forma* SGIP and pre-application report stating that the information provided in the pre-application report is non-binding and that the Transmission Provider will not be held liable if information in the report is no longer accurate. The Commission notes that similar pre-application report disclaimers are proposed in SGIP proceedings in Ohio and Massachusetts.[178]

[154] NRECA, EEI & APPA at 12–13, and NYISO & NYTO at 16.

[155] ITC at 9.

[156] *Id.* at 9.

[157] Duke Energy at 6.

[158] IREC at 11–12; NRECA, EEI & APPA Appendix B at 1; Pepco at 11; and SEIA at 11.

[159] IREC at 11.

[160] SEIA at 11.

[161] NARUC at 5.

[162] LES at 2.

[163] *Id.* at 2–3.

[164] *Id.* at 3.

[165] Clean Coalition at 5–6.

[166] *Id.* at 6.

[167] NRECA, EEI & APPA Reply Comments at 15–16.

[168] NRECA, EEI & APPA at 14.

[169] CAISO at 4.

[170] PJM at 10.

[171] Duke Energy at 6.

[172] NRECA, EEI & APPA at 17.

[173] *Id.*

[174] IREC at 10–11; Pepco at 6.

[175] CAISO at 4.

[176] NYISO & NYTO at 16.

[177] ISO–NE at 10.

[178] Pub. Utilis. Comm'n of Ohio, *In the Matter of the Comm'n's Review of Chapter 4901:1–22, Ohio Admin. Code, Regarding Interconnection Servs.,* Case No. 12–2051–EL–ORD, at 7 (2013), *available at http://www.seia.org/sites/default/files/Ohio-Supplemental-Entry.pdf;* Mass. Dep't of Pub. Utils., *Order on the Distributed Generation Working Group's Redlined Tariff and Non-Tariff Recommendations,* Docket No. D.P.U. 11–75–E, at 14 (2013).

75. NRECA, EEI & APPA, Pepco, SEIA, and IREC propose adding the following two items to the pre-application report: (1) For single-phase circuits, the distance of the Point of Interconnection from the three-phase circuit; and (2) whether the Point of Interconnection is located on an area network, spot network, grid network, or radial supply.[179] The Commission is persuaded that this additional information will be useful to assess whether a project will qualify for the Fast Track Process at a given Point of Interconnection. Furthermore, the information should be readily available to Transmission Providers because it relates to basic system configuration. Accordingly, sections 1.2.3.10 and 1.2.3.12 of the SGIP are revised to include these items.

76. In order to clarify Interconnection Customer expectations with respect to the pre-application report, the Commission adopts IREC, SEIA and Pepco's proposed disclaimer that the bank or circuit selected by the Transmission Provider in the pre-application report does not necessarily indicate the circuit to which the Interconnection Customer may ultimately connect. The disclaimer is added to section 1.2.3 of the SGIP. However, the Commission declines to adopt IREC, SEIA and Pepco's request to clarify how the Transmission Provider will select which circuit to include in the pre-application report if there is more than one circuit to which the Interconnection Customer could interconnect because methodologies for selecting a circuit may be differ depending on the circumstances of the proposed interconnection and may differ among Transmission Providers. If Transmission Providers wish to provide this information to Interconnection Customers, they may do so in business practices.

[179] *See supra* note 158.

77. In response to Duke Energy's inquiry, the Commission affirms that information Transmission Providers provide in the pre-application will have no bearing on OASIS reporting requirements. The Commission also affirms that the pre-application report only applies to a single Point of Interconnection and that Interconnection Customers must submit payment and separate pre-application request forms if they are requesting information about multiple Points of Interconnection, including multiple circuits at a single Point of Interconnection. The Commission also finds that it would be unjust and unreasonable to expect the Transmission Provider to bear the cost of any follow-up studies resulting from the pre-application report. Therefore, apart from reasonable clarification of items in the pre-application report, the Transmission Provider is not required as part of this Final Rule to conduct any studies or analysis after furnishing the pre-application report unless the Interconnection Customer proceeds with a formal interconnection request.

78. The Commission expects Transmission Providers to continue to abide by the recommendations outlined in section 1.1.5 of the *pro forma* SGIP and with section 1.2.1 of the *pro forma* SGIP, which states that information may be provided ''to the extent such provision does not violate confidentiality provisions of prior agreements or critical infrastructure requirements'' and that ''[t]he Transmission Provider shall comply with reasonable requests for such information.''

79. The Commission rejects ISO–NE's request to refer to entities requesting pre-application reports as ''potential Interconnection Customers'' within the *pro forma* SGIP because we are not aware that use of the term ''Interconnection Customer'' in the pre-application section 1.2 of the *pro forma* SGIP adopted under Order No. 2006 caused confusion or set incorrect expectations for Interconnection Customers or Transmission Providers.

80. The Commission rejects LES's request that Transmission Providers indicate what upgrades, if any, will be required at a Point of Interconnection when preparing a pre-application report for that Point of Interconnection. This information may not be readily available to a Transmission Provider.

81. The Commission is not persuaded by Duke Energy's assertion that it is unreasonable to ask Transmission Providers to provide available capacity, or an estimate of available capacity. Providing available capacity will not burden the Transmission Provider because doing so only requires Transmission Providers to subtract aggregate existing and queued capacity from total capacity, and will provide additional clarity to the interconnection customer.

82. The Commission finds Clean Coalition and LES's proposal to make certain small generator interconnection data publicly available as beyond the scope of the NOPR. However, we encourage Transmission Providers to look for ways to streamline the provision of and make transparent relevant public information in order to facilitate small generator interconnections.

B. Threshold for Participation in the Fast Track Process

1. Commission Proposal

83. In the NOPR, the Commission proposed to revise the 2 MW threshold for participation in the Fast Track Process to be based instead on individual system and generator characteristics up to a limit of 5 MW, as shown in Table 1 below.

Table 1: Fast Track eligibility as proposed in the NOPR.[180]

Line Voltage	Fast Track Eligibility Regardless of Location	Fast Track Eligibility on ≥ 600 Ampere Line and ≤ 2.5 Miles from Substation
< 5 kilovolt (kV)	≤ 1 MW	≤ 2 MW
≥ 5 kV and < 15 kV	≤ 2 MW	≤ 3 MW
≥ 15 kV and < 30 kV	≤ 3 MW	≤ 4 MW
≥ 30 kV	≤ 4 MW	≤ 5 MW

2. Comments

84. Many commenters support increasing the Fast Track threshold from 2 MW to 5 MW.[181] IREC states that the purpose of eligibility limits to the Fast Track Process should be to filter out projects that are highly unlikely to pass the Fast Track screens in order to save time and set clear customer expectations. However, IREC states that the eligibility limits do not need to duplicate or go beyond the Fast Track screens themselves.[182]

85. DCOPC states that it has no objections to the new Fast Track eligibility table proposed for section 2.1 of the SGIP or to raising the maximum eligibility size from 2 MW to 5 MW, as long as this change does not compromise system safety and grid reliability.[183]

86. Sandia supports the new Fast Track eligibility proposal in the NOPR, as it more accurately differentiates interconnection requests that do not cause impacts from those that could need further study and states that the characteristics in the proposal for Fast Track eligibility are technically reasonable.[184]

87. Clean Coalition states that it prefers no Fast Track eligibility threshold because the Fast Track screens themselves eliminate projects that are not appropriate for the Fast Track Process.[185] However, Clean Coalition states that because of utility concerns about eliminating the threshold, it supports the Commission's proposal for increasing the threshold.[186]

88. Max Hensley states that the Commission should allow facilities of up to 10 MW to qualify for the Fast Track Process. Mr. Hensley believes this would increase the market for distributed solar power generation and lower prices for residential customers.[187]

89. ITC generally supports increasing the upper bound of the Fast Track proposal based on line voltage, line amperage and proximity to the substation but is concerned that Interconnection Customers will abuse the 5 MW limit by submitting multiple interconnection requests for the same project in an effort to circumvent the Study Process, to the detriment of system reliability (e.g., a 20 MW wind farm comprised of five 4–MW wind turbines might submit five separate interconnection requests rather than a single 20 MW interconnection request). ITC recommends that the Commission allow individual ISOs or RTOs to coordinate Fast Track interconnections through their existing interconnection queue process to ensure Interconnection Customers are not able to circumvent the required studies necessary to protect safety and reliability.[188]

90. ISO–NE requests that the Final Rule allow flexibility to account for eligibility limits that may be unique to the region. For example, ISO–NE states that eligibility for the Fast Track Process in New England is limited to interconnections to distribution facilities and does not apply to facilities rated 69 kV or higher that are used for regional transmission service.[189]

91. NYISO & NYTO do not believe the Commission's proposed expansion of the Fast Track eligibility to 5 MW and the introduction of minimum load and other screens for the supplemental review process are likely to improve the time and cost to process the interconnection requests of small facilities in New York at this time.[190] NYISO & NYTO state that most of the very small generating facilities in New York seek to interconnect to distribution facilities that are not subject to the Commission's jurisdiction and are generally able to skip most, if not all, of the time and expense of the full study process due to their limited system impacts.[191]

92. Duke Energy states that the proposed values in the Fast Track threshold table are not realistic for distribution systems. Duke Energy asserts that, based on its experience, a 1 MW generator proposing to interconnect to its distribution facilities

[180] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 30.

[181] AWEA at 4; CREA at 2; IECA at 4–5; NRG at 5; SEIA at 13–14; Clean Coalition at 7; CEP at 1; ELCON at 4–5; ESA at 3–4; FCHEA at 1; IECA at 4–5; IREC at 13; LES at 2; Sandia at 2; and Public Interest Organizations at 10.

[182] IREC at 13.

[183] DCOPC at 5.

[184] Sandia at 2.

[185] Clean Coalition at 7.

[186] *Id.*

[187] Max Hensley at 1.

[188] ITC at 11.

[189] ISO–NE at 15.

[190] NYISO & NYTO at 16.

[191] *Id.* at 16–17.

under 5 kV, which are lightly loaded and have small conductor sizes, would not pass the Fast Track screens because it would likely exceed the minimum load of the line section and might exceed the rating of the conductor.[192] Duke Energy therefore urges the Commission to consider lowering the proposed threshold levels to values that are more realistic for a distribution system.[193]

93. NRECA, EEI & APPA support basing Fast Track eligibility on individual system and generator characteristics.[194] They state that it is difficult to use the size of the generator as a threshold to determine whether the Small Generating Facility should go through the Fast Track Process and that the location of the point of common coupling and the interconnecting feeder and loading characteristics should be major factors for determining Fast Track eligibility.[195]

94. NRECA, EEI & APPA assert that there is no standard definition of distribution system voltages in the United States and that there needs to be an upper bound voltage class limit that captures voltages of up to 69 kV. They state that the Commission should continue to follow its own precedent of taking into account the differences in utilities' distribution systems by building a degree of flexibility into the Final Rule with respect to the criteria for determining Fast Track eligibility.[196]

95. NRECA, EEI & APPA note that in Massachusetts and Rhode Island, the Fast Track Process does not include a 2 MW limit, but instead inverter-based equipment that has been ''listed'' using the UL1741 testing procedure is eligible for an expedited process.[197] They state that multiple inverter projects may or may not be considered ''listed'' in the proposed configuration, which means that some projects may not be eligible for the Fast Track Process.[198] According to NRECA, EEI & APPA, on a regional level, the capacity of solar projects that tend to pass the screen tests is typically in the 2 MW range. They therefore urge the Commission to keep this factor in mind when considering raising the limit to 5 MW.[199]

96. NRECA, EEI & APPA state that they are concerned that the third column of the Fast Track eligibility table in the NOPR, which refers to the location of a distributed generation facility on the feeder system relative to the distance from the source substation, would raise expectations from developers that they may be eligible for the Fast Track Process when they may not be.[200] The SWG agreed on proposed revised language to be inserted in section 2.1 of the SGIP to clarify the intent of the Fast Track eligibility limits and to address concerns regarding the role of the eligibility limits in setting customer expectations.[201]

97. Several commenters[202] submitted the table for Fast Track eligibility proposed by the SWG as shown in Table 2 below. The SWG proposes revising the Fast Track eligibility threshold applicable to inverter-based generators. The SWG also proposes the following changes to Fast Track Process eligibility: (1) Making all projects interconnecting to lines greater than 69-kV ineligible for the Fast Track Process (inverter-based projects interconnecting to lines up to and including 69 kV would be eligible for the Fast Track Process based on Table 2 below); (2) maintaining the current 2 MW limit for Fast Track eligibility for synchronous and induction machines (as opposed to inverter-based generators); (3) for lines below 5 kV, changing the Fast Track eligibility regardless of location to 500 kW for inverter-based projects; and (4) in the third column of the table, replacing ''≥ 600 Ampere Line'' with ''a Mainline'' and a footnote defining ''Mainline.''[203] [204] [205]

TABLE 2—FAST TRACK ELIGIBILITY FOR LISTED INVERTER-BASED SYSTEMS AS PROPOSED BY NRECA, EEI & APPA

Line voltage	Fast Track eligibility regardless of location	Fast Track eligibility on a mainline* and ≤2.5 miles** from substation
<5 kilovolt (kV)	≤500 kW	≤500 kW
≥5 kV and <15 kV	≤2 MW	≤3 MW
≥15 kV and <30 kV	≤3 MW	≤4 MW
≥30 kV and <70 kV	≤4 MW	≤5 MW

* For purposes of this table, a mainline will typically constitute lines with wire sizes of 4/0 AWG, 336.4 kcmil, 397.5 kcmil, 477 kcmil and 795 kcmil.

** Electrical Circuit Miles.

*** An Interconnection Customer can determine this information in advanced [sic] by requesting a Pre-Application Report pursuant to section 1.2 [of the SGIP].

98. IREC believes the proposed revisions to the Fast Track eligibility table agreed to by the SWG are reasonable and reflect a technically justified approach to Fast Track eligibility. It recommends that the Commission adopt the proposed revisions.[206] Further, IREC states that some projects connecting to lines greater than 69 kV should go through the Study Process because the cost of interconnecting to larger lines is likely to be significant enough that generators may benefit from a more thorough cost estimate.[207] Regarding the 2 MW Fast Track eligibility limit for synchronous, induction machines, IREC notes that there are important technical differences between these generators and inverter-based systems that may require further consideration, so the SWG agreed that the Commission should maintain the current limit for these generators.[208] Finally, IREC states that although it believes that the MW limits proposed by the Commission in the NOPR are sufficiently conservative, it supports the

[192] Duke Energy at 7.

[193] *Id.* at 9–10. *See* Duke Energy at 9 for its proposed Fast Track eligibility table.

[194] NRECA, EEI & APPA at 19.

[195] *Id.* at 19–20.

[196] *Id.* at 20.

[197] *Id.*

[198] *Id.* at 20–21.

[199] *Id.* at 21.

[200] *Id.*

[201] IREC at 14.

[202] NRECA, EEI & APPA Appendix A; IREC Attachment A; NREL Attachment; and SEIA Attachment B. The Commission notes that there were minor differences among the tables submitted by NRECA, EEI & APPA, IREC, SEIA and NREL.

[203] IREC at 14–15.

[204] NRECA, EEI & APPA, Appendix A.

[205] AWG is American wire gauge, a standardized system used for the diameters of round conducting wires to help determine its current-carrying capacity and electrical resistance.

[206] IREC at 14.

[207] *Id.* at 15.

[208] *Id.*

SWG proposal because it provides comfort to utilities interconnecting generators on lines below 5 kV.[209]

99. While SEIA would prefer to eliminate the threshold for participation in the Fast Track Process, it views the Commission's proposal as a reasonable and appropriate balance between a developer's need for an efficient interconnection process and the safety and reliability concerns raised with respect to broadening the Fast Track screens.[210] SEIA supports the agreement reached by the SWG on revisions to the Commission's proposal, which primarily narrows the scope of projects that would be eligible for the Fast Track Process at either end of the voltage spectrum, while maintaining Fast Track eligibility for the vast majority of distributed solar projects.[211] SEIA believes the Commission's proposal as modified by the SWG represents a reasonable compromise between developers and Transmission Providers and therefore recommends that the Commission adopt the SWG's proposal on Fast Track Process eligibility.[212] Public Interest Organizations and NREL also support the SWG's proposed changes to Fast Track eligibility.[213]

100. NYISO & NYTO support the SWG's revised Fast Track eligibility table, but state that the upper voltage limit for a very small generating facility's eligibility in the Fast Track Process should be limited to 50 kV.[214] They note that the system modifications and costs associated with a Small Generating Facility interconnecting to 69 kV facilities in New York will require careful evaluation to ensure safety and reliability and should therefore remain within the Study Process.[215]

101. AWEA opposes limiting Fast Track eligibility to 2 MW for synchronous and induction machines. AWEA states that it understands the reason for this limit is due to concerns about the fault current contribution of different types of wind turbine generators. It states that these concerns are unfounded and that wind turbines up to 5 MW should be allowed to participate in the Fast Track Process. Alternatively, AWEA states that screens that identify the type of wind turbine and the fault current contribution of that type could be used to allow wind turbines to participate in the Fast Track Process up to 5 MW.[216]

3. Commission Determination

102. The Commission concludes that it is just and reasonable to adopt the Fast Track eligibility thresholds proposed by the SWG, with modifications as discussed below.

103. The Commission agrees with the following reforms proposed by the SWG: (1) Modifying Fast Track eligibility for inverter-based machines to be based on individual system and generator characteristics; (2) for lines below 5 kV, limiting Fast Track eligibility to generators less than 500 kW for a conductor less than 5 kV regardless of location; and (3) making all projects interconnecting to lines greater than 69-kV ineligible for the Fast Track Process. The Commission finds that the modifications to Fast Track eligibility proposed by the SWG, reflected in Table 3 below, are just and reasonable and strike a balance between allowing larger projects to use the Fast Track Process while ensuring safety and reliability.

TABLE 3—FAST TRACK ELIGIBILITY FOR INVERTER-BASED SYSTEMS, AS ADOPTED IN THIS FINAL RULE

Line voltage	Fast Track eligibility regardless of location	Fast Track eligibility on a mainline [1] and ≤2.5 electrical circuit miles from substation [2]
<5 kilovolt (kV)	≤500 kW	≤500 kW
≥5 kV and <15 kV	≤2 MW	≤3 MW
≥15 kV and <30 kV	≤3 MW	≤4 MW
≥30 kV and ≤69 kV	≤4 MW	≤5 MW

[1] For purposes of this table, a mainline is the three-phase backbone of a circuit. It will typically constitute lines with wire sizes of 4/0 American wire gauge, 336.4 kcmil, 397.5 kcmil, 477 kcmil and 795 kcmil.

[2] An Interconnection Customer can determine this information about its proposed interconnection location in advance by requesting a pre-application report pursuant to section 1.2 of the SGIP.

104. The SWG's proposed Fast Track eligibility table indicates that it is applicable to ''listed'' (see Table 2 above) inverter-based systems. However, section 2.1 of the SGIP states that a Small Generating Facility must meet the ''codes, standards, and certification requirements of Attachments 3 and 4'' of the SGIP, ''or the Transmission Provider has to have reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.'' In order to eliminate potential confusion regarding the applicability of the Fast Track Process and to eliminate potential conflicts between the language of section 2.1 of the SGIP and the Fast Track eligibility table (Table 3 above), the Commission does not adopt the references to listing or certification in the title of the table submitted by the SWG. In doing so, the text of the Fast Track eligibility table will be consistent with section 2.1, which allows that Small Generating Facilities either be certified *or* have been reviewed or tested by the Transmission Provider and determined to be safe to operate. We also note that in section 2.1 of the SGIP, we only refer to ''certified inverter-based systems'' rather than ''listed or certified inverter-based systems'' as proposed by the SWG because listing is a type of certification under Attachments 3 and 4 of the SGIP.

105. The Commission acknowledges comments stating that voltages below 5 kV are being phased out. Nonetheless, such facilities can still be found in parts of the country and, therefore, our reforms must address reliability concerns with this voltage class. We conclude that imposing lower limits on lower voltage lines is reasonable. As Duke Energy notes in its comments, a request to interconnect to distribution facilities under 5 kV, which are typically lightly loaded and have small conductor sizes, would likely exceed the minimum load of the line section and the conductor rating.

106. The Commission will maintain the 2 MW Fast Track threshold for

[209] *Id.*

[210] SEIA at 13–14.

[211] *Id.* at 14.

[212] *Id.*

[213] NREL at 3 and Public Interest Organizations at 10–11.

[214] NYISO & NYTO at 17.

[215] *Id.*

[216] AWEA Supplemental Comments at 3–5.

synchronous and induction machines as suggested by the SWG because there are important technical differences between these generators and inverter-based generators. The Commission notes that, in general, the technical characteristics of synchronous and induction machines, such as higher fault current capabilities, may require further study to ensure the safety and reliability of the interconnection.[217] Therefore, we agree that synchronous and induction machines should continue to be subject to the 2 MW Fast Track threshold.[218] We are not persuaded by AWEA that the safety and reliability concerns of the SWG associated with synchronous and induction machines are unfounded and therefore decline at this time to include these machines in Fast Track eligibility beyond the existing 2 MW threshold. Further, in response to AWEA's proposal to modify the Fast Track Process to include screens based on the type of wind turbine and the fault current contribution of that type to allow wind turbines to participate in the Fast Track Process up to 5 MW, we find that AWEA's proposal has not been developed and vetted in this rulemaking process, therefore we decline to adopt the proposal.[219] We note, however, that in accordance with section 2.1 of the SGIP, synchronous and induction machines up to 5 MW that are interconnected to the Transmission Provider's system through a certified inverter or that have been reviewed or tested by the Transmission Provider and determined to be safe to operate may be interconnected under the Fast Track Process in accordance with Table 3 above.

107. The Commission adopts the SWG proposal to limit Fast Track eligibility to those projects connecting to lines at 69 kV and below. The Commission is persuaded by commenters [220] that even though not all Small Generating Facilities interconnecting to lines above 69 kV would require study, some of them will, and the Commission agrees that the costs and system modifications of interconnecting to lines larger than 69 kV are likely significant enough that generators may benefit from the more thorough estimate developed through the Study Process.

108. Regarding ITC's concerns, the Commission believes that the potential for Interconnection Customers to submit multiple interconnection requests for the same project in an effort to circumvent the Study Process is limited because the Fast Track screens consider the aggregate generation on a line section.

109. The Commission acknowledges NYISO & NYTO's comment that certain facilities in New York may require a detailed study to ensure safety and reliability. However, the Fast Track Process itself will identify such facilities so they need not be eliminated from Fast Track eligibility.

110. Finally, to address NRECA, EEI & APPA's concern that the third column of the Fast Track eligibility table in the NOPR could raise Interconnection Customer expectations regarding eligibility for the Fast Track Process, the Commission adopts language in section 2.1 of the *pro forma* SGIP reminding small generators that Fast Track eligibility is distinct from the Fast Track Process itself, and that being found eligible for the Fast Track Process does not imply or indicate that a project will pass the Fast Track or supplemental review screens.[221]

C. Fast Track Customer Options Meeting and Supplemental Review

1. Commission Proposal

111. In the NOPR, the Commission proposed modifications to the customer options meeting following the failure of any of the Fast Track screens. The Commission proposed to require the Transmission Provider to offer to perform a supplemental review of the proposed interconnection without condition.[222] Additionally, the Commission proposed to modify the supplemental review by including three screens: (1) The Minimum Load Screen; (2) the power quality and voltage screen; and (3) the safety and reliability screen.[223]

112. The Commission also proposed language in section 2.4.2 of the SGIP to clarify the requirements following the conclusion of the supplemental review. The Commission proposed that the Transmission Provider perform the supplemental review for a nonrefundable fee of $2,500.

2. General Comments on the Customer Options Meeting and the Supplemental Review

a. Comments

113. Several commenters support the Commission's proposed supplemental review reforms.[224] ITC expresses general support for the proposed changes in the customer options meeting and supplemental review process but offers several recommendations.[225] IREC supports the proposed supplemental review process with the optional use of ''hosting capacity.'' [226] IREC states that utilities operating with high distributed generation penetrations have found that with additional time and screening, they are able to safely interconnect generators without full study (*e.g.,* California and Hawaii have adopted screens similar to those in the NOPR).[227] SEIA believes the proposed supplemental review reforms will support the interconnection of renewable generation needed to meet the demand created by state policies.[228] AWEA and IREC both assert that the

[217] Thomas Cleveland & Michael Sheehan, Updated Recommendations for FERC Small Generator Interconnection Procedures Screens (July 2010), *available at http://www.solarabcs.org/about/publications/reports/ferc-screens/pdfs/ABCS-FERC_studyreport.pdf,* p. 2 and Appendix I.

[218] We note that inverter-based wind turbines would not be excluded from the 2 MW to 5 MW thresholds shown in the Fast Track eligibility table adopted in this Final Rule.

[219] If a Transmission Provider prefers to adopt Fast Track eligibility criteria that differ from the table adopted in this Final Rule and that would accomplish AWEA's proposal, it may propose to do so as part of its compliance filing. Transmission Providers that propose to adopt different Fast Track eligibility criteria must submit compliance filings demonstrating that their proposed approach is consistent with or superior to the table adopted in this Final Rule, or meets another standard allowed in section V of this Final Rule.

[220] IREC at 14–15, Public Interest Organizations at 11.

[221] The Commission adds the following language to the first paragraph of section 2.1 of the SGIP:

However, Fast Track eligibility is distinct from the Fast Track Process itself, and eligibility does not imply or indicate that a Small Generating Facility will pass the Fast Track screens in section 2.2.1 below of the Supplemental Review screens in section 2.4.1 below.

[222] Section 2.3.2 of the SGIP adopted in Order No. 2006 gave the Transmission Provider the discretion to offer to perform a supplemental review if the ''Transmission Provider concludes that the supplemental review might determine that the Small Generating Facility could continue to qualify for interconnection pursuant to the Fast Track Process.''

[223] For the full text of the proposed screens, see section 2.4 of Appendix C to the NOPR. ''Minimum Load Screen'' refers to SGIP section 2.4.1.1 of Appendix C to the NOPR or SGIP section 2.4.4.1 of Appendix C to the Final Rule. The Minimum Load Screen tests whether the aggregate Generating Facility capacity on a line section is less than 100 percent of minimum load for all line sections bounded by automatic sectionalizing devices upstream of the proposed Small Generating Facility (using 100 percent of daytime minimum load for solar PV generators with no battery storage and 100 percent of absolute minimum load for all other Small Generating Facilities).

[224] AWEA, CEP, Clean Coalition, DCOPC, ELCON, FCHEA, IREC, NRG, Public Interest Organizations, SEIA, and UCS.

[225] ITC at 11.

[226] IREC at 17. ''Hosting capacity'' is an alternative approach to the interconnection procedures in the NOPR under which the Transmission Provider calculates the maximum aggregate generating capacity that a distribution circuit can accommodate at a proposed Point of Interconnection without requiring the construction of facilities by the Transmission Provider on its own system and while maintaining the safety, reliability and power quality of the distribution circuit. *See infra* P 0.

[227] IREC at 19.

[228] SEIA at 6.

proposed revisions to the supplemental review process are a well-designed solution for efficiently handling increased volume and penetrations of distributed generation without compromising safety and reliability.[229] NRG Companies states the revised supplemental review process will provide transparency and allow small generators to avoid lengthy and costly interconnection procedures.[230]

114. CPUC notes that the proposed supplemental review screens are modeled after California's Electric Rule 21 and recommends that the Commission adopt the supplemental review screens.[231] CPUC states that the proposed supplemental review screens will harmonize state and federal interconnection standards, allow for increased penetration of Small Generating Facilities, and are consistent with safe and reliable electric service.[232]

115. MISO warns that although the additional screens are designed to create more cohesiveness between the parties and to increase the movement of projects through the interconnection queue, they can instead lead to conflict over the underlying data used in the screens.[233]

116. NYISO & NYTO state that the time required to perform the supplemental review screens would be better spent conducting an Interconnection Feasibility Study.[234] According to NYISO & NYTO, requiring that the performance of the additional screens could exacerbate, rather than mitigate, the time and costs associated with the interconnection process and would not preclude the possibility that the proposed Small Generating Facility may still be required to participate in the Study Process.[235]

b. Commission Determination

117. The Commission adopts the proposed revisions to the customer options meeting and the supplemental review, with some modifications as discussed below, including three supplemental review screens (the Minimum Load Screen,[236] the voltage and power quality screen[237] and the safety and reliability screen[238]). The Commission is persuaded by the comments and by the apparent successful implementation thus far of a similar process in California that the revised customer options meeting and supplemental review will enhance transparency and consistency of the supplemental review process and thus ensure that interconnection remains just and reasonable and not unduly discriminatory, particularly in regions with increasing penetrations of Small Generating Facilities. The Commission further finds that the SGIP retains sufficient flexibility (e.g., through the initial Fast Track screens in section 2.2.1) to meet the needs of regions that do not have significant penetrations of Small Generating Facilities. The Commission believes adopting the revisions to the customer options meeting and the supplemental review best balances the benefits of interconnecting Small Generating Facilities under the quicker, less costly Fast Track Process with the needs of Transmission Providers to protect the safety and reliability of their systems.

3. Minimum Load Screen (SGIP Section 2.4.4.1)

a. Comments

118. IREC, SEIA, the Vote Solar Initiative (VSI) and UCS support including the Minimum Load Screen in the supplemental review.[239] IREC contends that minimum load is an appropriate evaluation standard in the SGIP supplemental review because minimum load is a more accurate metric for evaluating system risk, and many utilities have or soon will have a year or more of minimum load data on some circuits.[240] According to IREC, utilities that are not experiencing high penetrations of distributed generation will not have a need to determine minimum load in the near term and will have time to refine their process for evaluating minimum load as distributed generation penetration grows in their service territory.[241]

119. SEIA states that without the Minimum Load Screen, ratepayers will bear the cost of unnecessarily costly and complex interconnection processes, and that achievement of the states' clean energy policies may be jeopardized.[242] Public Interest Organizations state that the Minimum Load Screen will accommodate higher penetrations of distributed generation without creating significant backlogs in study queues.[243]

120. SEIA and AWEA state that the Minimum Load Screen, which is similar to CPUC Rule 21, is a national best practice for distributed generation penetration levels and demonstrates that aggregate interconnected generating capacity can be 100 percent of minimum load on a distribution line section without impairing safety or reliability.[244] SEIA notes that the California Utilities called Rule 21 ''a model for use in reforming the Fast Track [P]rocess''[245] and that EEI indicated support for a minimum load screen similar to the one in Rule 21 in the context of a supplemental review process.[246] SEIA states that California's experience with Rule 21 demonstrates the viability of the Minimum Load Screen on a national level so there is no need for a lower standard.[247] Given the widespread support for the Minimum Load Screen, NREL analysis, the CPUC's adoption of the Rule 21 minimum load screen, and the technical feasibility and protections afforded by the other proposed supplemental review screens, SEIA urges the Commission to adopt the proposed supplemental review process, including the Minimum Load Screen.[248] Clean Coalition credits the Rule 21 supplemental review with leading to significant improvements in the Fast Track Process, including allowing larger projects to succeed under the Fast Track Process than would be allowed under the 15 Percent Screen.[249] FCHEA recommends that all types of distributed generation, especially stationary fuel cells, be included in the new screen.[250]

121. NREL considers minimum daytime load, as included in the proposed Minimum Load Screen, to be the appropriate approach for solar PV systems because it more precisely estimates the ratio between generation and load on a line section.[251]

122. NRECA, EEI & APPA and NYISO & NYTO do not support the Minimum Load Screen, stating that minimum load is not a critical system operating criterion and cannot be determined accurately because line section

[229] AWEA at 4 and IREC at 17.

[230] NRG at 4.

[231] CPUC at 6–7. California Electric Rule 21 is the California distribution level interconnection rules and regulations (Rule 21). It includes supplemental review screens similar to those proposed by the Commission in the NOPR.

[232] CPUC at 7.

[233] MISO at 8–9.

[234] NYISO & NYTO at 20–21.

[235] *Id.* at 21.

[236] *See* SGIP section 2.4.4.1 of Appendix C attached hereto.

[237] *See* SGIP section 2.4.4.2 of Appendix C attached hereto.

[238] *See* SGIP section 2.4.4.3 of Appendix C attached hereto.

[239] IREC at 17; SEIA at 4–5; VSI at 2; and UCS at 18–19.

[240] IREC at 17–18.

[241] *Id.* at 18–19.

[242] SEIA at 6.

[243] Public Interest Organizations at 13–14.

[244] SEIA at 6; AWEA at 4.

[245] SEIA at 6 (citing comments of the California Utilities in Docket No. AD12–17–000 at 4).

[246] *Id.* at 6–7 (citing EEI comments in Docket No. AD12–17–000 at 11, n. 10).

[247] *Id.* at 10.

[248] *Id.*

[249] Clean Coalition at 7.

[250] FCHEA at 2.

[251] NREL at 4.

monitoring is typically unavailable.[252] NRECA, EEI & APPA contend that the investment needed to obtain the data would be unacceptably high unless a utility has other operational reasons for investing in the measuring devices needed to acquire the data.[253]

123. Duke Energy expresses concern about the proposal to calculate daytime minimum load, stating that calculating minimum load when actual load data are not available may not adequately reflect system conditions.[254]

124. SEIA claims that NRECA, EEI & APPA's NOPR comments that describe how utilities use other sources of information to estimate minimum load data demonstrate that the proposed *pro forma* SGIP gives Transmission Providers sufficient flexibility to perform the Minimum Load Screen when minimum load data are not available.[255]

125. UCS asserts that the Commission should order utilities to start collecting daytime minimum load data in areas where distributed generation penetration levels of five percent of peak load or higher are proposed.[256]

126. NRECA, EEI & APPA contend that utilities must take an ''appropriately cautious'' approach to integrating distributed generation because the industry is still in the early stages of evaluating the impact that increased distributed generation will have on transmission and distribution systems.[257] They claim that rapid integration of distributed generation can cause the flow direction to change and introduce significant reliability concerns. They argue that while interconnection studies may identify reverse power flow issues and possible solutions, more detailed studies of individual line protection and control devices are necessary to prevent damage to Transmission Provider equipment.[258]

127. NRECA, EEI & APPA dispute SEIA's claims that the Minimum Load Screen is widely supported, offering their own opposition as evidence to the contrary. They also urge the Commission to give substantial weight to Transmission Provider comments about the Minimum Load Screen because they are responsible for ensuring the safety and reliability of their systems.[259]

128. NRECA, EEI & APPA assert that the Minimum Load Screen: (1) Is not consistent with Good Utility Practice because utilities typically do not operate their systems at or beyond the threshold of when problems are known to occur; (2) limits the utility's future flexibility to move loads when new facilities are built in an area and limits the ability to deploy additional line sectionalizing devices for reliability enhancement; (3) requires the utility to maintain some amount of minimum load on a feeder where a distributed generation project has been operating and a large load is lost; and (4) results in additional costs being recovered from all other customers to rectify the problems, requiring additional infrastructure investment to move loads by constructing new feeder ties or other needed solutions.[260] Therefore, they urge the Commission to retain the existing 15 Percent Screen.[261]

129. Duke Energy believes that the Minimum Load Screen may not provide a sufficient margin of safety to account for the variability of load on a distribution circuit and for the variability of output of certain types of Small Generating Facilities.[262] Duke Energy asserts that the intermittent nature of PV generation connected on distribution lines may interfere with smart grid applications and load monitoring equipment, and may cause restoration schemes and voltage and reactive power schemes to operate improperly. Duke Energy states that the existing 15 Percent Screen has a safety margin for minimum load built into the screen, which minimizes the negative effects of variable generation.[263] Duke Energy also comments that the Minimum Load Screen will require utilities to estimate minimum load and that these estimates may involve high rates of error.[264]

130. IREC argues, however, that Transmission Providers infrequently have to transfer load between circuits and can retain flexibility on a particular circuit by identifying this need through the application of the additional supplemental review screens.[265] IREC further states that the safety, reliability, and power quality screens in the supplemental review process, along with providing 20 business days for the Transmission Provider to perform the supplemental review, provide utilities with sufficient time and flexibility to evaluate a proposed generator and enable more generators to be interconnected safely without a full study.[266]

131. IREC asserts that it is inappropriate to view the Minimum Load Screen in isolation from the other supplemental review screens.[267] IREC argues that when viewed together, the supplemental review screens provide the flexibility to identify circumstances where high penetrations of distributed generation may require additional study.[268] SEIA and Public Interest Organizations similarly assert that even if a proposed Small Generating Facility passes the Minimum Load Screen, it would be subject to additional study if it failed either of the other two screens, which address reliability and operational flexibility.[269] IREC states that inverter-based systems minimize risks that may arise at higher penetrations.[270] IREC further states that the Minimum Load Screen does not increase the risk of problems related to load changes and notes that problems related to load changes could also be raised in relation to projects that undergo the Study Process (*i.e.,* increasing the number of generators that are able to interconnect without full study does not exacerbate the problem associated with changes in load, nor would requiring full study for more generators reduce this risk).[271] SEIA states that the Minimum Load Screen is conservative because the likelihood of every generator on a circuit generating power at its nameplate capacity while the circuit's load is simultaneously at its minimum is extremely rare.[272]

132. NRECA, EEI & APPA state that if the Commission adopts a minimum load screen, 67 percent for such a screen is a reasonable starting point because it provides an appropriate initial buffer to protect safety, reliability and power quality, and is consistent with the configuration of many distribution systems.[273] Further, they claim that any threshold higher than 67 percent of minimum load for those distribution circuits involving both inverter-based PV and rotating generator machines would impose an unacceptable threat to safety, reliability, and power quality.[274] They argue that no more than a 33 percent minimum load screen is

[252] NRECA, EEI & APPA at 23 and NYISO & NYTO at 21.

[253] NRECA, EEI & APPA at 23.

[254] Duke Energy at 11–12.

[255] SEIA Reply Comments at 4.

[256] UCS at 20.

[257] NRECA, EEI & APPA Reply Comments at 7.

[258] *Id.* at 6.

[259] *Id.* at 10.

[260] NRECA, EEI & APPA at 26.

[261] *Id.* at 7.

[262] Duke Energy at 10.

[263] *Id.* at 11.

[264] *Id.* at 11–12.

[265] IREC at 24.

[266] *Id.* at 17.

[267] *Id.* at 22.

[268] *Id.*

[269] Public Interest Organizations at 14 and SEIA at 8.

[270] IREC at 23.

[271] *Id.*

[272] SEIA at 8–9.

[273] NRECA, EEI & APPA Reply Comments 9.

[274] NRECA, EEI & APPA at 7, 25.

appropriate for areas or applications involving only rotating machines.[275] They state that the Commission could follow the Massachusetts Department of Public Utilities' procedure by adopting a 67 percent minimum load screen and holding an annual technical workshop with interested parties to determine whether the percentage chosen for the screen is working as planned or determine whether the chosen percentage should be revised.[276]

133. SEIA contends that the 67 percent Minimum Load Screen is inappropriate because the only rationale presented was the adoption of this screen on an interim basis in Massachusetts.[277] Sandia and SEIA state that the 67 percent minimum load screen adopted in Massachusetts serves only as an interim standard while a working group investigates the appropriate level for a minimum load screen.[278] SEIA asserts that holding annual technical conferences to reassess the Minimum Load Screen will impose uncertainty on utilities and developers and will burden the Commission.[279]

134. Sandia, IREC and SEIA argue that a 67 percent minimum load screen lacks technical justification.[280] Sandia and IREC note that the 67 percent minimum load screen adopted in Massachusetts on an interim basis was derived from a Sandia report on anti-islanding, and that it is not appropriate to use the screen to determine if further study of a Small Generating Facility is required.[281] IREC asserts that a 67 percent minimum load screen would do little to improve the interconnection process.[282]

135. SEIA further states that NREL determined that if aggregate generation on a line section is below 100 percent of minimum load, the risk of power backfeeding beyond the substation is minimal; therefore power quality, voltage control and other safety and reliability concerns may be addressed without a full study of the proposed Small Generating Facility.[283] SEIA also notes that at the July 17, 2012 technical conference,[284] NREL stated that there are systems designed to work well with aggregate generation in excess of 100 percent of minimum load and there is no ''hard and fast ceiling'' that exceeding 100 percent of daytime minimum load would cause a system to fail.[285]

136. Sandia states that there are many circuits with aggregated PV that are operating above 100 percent of minimum load, but the risk of unintentional islanding of inverter-based distributed generation is extremely low.[286] Therefore, Sandia asserts that, for distributed generation with anti-islanding capability,[287] a screening threshold of 100 percent of minimum load is sufficiently conservative to mitigate the risk of unintentional islanding.[288]

137. NREL states that it has documented examples of PV systems operating at levels over 300 percent of minimum daytime load.[289] NREL believes that utilities should be encouraged to increase this penetration screen percentage on line sections with feeders that have shorter average distances to a substation, lower average impedance, and a lower average stiffness factor.[290]

138. MISO suggests that for facilities less than 100 kV, it may be more efficient to assess the impact of a possible back-feed event rather than conduct a Minimum Load Screen analysis.[291]

139. VSI asserts that the Minimum Load Screen can be implemented without the other supplemental review screens for two reasons: (1) Minimum daytime loads tend to occur in the early morning hours and are not coincident with maximum solar output; and (2) the diversity of solar installations adds to the safety margin because the varying size, angles, orientations, and regional cloud cover make it unlikely that the generation of all the solar installations will peak at the same time.[292]

140. NRECA, EEI & APPA suggest deleting the proposed requirement to consider only net export energy from small generators that serve onsite load (proposed SGIP section 2.4.1.1.2) because it requires consideration of the net export of power by the Small Generating Facility that may flow on the Transmission Provider's system rather than total output of the Small Generating Facility in the application of the Minimum Load Screen. They argue that on-site load can vary and cannot be counted on to consume some of the Small Generating Facility's output. The commenters also state that relying on reverse power relays alone does not mitigate all concerns related to the potential impact of reverse power flow on the Transmission Provider's system.[293]

b. Commission Determination

141. The Commission adopts the Minimum Load Screen [294] as proposed in the NOPR, with modifications as discussed below. We appreciate the concerns of Transmission Providers with regard to the Minimum Load Screen, but believe that the Minimum Load Screen is sufficiently conservative, particularly when viewed together with the other two supplemental review screens. Taken as a whole, the supplemental review screens provide the flexibility to identify circumstances when additional studies may be required while avoiding an unjust and unreasonable increase in expense and delay in interconnection. That is, the three screens in the supplemental review are designed to strike a balance between handling the increased volume of interconnection requests and penetrations of small generators and maintaining the safety and reliability of the electric systems.

142. The Minimum Load Screen is used in assessing whether an Interconnection Customer that initially failed the Fast Track screens may still interconnect under the Fast Track Process. If the aggregate generating capacity on a line section, including the proposed Small Generating Facility, is less than 100 percent of minimum load, there are two additional screens, the voltage and power quality screen and the safety and reliability screen, that the Small Generating Facility must pass to be interconnected. Regarding NRECA, EEI & APPA's assertion that the use of 100 percent of minimum load limits the flexibility to move loads and the ability to deploy additional sectionalizing

[275] *Id.* at 25.

[276] *Id.*

[277] SEIA Reply Comments at 3.

[278] Sandia at 4 and SEIA at 9 (citing *Order on the Distributed Generation Working Group's Redlined Tariff and Non-Tariff Recommendations,* Massachusetts Department of Public Utilities 11–75–E at 34).

[279] SEIA Reply Comments at 3.

[280] IREC at 20–21; Sandia at 4; and SEIA at 9.

[281] IREC at 20–21 and Sandia at 4, citing M. Ropp and A. Ellis, *Suggested Guidelines for Assessment of DG Unintentional Islanding Risk,* Sandia National Laboratories (March 2013), p. 5, available at: *http://energy.sandia.gov/wp/wp-content/gallery/uploads/SAND2012-1365-v2.pdf.*

[282] IREC at 21.

[283] SEIA at 7 (citing NREL, Technical Report: Updating Small Generator Interconnection Procedures for New Market Conditions 30 (Dec. 2012)).

[284] *See supra* P 0.

[285] SEIA at 7 (citing Technical Conference Transcript at 92:15–21).

[286] Sandia at 5.

[287] *Id.* at 4–5 (noting that all new UL 1741-listed inverter-based distributed generation must have anti-islanding capability).

[288] *Id.* at 5.

[289] NREL at 4.

[290] *Id.* at 5, stiffness factor is defined as the available utility fault current divided by the distributed generation rated output current at the point of common coupling.

[291] MISO Comments at 9.

[292] VSI at 3.

[293] NRECA, EEI & APPA, Appendix B at 2.

[294] *See* SGIP section 2.4.4.1 of Appendix C attached hereto.

devices for reliability enhancement, we note that one of the factors to be considered in the safety and reliability screen of the supplemental review asks whether operational flexibility is reduced by the proposed Small Generating Facility (see SGIP section 2.4.1.3.5). Therefore, the Commission agrees with IREC that this concern can be evaluated under the safety and reliability screen.

143. The Commission finds that a 100 percent minimum load screen more appropriately balances these considerations than the 33 and 67 percent minimum load screens proposed by NRECA, EEI & APPA. We note that a 33 percent minimum load screen would be even more conservative than the existing 15 Percent Screen (which approximates a 50 percent minimum load screen).[295]

144. The Commission acknowledges the concerns of NRECA, EEI & APPA and NYISO & NYTO that minimum load does not represent a critical system operating criterion so currently minimum load data are typically not measured and/or recorded, but the Commission agrees with IREC that minimum load is a more accurate metric for evaluating system risk posed by a potential interconnection than peak load. The Commission also acknowledges IREC's comment that Transmission Providers experiencing high penetrations of Small Generating Facilities have or soon may have a year or more of minimum load data on some circuits. Contrary to UCS' request and in response to NRECA, EEI & APPA's comments, the Commission is not at this time requiring Transmission Providers to purchase equipment or otherwise make investments to obtain minimum load data. The adopted reform gives the Transmission Provider the flexibility to calculate, estimate or determine minimum load if data are not available. Further, the language allows the Transmission Provider not to perform the Minimum Load Screen if data are unavailable or if it is unable to calculate, estimate or determine minimum load.[296]

145. Regarding Duke Energy's concern that calculations of daytime minimum load may not adequately reflect system conditions, the Commission clarifies that if the Transmission Provider is concerned that its minimum load calculations may not adequately reflect system conditions in a particular instance and the Transmission Provider is unable to correct for any inaccuracies in the calculations or estimate or determine minimum load in some other way, the Transmission Provider may elect not to perform the Minimum Load Screen. However, the Transmission Provider must provide the reason it is unable to perform the screen to the Interconnection Customer, in accordance with SGIP section 2.4.4.1.

146. Regarding Duke Energy's assertion that the 15 Percent Screen should be maintained because it includes a safety margin that minimizes the negative effects of intermittent generation (such as problems with smart grid applications, load monitoring equipment, restoration schemes, and voltage and reactive power control schemes), the Commission finds that such issues are appropriately addressed under the voltage and power quality and the safety and reliability screens of the supplemental review.

147. The Commission acknowledges comments that utilities study the aggregate nameplate generation on the system relative to the Small Generating Facility output, that on-site load can vary, and that Transmission Providers should not net out on-site load when applying the Minimum Load Screen. Rather than deleting proposed section 2.4.1.1.2 [297] entirely, however, the Commission changes ''onsite electrical load'' to ''station service load,'' since station service load is typically netted out when considering the aggregate generation. Further, the Commission modifies section 2.4.4.1 to clarify that on-site load served by a proposed Small Generating Facility should be accounted for in minimum load for the purpose of applying the Minimum Load Screen.

148. Finally, the Commission disagrees with VSI that the Minimum Load Screen alone is generally sufficient to determine if a Small Generating Facility may be interconnected safely and reliably without undergoing full study. The additional screens are necessary to ensure the safety and reliability of the proposed interconnection and to allow Transmission Providers the flexibility to identify issues that may be unique to a particular Small Generating Facility.

4. Voltage and Power Quality Screen and Safety and Reliability Screen (SGIP Sections 2.4.4.2 and 2.4.4.3)

a. Comments

149. The Commission received a number of comments regarding the details of the proposed voltage and power quality screen [298] and the safety and reliability screen.[299] NYISO & NYTO are concerned that these screens could be passed by a single generator, but aggregate distributed generation in an area could result in voltage and/or power quality issues to neighboring customers.[300]

150. ITC notes that it has performed power quality screens and asserts that performing the voltage and power quality screen requires monitoring equipment that is typically found on distribution-level systems and adding it to ITC's transmission-level system would present ''substantial logistical problems.'' [301] ITC states that performing the power quality and voltage screen would impose costs in excess of the $2,500 supplemental review fee without providing commensurate benefits.[302] Similarly, NRECA, EEI & APPA state that the power quality and voltage screen is difficult to perform without detailed engineering analysis and the $2,500 supplemental review fee would not cover the cost of performing the screen.[303] ITC does not recommend increasing the supplemental review fee to cover the cost of performing this screen. Rather, ITC recommends that the voltage and power quality screen should be an optional analysis performed at the request of individual Interconnection Customers on a fee-for-service basis. Alternatively, ITC suggests that the inclusion and precise methodology of this screen should be left to the discretion of individual ISOs/RTOs.[304]

151. NRECA, EEI & APPA note that the voltage and power quality screen does not specify if the screen applies at the point of common coupling or at the Point of Interconnection.[305]

152. NRECA, EEI & APPA suggest revising the screen as follows:

[295] The 15 Percent Screen can be viewed as a ''rule of thumb'' that minimum load is approximately 30 percent of peak load on a given line section with a 50 percent safety margin. *See* Nat'l Renewable Energy Lab, *Updating Interconnection Screens for PV System Integration* 2 (Feb. 2012), *available at http://www.nrel.gov/docs/fy12osti/54063.pdf.*

[296] Under section 2.4.4 of the SGIP adopted herein, if a Transmission Provider is unable to perform the Minimum Load Screen, it must notify the Interconnection Customer to obtain the Interconnection Customer's permission to continue the supplemental review (*see infra* P 0), to terminate the supplemental review or to withdraw the interconnection request. Further, in section 2.4.4.1 of the SGIP, when the Transmission Provider notifies the Interconnection Customer of the results of the supplemental review, it must include the reason that it is unable to perform the Minimum Load Screen.

[297] Section 2.4.4.1.2 in the SGIP adopted herein.

[298] *See* SGIP section 2.4.1.2 of Appendix C to the NOPR.

[299] *See* SGIP section 2.4.1.3 of Appendix C to the NOPR.

[300] NYISO & NYTO at 21.

[301] ITC at 13–14.

[302] *Id.* at 13–15.

[303] NRECA, EEI & APPA, Appendix B at 3.

[304] ITC at 13–15.

[305] NRECA, EEI & APPA, Appendix B at 3.

2.4.1.2 In aggregate with existing generation on the line section:

~~(1)~~2.4.1.2.1 the voltage regulation on the line section can be maintained in compliance with relevant requirements under all system conditions such that load on the Transmission Provider's transformer with automatic voltage control or line voltage regulator is 20% greater than the aggregate generation on the line section;

~~(2)~~2.4.1.2.2 the voltage fluctuation is within acceptable limits as defined by Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or utility practice similar to IEEE Standard 1453; and

~~(3)~~2.4.1.2.3 the harmonic levels meet IEEE Standard 519 limits at the Point of Interconnection.[306]

153. NRECA, EEI & APPA recommend adding the following final sentence to proposed SGIP section 2.4.1.3: ''If any one or more of the following safety and reliability protection test screens fail, then proceed to a feasibility and/or system impact study in [s]ections 3.3 and 3.4.'' [307]

154. In addition, NRECA, EEI & APPA recommend adding the following to proposed section 2.4.1.3: ''For safety and reliability protection of the line section, the aggregate generation existing, in queue for installation, and being proposed shall be considered for evaluating the generation types within the regional limits established for interactive system operability as specified by the Transmission Provider.'' [308]

155. Finally, NRECA, EEI & APPA suggest deleting proposed SGIP section 2.4.1.3.3, which examines the proposed interconnection's proximity to the substation and the class of conductor cable between the substation and the proposed Point of Interconnection, because different distribution line constructions can affect system impedance differently.[309]

b. Commission Determination

156. The Commission adopts the NOPR proposal for the voltage and power quality screen and the safety and reliability screen, as modified below.

157. Regarding NYISO & NYTO's concern that the voltage and power quality and safety and reliability screens could be passed by a single generator, but aggregate distributed generation in an area could result in voltage and/or power quality issues to neighboring customers, we note that sections 2.4.4.2 and 2.4.4.3 of the SGIP adopted herein specify that the proposed Small Generating Facility should be evaluated with existing aggregate generation on a line section, so any issues associated with aggregate generation should emerge as a result of the performance of these screens.

158. In response to ITC's comment that the cost of the voltage and power quality screen may be greater than the benefit associated with the screen and NRECA, EEI & APPA's comment that this screen is difficult to perform without detailed engineering analysis, we will permit Transmission Providers to propose an alternative methodology for performing this screen when submitting filings in compliance with this Final Rule.[310]

159. In response to NRECA, EEI and APPA, the Commission clarifies that a proposed interconnection being evaluated under the voltage and power quality supplemental review screen must meet the requirements as specified in the applicable IEEE standards. Therefore, we delete ''at the Point of Interconnection'' from section 2.4.4.2 of the *pro forma* SGIP adopted herein so there is not a conflict between the SGIP and the IEEE standards.

160. The Commission declines to add ''such that load on the Transmission Provider's transformer with automatic voltage control or line voltage regulator is 20 [percent] greater than the aggregate generation on the line section'' to section 2.4.4.2 of the SGIP adopted herein as suggested by NRECA, EEI & APPA because the commenters do not provide an explanation or support for making this revision. For the same reasons the Commission declines to add the language under section 2.4.4.3 as proposed by NRECA, EEI & APPA.

161. Finally, the Commission acknowledges NRECA, EEI & APPA's concerns regarding different distribution line constructions affecting system impedance differently. Therefore, in order to account for differences in distribution systems and to make this section consistent with the Fast Track eligibility table in section 2.1 of the SGIP, the Commission adopts the following language in section 2.4.4.3.3 of the SGIP:

> Whether the proposed Small Generating Facility is located in close proximity to the substation (i.e., less than 2.5 electrical circuit miles), and whether the line section from the substation to the Point of Interconnection is a Mainline rated for normal and emergency ampacity.

5. Supplemental Review Screen Order (SGIP Section 2.4.2)

a. Comments

162. NRECA, EEI & APPA argue that the safety and reliability screen should be performed first in the supplemental review, and that a Small Generating Facility that fails the safety and reliability screen should be required to proceed directly to the Study Process.[311] They assert that Transmission Providers could be spared the time and cost of performing the remaining supplemental review screens if it is known at the beginning of the supplemental review that interconnection of a Small Generating Facility poses a threat to the safety and reliability of the system.[312]

163. SEIA opposes any change to the order in which the supplemental review screens are applied.[313] SEIA contends

[306] *Id.*

[307] *Id.*

[308] *Id.*

[309] *Id.*

[310] *See infra* section V.

[311] NRECA, EEI & APPA at 26.

[312] *Id.* at 27.

[313] SEIA Reply Comments at 2.

that the Commission's supplemental review screens are proposed to be completed in the same manner as the Rule 21 screens.[314] Thus, SEIA contends that the Commission proposed that the three supplemental review screens be conducted in the following order: (1) Minimum Load Screen; (2) power quality and voltage screen; and (3) safety and reliability screen. SEIA states that the Commission should maintain this order to avoid inconsistencies between the SGIP and Rule 21.[315] SEIA also argues that changing the order of the screens will not save utilities the time and expense of performing additional screens because the Interconnection Customer bears the cost of the supplemental review, not the utility.[316]

b. Commission Determination

164. In order to allow for flexibility in the supplemental review process and to potentially save the Interconnection Customer the cost of unnecessary supplemental review screens, the Commission adopts language in SGIP section 2.4 that allows the Interconnection Customer to specify an order in which the supplemental review screens are to be performed, as well as a requirement that the Transmission Provider notify the Interconnection Customer if the Small Generating Facility fails any of the screens and obtain the Interconnection Customer's permission to continue with the supplemental review for informational purposes or in order to determine if the interconnection may proceed with minor modifications to the Transmission Provider's system.[317] The Commission finds, contrary to arguments by NRECA, EEI & APPA and SEIA, that because the Interconnection Customer is paying for the screens, the Interconnection Customer should be able to specify the order in which the Transmission Provider performs the screens. However, we note that any delay in obtaining permission from an Interconnection Customer under these requirements may impact the Transmission Provider's ability to complete the supplemental review within the specified timeframe. To avoid the possibility of any such delays, an Interconnection Customer may provide instructions for how to proceed after a supplemental review screen failure at the time the Interconnection Customer accepts the Transmission Provider's offer to perform the supplemental review under section 2.4.1 of the *pro forma* SGIP adopted herein.

6. Supplemental Review Fee (SGIP Sections 2.4.1 and 2.4.3)

a. Comments

165. NREL believes that the $2,500 supplemental review fee strikes a balance in cost and time and supports the fee.[318] IECA states that the $2,500 fee is appropriate.[319]

166. NRECA, EEI & APPA and ISO–NE do not believe the $2,500 fee covers the cost of performing the supplemental review.[320] NRECA, EEI & APPA recommend, at the very least, that the $2,500 fee represents a base payment, and that the fee be adjusted for inflation with either the Consumer Price Index or the Handy-Whitman Index.[321] ISO–NE requests regional flexibility to determine a fee that adequately covers the supplemental review costs.[322]

167. NYISO & NYTO estimate the actual cost of a supplemental review will be approximately equivalent to the cost of an average interconnection feasibility study for a Small Generating Facility ($30,000), and therefore claim that the proposed $2,500 supplemental review fee is insufficient to cover the cost of the review.[323] NYISO & NYTO propose either adopting a higher supplemental review fee or retaining the existing requirement that the Interconnection Customer provide a deposit for the estimated cost of the work, which would be refunded, based on actual costs.[324]

168. ITC and PJM assert that Interconnection Customers should be required to pay the Transmission Provider for its actual cost incurred in performing the supplemental review rather than a flat $2,500 fee, which may result in over- or under-recovery of the Transmission Provider's actual incurred expenses.[325] ITC believes the $2,500 fee will be ''consistently and substantially less than the true cost'' of performing the proposed supplemental review.[326] DCOPC requests that the Commission ensure that the Interconnection Customer is solely responsible for all supplemental review costs rather than allocating these costs to load.[327] If the Commission does not require the Interconnection Customer to pay the actual cost of the supplemental review, PJM requests clarification by the Commission that allocating costs in excess of the $2,500 review fee to load is just and reasonable.[328]

169. ITC recommends that the Commission adopt a ''deposit/not-to-exceed'' fee structure whereby the Interconnection Customer provides an initial deposit and identifies an amount that the Transmission Provider is not to exceed while it prepares the supplemental review.[329] ITC proposes that the supplemental review costs could be trued-up based on actual incurred costs after the study is complete.[330]

b. Commission Determination

170. The Commission agrees with commenters that the Interconnection Customer should be responsible for the actual cost of conducting the supplemental review, therefore, the Commission adopts a supplemental review fee based on actual costs. We are concerned that because the supplemental review is not based solely on information already available to the Transmission Provider (unlike the pre-application report), there may be significant cost differences between supplemental reviews for different projects. Therefore, a fixed fee would result in Interconnection Customers with smaller supplemental review costs subsidizing Interconnection Customers with larger supplemental review costs.

171. Similar to the supplemental review and other processes (e.g., the feasibility study and the system impact study) in the *pro forma* SGIP,[331] prior to performing the supplemental review, the Transmission Provider will be required to provide the Interconnection Customer with a good faith estimate of the cost to perform the supplemental review, and the Interconnection Customer will be required to pay this amount as a deposit in advance of the supplemental review. After the supplemental review is complete, the Transmission Provider and the Interconnection Customer will reconcile any difference between the deposit paid by the Interconnection Customer and the actual cost to perform the supplemental review.

172. Consistent with the Commission's determination on SGIP study cost responsibility in Order No. 2006, the Interconnection Customer will

[314] *Id.* at 5.

[315] *Id.*

[316] *Id.*

[317] *See infra* P 0.

[318] NREL at 4.

[319] IECA at 5.

[320] NRECA, EEI & APPA at 22–23; ISO–NE at 17.

[321] NRECA, EEI & APPA at 22–23.

[322] ISO–NE at 17.

[323] NYISO & NYTO at 19.

[324] *Id.* at 19–20.

[325] ITC at 12; and PJM at 12.

[326] ITC at 12.

[327] DCOPC at 7.

[328] PJM at 12.

[329] ITC at 12–13.

[330] *Id.* at 8, 12–13.

[331] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 187.

be required to pay for the supplemental review, regardless of the conclusions reached, rather than unreasonably shift this cost to other transmission customers that do not benefit from the review. However, whenever possible, the Transmission Provider should use existing information and studies instead of performing additional analyses for the supplemental review in order to reduce costs for the Interconnection Customer. Although the Interconnection Customer is not to be charged for such existing information and studies, it is responsible for costs associated with any new analysis and any modification to an existing analysis that are reasonably necessary to evaluate the proposed interconnection under the supplemental review.

173. We are not adopting ITC's proposal to allow Interconnection Customers to specify the maximum amount that the Transmission Provider may spend to prepare the supplemental review. Rather, the Commission believes that the Transmission Provider's good faith estimate of the cost to perform the review, along with the requirement described above that the Transmission Provider notify the Interconnection Customer upon failure of a supplemental review screen, provides the Interconnection Customer with a reasonable degree of transparency and cost certainty in the supplemental review process.

7. Process Following Completion of the Customer Options Meeting and the Supplemental Review (SGIP Sections 2.3.1, 2.4.4 and 2.4.5)

a. Comments

174. NRECA, EEI & APPA, MISO and ITC request additional clarification regarding what changes qualify as ''minor modifications'' to the Transmission Provider's system.[332] ITC requests that the Commission provide a cost threshold or a more extensive list of examples of what constitutes a minor modification.[333] NRECA, EEI & APPA believe that ''minor'' would mean that ''the proposed interconnection requires no construction of facilities by the Transmission Provider on its own system'' and refers to modifications such as ''changing meters, fuses, [and] relay settings'' on the Transmission Provider's system.[334]

175. NYISO & NYTO request that ''minor modifications'' only include upgrades that fall within the definition of Local System Upgrade Facilities in the NYISO tariff.[335] NYISO & NYTO also request that the Commission clarify the extent to which security is required for such modifications and clarify that the Transmission Provider will forward the Interconnection Customer an interconnection agreement that requires the Interconnection Customer to pay the costs of the required system modifications prior to interconnection and requests that the Commission make similar modifications to the proposed requirement in section 2.4.2 regarding the provision of an interconnection agreement when the interconnection only requires minor modifications.[336] NYISO & NYTO propose that the Commission also modify section 2.4.2 of the SGIP to require that an Interconnection Customer's interconnection request ''shall'' be evaluated under the Study Process if it requires more than minor modifications to the Transmission Provider's system or be withdrawn.[337]

176. NYISO & NYTO state that since the supplemental review is optional, an Interconnection Customer's failure to agree and pay for the supplemental review should not lead to the withdrawal of its interconnection request. They request that the Commission require that if an Interconnection Customer does not agree in writing and pay the supplemental review fee within 15 business days, its interconnection request shall be directed to the Study Process for evaluation.[338]

177. ISO–NE argues that requiring the Transmission Provider to provide the Interconnection Customer with an interconnection agreement within five business days of the customer options meeting when the Interconnection Customer agrees to pay for modifications to the Transmission Provider's system is problematic.[339] Further, ISO–NE asserts that the existing ten business day deadline for providing an interconnection agreement following supplemental review when modifications to the Transmission Provider's system are required is extremely tight and states that the Commission should not reduce this timeframe.[340]

178. PJM is concerned that Transmission Providers will not be able to provide an executable interconnection agreement within five business days if the Interconnection Customer chooses to move forward based on the non-binding good faith estimate to perform modifications to the Transmission Provider's system offered during the customer options meeting. PJM therefore requests that the Commission allow ten business days, which it believes will enable more projects to obtain a quick interconnection agreement.[341] PJM also asks that the Commission increase each of the timeframes concerning the provision of interconnection agreements in the current supplemental review process by adding five business days to each stated deadline to accommodate the greater number of interconnection agreements that may result from the proposed reforms to the Fast Track Process.[342]

179. Bonneville Power Administration (Bonneville) states that the supplemental review should include an examination of Affected Systems.[343]

180. Finally, NYISO & NYTO request that the Commission retain ''does not'' in section 2.2.4 of the SGIP in order to enable the Interconnection Customer to have a customer options meeting when the Transmission Provider has the capability to but does not determine from the initial screens that the proposed facility can be interconnected safely and reliability under current system conditions.[344] Section 2.2.4 of the SGIP currently states that the Transmission Provider will offer Interconnection Customers a customer options meeting if the proposed interconnection fails the Fast Track screens but the Transmission Provider ''does not or cannot'' determine that the facility could interconnect consistently with safety, reliability, and power quality standards. In the NOPR, the Commission proposes to replace ''does not or cannot determine'' with ''cannot determine.''

b. Commission Determination

181. The Commission adopts the NOPR proposal to govern the process after the supplemental screen(s) have

[332] ITC at 13; MISO at 8; and NRECA, EEI & APPA at 22 (citing the NOPR, 142 FERC ¶ 61,049 at P 33 (stating that the Transmission Provider must offer to perform minor modifications to its system and provide a non-binding estimate of the cost at the customer options meeting)).

[333] ITC at 13.

[334] NRECA, EEI & APPA at 22 (citing the proposed *pro forma* SGIP at sections 2.3.1 and 2.4.2).

[335] NYISO & NYTO at 19.

[336] *Id.*

[337] *Id.* at 20.

[338] *Id.*

[339] ISO–NE at 16.

[340] *Id.* at 16–17.

[341] PJM at 11.

[342] *Id.* at 12.

[343] Bonneville at 3–4. An Affected System is ''[a]n electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.'' SGIP, Attachment 1.

[344] NYISO & NYTO at 18.

been completed as modified below. We agree with NYISO & NYTO that section 2.4.5 of the SGIP should be modified to require that an Interconnection Customer's interconnection request ''shall'' be evaluated under the Study Process if it requires more than minor modifications to the Transmission Provider's system, and the Interconnection Customer does not withdraw its Small Generating Facility. To further clarify the outcome of the supplemental review process, the Commission adopts language in section 2.4.5 for the following circumstances: (1) The proposed interconnection passes the supplemental review screens and does not require construction of facilities by the Transmission Provider on its own system; (2) interconnection facilities or minor modifications to the Transmission Provider's system are required for the proposed interconnection to pass the supplemental review screens; and (3) the proposed interconnection would require more than interconnection facilities or minor modifications to the Transmission Provider's system to pass the supplemental review screens. In the first circumstance, the proposed interconnection passes the supplemental review screens, and the Interconnection Customer is provided with an interconnection agreement within ten business days of notification of the supplemental review results. In the second circumstance, the proposed interconnection passes the supplemental review screens, and, if the Interconnection Customer agrees to pay for the modifications to the Transmission Provider's system, the Interconnection Customer is provided with an interconnection agreement within 15 business days of receiving written notification of the supplemental review results. In the third circumstance, the proposed interconnection does not pass the supplemental review screens and must continue to be evaluated under the Study Process unless the Interconnection Customer withdraws its Small Generating Facility.

182. The Commission affirms that, consistent with Order No. 2006, examples of ''minor modifications'' to the Transmission Provider's system in the context of the supplemental review include changing meters, fuses, and relay settings.[345] However, we also note that these are examples only and therefore minor modifications could include other items that the Transmission Provider determines could be made to its system safely and reliably without further study of the interconnection. Because ''minor modifications'' could include items other than the listed examples,[346] the Commission does not herein establish a cost threshold or a more extensive list of items that would qualify as ''minor modifications.'' We do, however, modify section 2.4.5 to include language that the Transmission Provider will provide an interconnection agreement to the Interconnection Customer if the Interconnection Customer agrees to pay for the modifications to the Transmission Provider's system, similar to the language in section 2.3.1 of the SGIP.

183. The Commission disagrees with NYISO & NYTO that the time spent on a supplemental review would be better spent on a feasibility study. The Commission acknowledges that a supplemental review could add to the overall time of the interconnection process if a project fails the supplemental review and must be evaluated under the Study Process. However, if the Small Generating Facility is able to be interconnected under the Fast Track Process as a result of undergoing supplemental review, the interconnection process will be much shorter when compared with the Study Process. Further, the Commission notes that the purpose of the supplemental review is to determine if the Small Generating Facility may be interconnected safely and reliably without undergoing full study, including a feasibility study.

184. We agree with NYISO & NYTO that since the supplemental review is optional, an Interconnection Customer's failure to agree and pay for the supplemental review should not lead to the withdrawal of its interconnection request. Therefore, we adopt language in section 2.4.1 of the SGIP stating that, if an Interconnection Customer does not agree in writing and pay the supplemental review fee within 15 business days, the Transmission Provider shall direct the interconnection request to the section 3 Study Process for evaluation unless it is withdrawn by the Interconnection Customer.

185. In response to comments that the five business day deadline for providing the Interconnection Customer with an interconnection agreement when the Interconnection Customer accepts the Transmission Provider's offer at the customer options meeting to perform modifications to the Transmission Provider's system and agrees to pay for these modifications is too short, the Commission revises the deadline in section 2.3.1 to ten business days as proposed by PJM. Further, the Commission also adopts a ten business day deadline in section 2.4.5.1 for provision of an interconnection agreement that requires no construction of facilities or minor modifications to the Transmission Provider's system to accommodate any increased volume of interconnection agreements associated with the Fast Track Process reforms adopted herein. Finally, the Commission adopts the 15 business day deadline in section 2.4.5.2 for provision of an interconnection agreement when interconnection facilities or minor modifications to the Transmission Provider's system are required, as proposed in the NOPR.[347] This provides an additional five business days beyond the deadline in section 2.4.1.3 of the *pro forma* SGIP adopted in Order No. 2006 and should accommodate any increased volume of interconnection agreements associated with the Fast Track Process reforms adopted herein.

186. The Commission notes that in order to interconnect under the Fast Track Process supplemental review, a Small Generating Facility must pass all three supplemental review screens. In order to minimize supplemental review costs, the Commission will require the Transmission Provider to notify the Interconnection Customer within two business days following the failure of a supplemental review screen and obtain the Interconnection Customer's permission to: (1) Continue with the supplemental review at the Interconnection Customer's expense for informational purposes or to determine if the proposed interconnection would require only interconnection facilities or minor modifications to the Transmission Provider's system and thus qualify for interconnection under the Fast Track Process in accordance with section 2.4.5.2 of the *pro forma* SGIP adopted under this Final Rule; (2) terminate the supplemental review and continue evaluating the interconnection request under the SGIP section 3 Study Process; or (3) terminate the supplemental review upon withdrawal of the interconnection request by the Interconnection Customer. The Commission extends the supplemental review timeline in section 2.4.4 of the

[345] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 159 and section 2.3.1 of the SGIP.

[346] ''Minor modifications'' could, in some circumstances, include construction of facilities by the Transmission Provider on its own system, provided that the Transmission Provider were able to determine without further study that such modifications are safe and reliable. Such circumstances may be rare, but we see no reason to foreclose their possibility completely.

[347] *See* section 2.4.2 of the SGIP in Appendix C to the NOPR.

SGIP to 30 business days to accommodate this process.

187. With regard to Bonneville's concern that the supplemental review should include an examination of Affected Systems, section 4.9 of the SGIP already directs Transmission Providers to consider Affected Systems during the Fast Track screens when possible. Accordingly, the Commission finds that Bonneville's proposal to amend section 2.2.1.1 of the SGIP is unnecessary.

188. Finally, the Commission agrees with NYISO & NYTO's request to keep ''does not or cannot'' in section 2.2.4 of the SGIP because it will enable the Interconnection Customer to have a customer options meeting when the Transmission Provider has the capability to but does not determine from the Fast Track screens that the proposed facility can be interconnected safely and reliably.

D. Review of Required Upgrades

1. Commission Proposal

189. The Commission proposed to give Interconnection Customers the opportunity to review and comment upon the upgrades the Transmission Provider finds necessary for interconnection.[348] The Commission also proposed that the Transmission Provider must provide ''supporting documentation, workpapers, and databases or data'' developed in preparation of the facilities study upon request.[349] These proposals would make the SGIP consistent with the LGIP with respect to providing comments on upgrades required for interconnection.

2. Comments

190. Many commenters support the Commission's proposal to allow Interconnection Customers to review and comment on the upgrades the Transmission Provider deems necessary for interconnection because it would facilitate communication and transparency in the interconnection process.[350] SEIA states that many parties are already familiar with the proposed process because it is based on the LGIP.[351] CREA states that the opportunity to provide written comments enables Interconnection Customers to understand the proposed upgrades, seek a professional review, and make comments to the Transmission Provider that must be considered.[352] FCHEA states that allowing the Interconnection Customer the opportunity to provide written comments on the network upgrades required for interconnection could significantly increase the amount of distributed generation.[353]

191. MISO states that its current generator interconnection procedures already provide for Interconnection Customer review and comment with respect to potential upgrades required for interconnection. Therefore, MISO does not oppose the Commission's proposed revisions to the *pro forma* SGIP so long as it would consider MISO's existing generator interconnection procedures to meet this requirement as it applies to small generator interconnections.[354]

192. ISO–NE., MISO and CAISO similarly request that the Commission accommodate previously approved regional variations.[355] CAISO states that, although its procedures are not entirely aligned with the Commission's proposal, its tariff provides all Interconnection Customers with the opportunity to submit written comments on both the phase I and phase II interconnection reports, which comply with the proposed reforms.[356] CAISO states that the Commission should recognize that variations from the proposed *pro forma* reforms may still be just and reasonable.[357]

193. NYISO explains that it does not permit written comments in its LGIP, but instead offers Interconnection Customers the opportunity to meet with NYISO and NYTO to discuss the results of the facilities study, which gives Interconnection customers ample opportunity to comment.[358] NYISO & NYTO thus propose that the Commission require a facilities study meeting instead of written comments.[359] NYISO & NYTO assert that a meeting would provide an opportunity for the Interconnection Customer to provide feedback without extending the process by a number of days or creating the expectation that the Transmission Provider will make changes to the facilities study based on the Interconnection Customer's comments.[360]

194. If the Commission requires written comments, NYISO & NYTO request that the Commission clarify that the Transmission Provider is not required to perform additional analysis or make other modifications based on the Interconnection Customer's comments, unless the Interconnection Customer agrees to pay for the additional studies required.[361]

195. VSI supports the inclusion of written Interconnection Customer comments in the Facilities Study Agreement but expresses concern that the comments may not be seriously considered by the Transmission Provider.[362] VSI and LES assert that Interconnection Customers should only be responsible for the cost of the minimum upgrades and interconnection facilities required to interconnect the small generator's project to prevent a Transmission Provider from knowingly or unknowingly making the interconnection upgrades prohibitively expensive.[363]

196. LES states that if a Transmission Provider wishes to install interconnection facilities in addition to those needed to interconnect the Interconnection Customer's project, the cost of those facilities should be included in the Transmission Provider's rate base and allocated to all system users. LES asserts that the cost of those upgrades should not be imposed on the Small Generating Facility alone.[364] LES asserts that the Interconnection Customer should not be required to interconnect at a substation when transmission or distribution lines are closer. Some parties request that the Commission offer the Interconnection Customer a mechanism to resolve disputes over required upgrades.[365] VSI proposes new language for the Facilities Study Agreement section 10.0 that would allow for an expedited review by the public utility regulatory authority having jurisdiction over the upgrade costs at issue.[366] LES argues that the Commission needs to provide a remedy for promptly and efficiently resolving disputes over the minimum upgrades and interconnection facilities needed to interconnect a Small Generating Facility. For example, LES states that if a Transmission Provider mischaracterizes a network upgrade or interconnection facility in order to avoid paying that cost itself, the small generator must have recourse available.[367] Otherwise, Transmission

[348] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 41.

[349] *Id.* P 43.

[350] AWEA, CEIP, Clean Coalition, CREA, DCOPC, Duke Energy, ELCON, FCHEA, IECA, ITC, NRG, Public Interest Organizations, and SEIA.

[351] SEIA at 15.

[352] CREA at 3.

[353] FCHEA at 1.

[354] MISO at 9–10.

[355] CAISO at 6; ISO–NE at 17; and MISO at 9–10.

[356] CAISO at 8.

[357] CAISO at 6.

[358] NYISO & NYTO at 22.

[359] *Id.*

[360] *Id.*

[361] *Id.*

[362] VSI at 4–5.

[363] LES at 4 and VSI at 4–5.

[364] LES at 4.

[365] Max Hensley at 1; LES at 4; Lucia Villaran at 2; and VSI at 4–5.

[366] VSI at 6.

[367] LES at 4.

Providers may claim to have final discretion over what interconnection facilities are required to be built.[368]

197. IECA recommends that the Commission monitor and measure the effectiveness and efficiency of its SGIP. IECA states that the Commission should assure that the SGIP and LGIP do not have the unintended consequence of providing opportunities for Transmission Providers to easily stop SGIP or LGIP applications with endless evaluation processes of ''meaningful dialogue,'' which the review of required upgrades is intended to promote.[369] IECA asserts that the Commission should initiate a process that routinely gathers key information to monitor the utilization and outcomes of the SGIP and should track, characterize, tabulate, and annually report all resolved and unresolved interconnection applications under its SGIP for the purpose of identifying and potentially removing interconnection barriers.[370]

198. Clean Coalition recommends that the Commission allow the Interconnection Customer to use third party contractors to perform the required upgrades, as is allowed under Rule 21, at the Interconnection Customer's option.[371] Clean Coalition asserts that this will allow competition to reduce upgrade costs and ensure that Transmission Providers keep upgrade costs low.[372]

199. NRECA, EEI & APPA, however, state that a developer's use of a third party to provide input on the process relating to upgrade requirements, alternatives and related issues can further complicate the process.[373] They state that formalizing these practices will do more harm than good because adding steps to the process can potentially delay and adversely impact other projects.[374] NRECA, EEI & APPA also assert that third-party contractors performing upgrades at the Interconnection Customer's option raises safety, liability, access, and reliability concerns.[375] The commenters suggest that the Commission only permit Interconnection Customers to use third-party contractors to perform upgrades in cases where the Transmission Provider agrees.[376]

200. NRECA, EEI & APPA urge the Commission to ensure that utilities are properly compensated for the time and expenses associated with documenting the decision-making process to determine required upgrades.[377] NRECA, EEI & APPA assert that in order to balance the Interconnection Customer's desire to have additional information on required upgrades with the added burden on Transmission Providers of preparing such information, the Commission must clearly state that the utility can collect its estimated costs before any additional study work is done.[378]

201. SEIA opposes charging Interconnection Customers additional fees associated with documenting the decision-making process of the facilities study.[379] SEIA asserts that these additional costs are unwarranted because the LGIP currently requires Interconnection Customers to pay the Transmission Provider's actual costs of completing the facilities study and the SGIP should be consistent with the LGIP.[380] Additionally, SEIA claims that compensating Transmission Providers for meetings and data gathering would constitute an ''unlimited and undefined blank check'' to recover costs beyond those actually incurred and create unnecessary uncertainty for developers.[381] NRECA, EEI & APPA state that they are not requesting a blank check and assert that Transmission Providers should be permitted to recover all prudently incurred costs resulting from such documentation requirements.[382]

202. Finally, NYISO & NYTO assert that the Commission should include the proposed revisions to the Facilities Study Agreement allowing the Interconnection Customer the opportunity to review and comment upon the upgrades the Transmission Provider finds necessary for interconnection in section 3.5 of the *pro forma* SGIP to be consistent with the similar procedures for Large Generating Facilities in sections 8.3 and 8.4 of the LGIP.[383]

3. Commission Determination

203. The Commission affirms its proposal to allow Interconnection Customers to provide written comments on the required upgrades in the facilities study. The Commission believes the adoption of this proposal will allow Interconnection Customers to have a meaningful opportunity to review any upgrades associated with an interconnection request and engage in a dialogue with the Transmission Provider. In addition, allowing Interconnection Customers the opportunity to provide written comments on required upgrades helps to ensure interconnection costs are just and reasonable.

204. The Commission agrees with SEIA that the Interconnection Customer is entitled to view the facilities study supporting documentation because it is funding the study. The Commission is not persuaded by APPA, EEI & NRECA's claim that documenting the facilities study will be unduly burdensome because the LGIP has a similar requirement. However, the Commission affirms that Transmission Providers are entitled to collect all just and reasonable costs associated with producing the facilities study, including any reasonable documentation costs.

205. We note that Transmission Providers that incorporate, or propose to incorporate, comments through a different process may submit compliance filings demonstrating that the process is consistent with or superior to the requirements contained herein or meets another standard allowed for in this Final Rule.[384]

206. Various parties propose a regulatory review of required upgrades when there is a dispute. The Commission rejects this request because the parties have the option of utilizing the SGIA dispute resolution procedures outlined in section 4.2 of the SGIP to resolve such disputes. In addition, in the event the dispute cannot be resolved, the Interconnection Customer may request that the Transmission Provider file the unexecuted interconnection agreement with the Commission.[385]

207. The Commission declines to adopt NYISO & NYTO's proposal to affirm that Transmission Providers are not required to perform additional analysis or make modifications based on comments unless the Interconnection Customer agrees to pay for the additional studies. While the Commission does not require Transmission Providers to modify the facilities study after receiving Interconnection Customer comments, the Commission encourages Transmission Providers to consider these comments when finalizing the facilities study. Further, the Commission reaffirms that the

[368] *Id.* at 4.

[369] IECA at 7.

[370] *Id.*

[371] Clean Coalition at 8.

[372] *Id.*

[373] NRECA, EEI & APPA at 27–28.

[374] *Id.* at 28.

[375] NRECA, EEI & APPA Reply Comments at 11–12.

[376] *Id.* at 12.

[377] NRECA, EEI & APPA at 8.

[378] *Id.*

[379] SEIA Reply Comments at 8.

[380] *Id.*

[381] *Id.*

[382] NRECA, EEI & APPA Reply Comments at 13.

[383] NYISO & NYTO at 22–23.

[384] *See infra* section V.

[385] *See* SGIP section 4.8 of Appendix C attached hereto.

Transmission Provider should make the final decision on upgrades required for interconnection because the Transmission Provider is ultimately responsible for the safety and reliability of its system.[386] For the same reason, the Commission finds that third-party contractors may not perform any interconnection-associated network upgrades without Transmission Provider consent.

208. The Commission's experience with the LGIP comment process does not suggest that allowing comments prevents new interconnections, which was a concern raised by IECA. Therefore, the Commission finds it unnecessary to formally monitor the number of Small Generating Facility interconnections at this time.[387] If an Interconnection Customer believes it is being treated in an unduly discriminatory manner, it may file a complaint with the Commission.

209. Finally, the Commission disagrees with NYISO & NYTO that the provisions related to Interconnection Customers providing written comments on required upgrades should be included in section 3.5 of the SGIP to be consistent with the LGIP. In the SGIP, the details regarding the facilities study report are found in the SGIA, so the Commission finds it appropriate to add the provisions related to providing written comments on required upgrades to the SGIA as proposed.

E. Revision to SGIA Section 1.5.4 Regarding Over and Under-Frequency Events

1. Commission Proposal

210. In the NOPR, the Commission proposed revisions to section 1.5.4 of the SGIA to address a reliability concern related to automatic disconnection of the Small Generating Facility during over- and under-frequency events that could become a matter of concern at high penetrations of PV resources. The proposed revisions to section 1.5.4 would require the Interconnection Customer to design, install, maintain, and operate its Small Generating Facility, in accordance with the latest version of the applicable standards (e.g., IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems), to prevent automatic disconnection during over- and under-frequency events and to ensure that rates remain just and reasonable.[388]

2. Comments

211. ISO–NE supports the Commission's proposal to mitigate the potential frequency problems and requests that the Commission revise the proposed modifications to include a voltage ride-through provision as well.[389] CAISO supports the proposed reform but urges the Commission to coordinate its proposed reform with the outcome of the CPUC's Rule 21 proceedings.[390]

212. CPUC states that it is currently developing technical standards to address voltage, frequency and other issues arising from Small Generating Facilities and is unable to provide comments until those standards are finalized.[391] CPUC notes that it is focusing on ''smart inverters'' to mitigate the voltage, frequency and other impacts of Small Generating Facilities.[392]

213. ComRent suggests that the Final Rule recognize the upcoming changes to IEEE 1547, including more interactive control of distributed resources by the electric power system operator and test requirements for interconnection.[393] ComRent encourages the Commission to reference the current version of the standards and acknowledge that the requirements may evolve through the consensus standards making process. ComRent also notes that the capability to provide documented tests for interconnection and impact to a wide range of variables are available today in the size range being discussed in this rulemaking.[394]

214. AWEA expresses concern that a requirement to comply with IEEE 1547 could actually be counterproductive for making the power system more resilient to over- or under-frequency events.[395] AWEA argues that IEEE 1547 as currently drafted requires distributed generation up to 10 MW to remain online only during extremely small frequency deviations, and requires them to disconnect during moderate frequency deviations.[396] AWEA asserts that this requirement counters the Commission's stated goal of preventing automatic disconnection during an over- or under-frequency event.[397] In supplemental comments, AWEA notes that pending revisions to IEEE 1547 no longer prohibit voltage and frequency ride-through for distributed generators.[398]

215. AWEA states that the Commission should convene a technical conference and pursue other efforts to ensure that IEEE and other entities are working towards a standard that will prevent automatic disconnection of new distributed generation during moderate over- and under-frequency events.[399] In addition, AWEA states that the Commission should clarify that, while the ride-through requirement for new generators may evolve as standards like IEEE 1547 evolve, the requirement for existing generators will be fixed at whatever standard was in place at the time the SGIA for that generator was implemented.[400]

216. The California Utilities assert that further exploration of this issue is needed before any rules are proposed.[401] The California Utilities assert that the Commission should consider the role of the smart inverter because it may provide the ability to address frequency and voltage ride-through and other benefits related to voltage control and reactive power support.[402]

217. NRECA, EEI & APPA assert that the proposed revisions to SGIA section 1.5.4 will require the Interconnection Customer to design, install, maintain and operate its Small Generating Facility in accordance with the latest version of the applicable North American Electric Reliability Corporation (NERC) reliability standards, unless the Transmission Provider has established different requirements that apply to all similarly situated generators in the control area on a comparable basis, to prevent automatic disconnection during an over- or under-frequency event.[403] NRECA, EEI &APPA suggest revising the proposed language in SGIA section 1.5.4 as follows:

1.4.1.2 ''. . . The Interconnection Customer agrees to design, install, maintain, and operate its Small Generating Facility so as to reasonably minimize the likelihood of (1) a disturbance of its Small Generating Facility adversely affecting or impairing the system or equipment of the Transmission Provider and any Affected Systems, and (2)

[386] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 27. We note that this decision by the Transmission Provider is ''final'' in the context of the dialogue between the Interconnection Customer and the Transmission Provider, but may be reviewed in some circumstances by the Commission (e.g., in response to a compliant that a Transmission Provider is requiring certain upgrades in an arbitrary or unduly discriminatory manner).

[387] We note that section 4.7 of the SGIP requires the retention of certain records for three years and provides that such records are subject to audit.

[388] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 46.

[389] ISO–NE at 20.

[390] CAISO at 8.

[391] CPUC at 7–8.

[392] *Id.* at 7.

[393] ComRent at 1.

[394] ComRent at 1.

[395] AWEA at 2.

[396] *Id.* at 5.

[397] *Id.*

[398] AWEA Supplemental Comments at 5.

[399] AWEA at 6.

[400] *Id.* at 7.

[401] California Utilities at 5.

[402] *Id.*

[403] NRECA, EEI & APPA at 28–29.

a disturbance of the system or equipment of the Transmission Provider or any Affected System causing off-normal frequency deviations unless the Transmission Provider has established different requirements that apply to all similarly situated generators in the control area on a comparable basis and resulting in a common mode disconnection of its Small Generating Facility.'' [404]

218. NRECA, EEI & APPA also request that the following sentence be added to SGIA section 1.5.2 requiring the Small Generating Facility to permit equal current in each phase conductor: ''Voltage unbalance resulting from unbalanced currents shall not exceed 2% between phases and shall not cause objectionable effects upon or interfere with the operation of the interconnection to the [Transmission Provider's System]. This criterion shall be met with and without generation.'' [405]

219. NRECA, EEI & APPA state that the Commission should not reference or incorporate IEEE Standards 1547 or 1547.1 into the Final Rule because mandatory standards do not permit the flexibility needed to allow IEEE standards to evolve and will likely impede the current 1547 standard development process.[406] They also assert that references to standards can lead to conflicting requirements if those standards are subsequently updated.[407] Citing Commission precedent, NRECA, EEI & APPA state that in the past, the Commission has declined to use rulemaking proceedings to make voluntary IEEE standards mandatory.[408]

3. *Commission Determination*

220. The Commission declines to adopt the NOPR proposal to revise to section 1.5.4 of the SGIA, or any of the revisions proposed by commenters, at this time. Section 1.5.4 of the *pro forma* SGIA adopted in Order No. 2006 already requires an Interconnection Customer to ''construct its facilities or systems in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards.'' Based on the comments received, the Commission does not see a need to change section 1.5.4 of the SGIA at this time. As NRECA, EEI & APPA note, these standards may be revised as systems evolve. The Commission recognizes that IEEE is currently in the process of revising the requirements under IEEE Standard 1547a [409] for frequency ride-through, voltage ride-through, and voltage regulation. IEEE standards are reconsidered every 10 years, and at the end of the 10-year period, the standard may be either revised or withdrawn.[410] The revision of the IEEE Standard 1547 will begin in early 2014, which will allow another opportunity to either correct or address outdated requirements in the standard. We encourage Transmission Providers and NERC to participate in the IEEE standards development process to provide input on the effects of the growing penetration of distributed generation on the bulk-power system. The Commission will continue to follow this process and may revise the *pro forma* SGIA as it relates to IEEE Standard 1547 in the future, if necessary.

221. Finally, the Commission disagrees with NRECA, EEI & APPA's comment that section 1.5.2 requires the Interconnection Customer to design, install, maintain, and operate its Small Generating Facility in accordance with the latest version of the applicable NERC reliability standards. The *pro forma* SGIA is applicable to generators no larger than 20 MW (approximately 20 megavolt amperes (MVA)). The NERC reliability standards are generally applicable to generators greater than 20 MVA.[411] Therefore, NERC reliability standards would generally not apply to Small Generating Facilities executing the SGIA. However, the Commission notes that IEEE Standard 1547 applies to generators with a capacity of 10 MVA or less. The Commission encourages IEEE to formulate interconnection standards for generators between 10 and 20 MVA.

F. Interconnection of Storage Devices

1. Commission Proposal

222. In the NOPR, the Commission announced that it would hold a workshop before the end of the comment period that would include the following topic: ''Whether storage devices could fall within the definition of Small Generating Facility included in Attachment 1 to the SGIP and Attachment 1 to the SGIA as devices that produce electricity.'' The March 27, 2013 workshop included a roundtable discussion on the interconnection of storage devices. The Commission requested comments on issues raised at the workshop in addition to comments on the NOPR.[412]

2. Comments

223. CREA supports including storage devices within the definition of Small Generating Facility.[413] CREA opines that expanding the definition to include storage will incentivize small generators to keep abreast of future innovations in storage technology.[414] CAISO believes the existing definition is sufficiently broad to encompass a storage device and therefore apply the SGIP to such a facility if it is less than 20 MW.[415]

224. The California Utilities believe that further exploration of this issue is needed before any rules are proposed and note that interconnection of storage devices will be discussed during Phase II of California's Rule 21 proceeding.[416]

225. ESA states that the Commission should define a Small Generating Facility as ''a device used for the production and/or storage for later injection of electricity having a maximum output of no more than 20 MW.'' [417] ESA states that the Commission should measure the capacity of a storage resource based on the maximum quantity that the resource can inject to the grid to be comparable to other small generators for the purposes of determining if the storage device is a Small Generator or qualifying it for the Fast Track Process.[418]

226. ESA also recommends that the Commission clarify how to measure the size of interconnections that are combining renewable resources with storage devices.[419] ESA recommends that interconnection size be measured by the maximum intended injection of the combined resource.[420] ESA states that its recommendations are entirely consistent with the interpretation to date of the SGIP for storage projects, and that it merely wants the Commission to confirm existing practice.[421]

[404] *Id.,* Appendix B at 4.

[405] *Id.*

[406] NRECA, EEI & APPA Reply Comments at 17.

[407] *Id.*

[408] *Id.* (citing *Trans. Relay Loadability Reliability Std.,* Order No. 733, 130 FERC ¶ 61,221, at P 207 (2010)).

[409] IEEE Standard 1547a is an amendment to IEEE Standard 1547 to establish updates to voltage regulation, as well as response to abnormal voltage and frequency conditions.

[410] *See* ''Revising Standards,'' *available at http://standards.ieee.org/develop/revisestds.html.*

[411] NERC Statement of Compliance Registry Criteria at p. 9, *available at http://www.nerc.com/files/Appendix_5B_RegistrationCriteria_20120131.pdf.*

[412] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 49.

[413] CREA at 3.

[414] *Id.*

[415] CAISO at 9.

[416] California Utilities at 5. Also, *see supra* note 231.

[417] ESA at 6.

[418] *Id.* at 5.

[419] *Id.*

[420] *Id.* 6.

[421] *Id.* at 5.

3. Commission Determination

227. The Commission finds, based on the comments received, that it is appropriate to adopt certain revisions to the *pro forma* SGIP to explicitly account for the interconnection of storage devices in order to ensure that storage devices are interconnected in a just and reasonable and not unduly discriminatory manner. The Commission acknowledges that the interconnection of storage devices will be discussed in the ongoing Rule 21 proceeding as the California Utilities point out in their comments.[422] As more experience is gained with the interconnection of storage devices and as the issue is explored further in other proceedings, such as the Rule 21 proceeding, the Commission may adopt further revisions to the *pro forma* SGIP and SGIA associated with the interconnection of storage devices.

228. The Commission agrees with CAISO that the definition of Small Generating Facility is broad enough to include storage devices. However, the Commission also agrees with ESA and CREA that, in order to improve the transparency of the SGIP, the definition of Small Generating Facility in the *pro forma* SGIP and SGIA should be clarified to explicitly include storage devices. Accordingly, the Commission revises the definition of Small Generating Facility in Attachment 1 to the SGIP and Attachment 1 to the SGIA as follows: ''The Interconnection Customer's device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.''

229. The Commission agrees with ESA that when determining whether a storage device may interconnect under the SGIP and/or whether it qualifies for the Fast Track Process, the Transmission Provider should generally assume that the capacity of the storage device is equal to the maximum capacity that the particular device is capable of injecting into the Transmission Provider's system (e.g., a storage device capable of injecting 500 kW into the grid and absorbing 500 kW from the grid would be evaluated at 500 kW for the purpose of determining if it is a Small Generating Facility or whether it qualifies for the Fast Track Process). Thus, the Commission revises SGIP section 4.10.3 to clarify that the term ''capacity'' of the Small Generating Facility in the SGIP refers to the maximum capacity that a device is capable of injecting into the Transmission Provider's system. When interconnecting such a storage device, the revisions to SGIP section 4.10.3 adopted herein do not preclude a Transmission Provider from studying the effect on its system of the absorption of energy by the storage device and making determinations based on the outcome of these studies.

230. To address ESA's comment related to combining generation resources with storage resources (e.g., a storage facility operating to firm a variable energy resource), the Commission further revises SGIP section 4.10.3. Under section 4.10.3 adopted herein, the Transmission Provider is to measure the capacity of a Small Generating Facility based on the capacity specified in the interconnection request, which may be less than the maximum capacity that a device is capable of injecting into the Transmission Provider's system, provided that the Transmission Provider agrees, with such agreement not to be unreasonably withheld, that the manner in which the Interconnection Customer proposes to limit the maximum capacity that its facility is capable of injecting into the Transmission Provider's system will not adversely affect the safety and reliability of the Transmission Provider's system. For example, an Interconnection Customer with a combined resource may propose a control system, power relays, or both for the purpose of limiting its maximum injection amount into the Transmission Provider's system.

231. The Commission notes that in Order No. 2006 it considered evaluating Small Generating Facilities based on less than their maximum rated capacity, but determined that this would not ensure that proper protective equipment is designed and installed and that the safety and reliability of the Transmission Provider's system could be maintained.[423] However, as discussed above, the energy industry has changed since Order No. 2006 was issued.[424] The use of storage in combination with other resources was not contemplated in Order No. 2006. In order to balance the needs of Small Generating Facilities and Transmission Providers, the Commission clarifies that section 4.10.3 adopted herein applies only to the determination of whether a resource is a Small Generating Facility to be evaluated under the SGIP rather than the LGIP, or if it qualifies for the Fast Track Process. In the Study Process, the Transmission Provider has the discretion to study the combined resource using the maximum capacity the Small Generating Facility is capable of injecting into the Transmission Provider's system and require proper protective equipment to be designed and installed so that the safety and reliability of the Transmission Provider's system is maintained. Similarly, in the Fast Track Process, the Transmission Provider may apply the Fast Track screens or the supplemental review screens using the maximum capacity the Small Generating Facility is capable of injecting into the Transmission Provider's system in a manner that ensures that the safety and reliability of its system is maintained.

G. Other Issues

1. Network Resource Interconnection Service

a. Commission Proposal

232. The Commission proposed to revise section 1.1.1 of the *pro forma* SGIP to require Interconnection Customers wishing to interconnect its Small Generating Facility using Network Resource Interconnection Service to do so under the LGIP and execute the LGIA. The Commission explained that this requirement was included in Order No. 2006[425] but was not made clear in the *pro forma* SGIP. To facilitate this clarification, the Commission also proposed to add the definitions of Network Resource and Network Resource Interconnection Service to Attachment 1, Glossary of Terms, of the *pro forma* SGIP.[426]

b. Comments

233. MISO states that its generator interconnection procedures and agreement are the result of a merger of its LGIP/LGIA and SGIP/SGIA in 2008. Because it does not differentiate between small and large interconnection requests, MISO states that the proposed revisions to section 1.1.1 of the *pro forma* SGIP would likely not apply to MISO.[427] MISO further asserts that its generator interconnection procedures already provide comparable definitions for ''Network Resource'' and ''Network Resource Interconnection Service.''[428]

234. NYISO & NYTO state this proposed revision could undermine the requirements in Attachment Z of the NYISO OATT that permit a Small Generating Facility to elect Capacity Resource Interconnection Service under

[422] California Utilities at 5.

[423] *See* Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at PP 79–86.

[424] *See supra* PP 0–0.

[425] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 140.

[426] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 45.

[427] MISO at 10.

[428] *Id.* at 10–11.

NYISO's SGIP and to execute an SGIA.[429] NYISO & NYTO assert that making Small Generating Facilities subject to the LGIP and requiring an LGIA would greatly increase the time and expense of interconnecting such projects. Therefore, NYISO & NYTO ask the Commission to clarify that the proposed revisions will not disturb these existing procedures.[430]

c. Commission Determination

235. The Commission adopts the revisions as proposed in the NOPR. As the Commission noted in the NOPR, the revision is meant to clarify in the *pro forma* SGIP an Order No. 2006 requirement rather than implement a new requirement.

236. Our intent is not to require revisions to interconnection procedures that have previously been found to be consistent with or superior to the *pro forma* SGIP and SGIA with regard to this Order No. 2006 requirement or permissible under the independent entity variation standard. In cases where provisions in Transmission Providers' existing interconnection procedures have been found by the Commission to be consistent with or superior to the *pro forma* SGIP and SGIA originally adopted under Order No. 2006 or permissible under the independent entity variation standard would be modified by the Final Rule, public utility Transmission Providers must either comply with the Final Rule or demonstrate that these previously approved variations meet the standard under which they are filed.[431]

2. Hosting Capacity

a. Comments

237. Pepco offers its ''hosting capacity'' process as an alternative approach to the interconnection procedures in the NOPR and claims that it is superior to the proposed pre-application report and Fast Track screens.[432] According to Pepco, its hosting capacity approach calculates the maximum aggregate generating capacity that a distribution circuit can accommodate at a proposed Point of Interconnection without requiring the construction of facilities by the Transmission Provider on its own system and while maintaining the safety, reliability and power quality of the distribution circuit.[433] Pepco states that hosting capacity is determined by applying the screens set forth in section 2.4.1.1 to 2.4.1.3 of the SGIP and will describe the amount of additional generating capacity a distribution circuit can accommodate above what has already been approved or queued for interconnection without requiring the construction of facilities by the Transmission Provider.[434]

238. Pepco states that it has successfully interconnected over 7,700 PV systems by using load flow tools to determine a maximum allowable hosting capacity at a given Point of Interconnection on its transmission and distribution systems.[435] Pepco asserts that load flow tools have allowed PV interconnections on many circuits that would otherwise not be available to new generation because they would violate a number of existing technical screens under the current SGIP, including the 15 Percent Screen.[436]

239. IREC, Sandia and SEIA support allowing Transmission Providers to use load-flow tools to determine the hosting capacity at a particular Point of Interconnection in both the pre-application report and the Fast Track process, and encourage the Commission to include language related to hosting capacity in the Final Rule and in the *pro forma* SGIP.[437] IREC states that hosting capacity would replace the total, allocated and available capacity in the pre-application report because these items are no longer valuable once the hosting capacity is known.[438] IREC notes that the SGIP hosting capacity provisions it proposes with Pepco, NREL, and Sandia would not be mandatory for Transmission Providers, but would allow for the use of hosting capacity where the capability exists.[439]

240. IREC supports allowing Transmission Providers to elect not to use the Fast Track screens when they can provide hosting capacity, but would require them to comply with the 15 Percent Screen at a minimum.[440] IREC states that if the Transmission Provider determines that using hosting capacity limits its ability to connect a proposed generator without further study, the Transmission Provider would be required to provide the Interconnection Customer with an explanation of the power flow, criteria violations, and/or queued projects that limit the hosting capacity.[441] IREC believes the revisions related to hosting capacity will significantly improve the Fast Track Process for both generators and Transmission Providers, and may allow for larger generators or greater penetrations of distributed generation to interconnect using the Fast Track Process.[442] Further, IREC supports incorporating the hosting capacity provisions into the SGIP rather than requiring Transmission Providers to seek modifications to the *pro forma* SGIP.[443]

241. NREL supports the use of hosting capacity as long as Transmission Providers are transparent regarding how hosting capacity is determined.[444] VSI also supports IREC and Pepco's hosting capacity proposal.[445] VSI states that the duration of the Study Process would decrease and existing equipment would be better optimized if all Transmission Providers had the capability to determine their hosting capacity in advance of the pre-application report.[446]

242. Sandia supports the use of dynamic load flow analysis to determine the hosting capacity of a circuit, as it is the most comprehensive and accurate way to determine the deployment level of distributed generation that can be accommodated on a distribution circuit without system upgrades.[447]

b. Commission Determination

243. The Commission encourages Transmission Providers to develop innovative and transparent interconnection processes that provide valuable information to Interconnection Customers. However, the Commission declines to include hosting capacity in the SGIP at this time because the record does not contain a sufficient discussion of the proposal. Transmission Providers wishing to utilize hosting capacity as part of their interconnection process may propose such procedures in their compliance filings for this Final Rule. Similar to other filings that do not conform with the *pro forma* SGIP and SGIA adopted under this Final Rule, the Commission will consider whether such procedures meet the compliance standard under which the filing was made.[448]

[429] NYISO & NYTO at 23.

[430] *Id.*

[431] See *infra* P 0.

[432] Pepco at 4.

[433] Pepco, Attachment 1.

[434] *Id.* (stating that its hosting capacity considers queued capacity for which an interconnection agreement has not been issued).

[435] *Id.* at 4.

[436] *Id.*

[437] IREC at 8; Sandia at 3; and SEIA at 11.

[438] IREC at 11.

[439] *Id.* at 8, 11.

[440] *Id.* at 16.

[441] *Id.*

[442] *Id.* at 8, 16.

[443] *Id.* at 16.

[444] NREL at 3.

[445] VSI at 2.

[446] *Id.*

[447] Sandia at 3.

[448] *See infra* section V for a discussion of compliance with this Final Rule.

3. Jurisdiction

a. Comments

244. NRECA, EEI & APPA assert that the NOPR incorrectly states that ''[t]he *pro forma* SGIP and SGIA are used by a public utility to interconnect a Small Generating Facility with the utility's transmission or with its *jurisdictional distribution facilities* for the purpose of selling electric energy at wholesale in interstate commerce.'' [449] They state that, as explained in Order No. 2003–C, the Commission's authority ''is limited to the wholesale transaction'' and ''it may not regulate the 'local distribution' facility itself, which remains state-jurisdictional.'' [450] NRECA, EEI & APPA therefore state that the Commission was incorrect in characterizing distribution facilities as ''[FERC] jurisdictional.'' They ask that the Commission correct this improper characterization.

245. NYISO & NYTO similarly ask the Commission to clarify that the term ''Distribution System'' as proposed in sections 1.1.1, 3.1 and 2.1 of the SGIP is limited to distribution facilities that are subject to the Commission's jurisdiction.[451]

b. Commission Determination

246. The Commission clarifies that the scope of its jurisdiction in this proceeding with respect to distribution facilities is identical to the jurisdiction previously asserted and as described in Order Nos. 888 [452] and 2003. Just as the Commission stated in Order No. 2003–A:

> There is no intent to expand the jurisdiction of the Commission in any way; if a facility is not already subject to Commission jurisdiction at the time interconnection is requested, the Final Rule will not apply. Thus, only facilities that already are subject to the Transmission Provider's OATT are covered by this rule. The Commission is not encroaching on the States' jurisdiction and is not improperly asserting jurisdiction over ''local distribution'' facilities.[453]

247. In response to NYISO & NYTO's comment, the Commission clarifies that the term ''Distribution System'' as used in this Final Rule is limited to distribution facilities that are subject to the Commission's jurisdiction.

248. In Order No. 2006, the Commission stated that the regulations promulgated under Order No. 2006 applied to interconnections to facilities that are already subject to a Commission-jurisdictional OATT at the time the interconnection request is made and that will be used for purposes of jurisdictional wholesale sales.[454] In Order No. 2003–C, however, the Commission clarified that, ''while the Commission may regulate the entire transmission component * * * of the wholesale transaction—whether the facilities used to transmit are labeled 'transmission' or 'local distribution'—it may not regulate the 'local distribution' facility itself, which remains state-jurisdictional.'' [455] The Commission clarifies that its jurisdiction under this Final Rule does not extend to local distribution facilities.

4. Miscellaneous

a. Commission Proposal

249. In addition to the proposed reforms and clarifications described above, the Commission proposed to correct section 3.3.5 of the *pro forma* SGIA. Specifically, we proposed to replace the first word of this section (''This'') with ''The.''

b. Comments

250. Several comments did not fit neatly within the topics discussed in the NOPR. FCHEA and CEP support increasing the project size threshold for requiring telemetry equipment to 5 MW because this equipment can add significant financial burden to distributed generation projects.[456] FCHEA and CEP state that the Commission should strongly encourage the states to match the Commission threshold in state interconnection procedures to avoid discouraging development of distributed generation projects.[457] CEP also recommends several changes to net metering and demand charges associated with distributed generation.[458]

251. ELCON and IECA submitted comments in support of advancing combined heat and power (CHP) interconnections.[459] ELCON claims that various barriers to the development of large CHP generation currently exist and urges the Commission to initiate a Notice of Inquiry to investigate the issues.[460] IECA states that the Commission should establish longer-term capacity payment mechanisms to encourage capital formation for manufacturer CHP and waste heat recovery investments, such as a 15- to 20-year term capacity payment.[461]

252. Bonneville recommends that, to prevent an Affected System [462] from having to construct upgrades or new facilities in response to an interconnection, the Commission should revise section 2.2.1.10 of the SGIP to read ''No construction of facilities by the Transmission Provider on its own system, nor construction of any facilities on any Affected System, shall be required to accommodate the Small Generating Facility.'' [463]

253. NREL states that it has analyzed PV systems integrated onto secondary network distribution systems and has found that there are methods of increasing the amount of interconnected PV generation on a spot network without affecting reliability and power quality.[464] NREL proposes adding language to the Secondary Network Distribution System screen.[465]

254. NRECA, EEI & APPA suggest adjusting the feasibility study deposit of $1,000 and the Fast Track processing fee of $500 annually based on the Consumer Price Index.[466] The commenters also suggest changing the record retention requirement in SGIP section 4.7 from three years to five years.[467] NRECA, EEI & APPA also suggest two changes to the Fast Track screens in section 2.2.1: (1) Adding language to section 2.2.1.2 for areas bounded by a voltage regulation zone of a distribution line or a power transformer; and (2) revising the 10 MW aggregate interconnected generation threshold in section 2.2.1.9 for areas with known or posted transient stability limitations to accommodate ISOs and

[449] NRECA, EEI & APPA at 29 (quoting the NOPR, FERC Stats. & Regs. ¶ 32, 6a7 at P1, n. 4) (emphasis added).

[450] *Id.* at 29–30 (referencing Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 at P 53).

[451] NYISO & NYTO at 24.

[452] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

[453] Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160 at P 700.

[454] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at PP 7–8.

[455] Order No. 2003, FERC Stats. & Regs. ¶ 31,146.

[456] FCHEA at 1.

[457] *Id.* at 2.

[458] CEP at 2–3.

[459] ELCON at 4.

[460] *Id.* at 6–7 and IECA at 10.

[461] IECA at 10.

[462] *See supra* note 343.

[463] Bonneville at 3.

[464] NREL at 5.

[465] *Id.* NREL proposes adding the following to the Secondary Network Distribution System screen: ''or 25kVA less than the minimum daytime load of the network when the proposed Small Generating Facility is a PV system and will have minimum import relay and dynamically controlled inverter controls installed to prevent backfeed onto the secondary network.''

[466] NRECA, EEI & APPA, Appendix B at 3–4.

[467] *Id.* at 3.

RTOs that may have lower thresholds.[468]

255. Clean Coalition strongly urges the Commission to ensure that any SGIP reforms adopted in this Final Rule apply equally to grid operators using the SGIP and to those that have combined the SGIP and LGIP into a single generator interconnection procedure.[469]

256. UCS asks the Commission to ''assert an affirmative obligation'' that Transmission Providers integrate and use the voltage support capability provided by Small Generating Facilities.[470] UCS asserts that the Transmission Provider's failure to utilize the voltage control capability of Small Generating Facilities increases the interconnection costs because the Transmission Provider may require upgrades to provide voltage support rather than using the capability inherent in the proposed facility.[471]

c. Commission Determination

257. The Commission finds the following to be beyond the scope of this proceeding: (1) FCHEA and CEP's requests to increase the threshold for requiring telemetry equipment; (2) ELCON and IECA's recommendations regarding CHP; (3) CEP's recommendations with regard to net metering and demand charges associated with distributed generation; (4) NRECA, EEI & APPA's proposed changes to the Fast Track screens in SGIP section 2.2.1; (5) NRECA, EEI & APPA's proposal to change the record retention requirement in SGIP section 4.7 from three years to five years; (6) NREL's proposal to add language to the Secondary Network Distribution System screen in section 2.2.1.3 of the SGIP; and (7) UCS's request that the Commission require Transmission Providers to integrate and use the voltage support capability provided by Small Generating Facilities.

258. With regard to the impact of Fast Track screens on Affected Systems, section 4.9 of the SGIP already directs Transmission Providers to consider Affected Systems during the Fast Track screens when possible. Accordingly, the Commission finds that Bonneville's proposal to amend section 2.2.1.1 of the SGIP is unnecessary.

259. We decline to adjust the Fast Track processing fee for inflation because, as provided for in Order No. 2006, Transmission Providers may submit a filing under FPA section 205 if the fixed fees in the *pro forma* SGIP do not sufficiently recover their costs.[472] We also decline to adjust the feasibility study deposit for inflation because Transmission Providers collect actual costs for the feasibility study. If a Transmission Provider would like to increase this deposit, it may propose to do so in its compliance filing.[473]

260. Regarding Clean Coalition's request that the Commission require that the SGIP reforms adopted herein apply to public utility Transmission Providers that have combined their SGIP and LGIP into a single set of generator interconnection procedures, the Commission affirms that the reforms adopted herein apply to all Commission-jurisdictional SGIPs, including those that have been combined with LGIPs.

261. Finally, the Commission replaces the first word of section 3.3.5 of the *pro forma* SGIA (''This'') with ''The'' as proposed in the NOPR. The Commission also makes certain minor clarifying revisions to the flow chart in Appendix B to this Final Rule.

V. Compliance

A. Commission Proposal

262. In the NOPR, the Commission stated that each public utility Transmission Provider would be required to submit a compliance filing within six months of the effective date of the Final Rule revising its SGIP and SGIA or other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the requirements as set forth in the Final Rule.[474]

263. The Commission acknowledged that in some cases, public utility Transmission Providers may have provisions in their existing SGIPs and SGIAs that the Commission has deemed to be consistent with or superior to the *pro forma* SGIP and SGIA. The Commission indicated that where these provisions are modified by the Final Rule, public utility Transmission Providers must either comply with the Final Rule or demonstrate that these previously-approved variations continue to be consistent with or superior to the *pro forma* SGIP and SGIA as modified by the Final Rule.

264. The Commission also proposed that Transmission Providers that are not public utilities would have to adopt the requirements of the Final Rule as a condition of maintaining the status of their safe harbor tariff or otherwise satisfying the reciprocity requirement of Order No. 888.[475]

B. Comments

265. Several commenters urge the Commission to permit regional discretion and flexibility in the implementation of the SGIP.[476] Commenters urge the Commission to adopt a process that permits each region to develop and implement its own specific proposals to the problems identified by the Commission.[477] CAISO comments that the *pro forma* proposals may not in all instances allow ISOs and RTOs operating high-voltage transmission systems to streamline interconnections for Small Generating Facilities.[478]

266. NYISO & NYTO state that the Commission should direct each ISO/RTO to report on the status of its processing of small generator interconnection requests and to develop with its stakeholders and implement, where needed, regionally-tailored reforms to its SGIP.[479] Additionally, they state a regional approach would be consistent with the Commission's order concerning interconnection queuing practices where the Commission permitted each region the opportunity to propose its own solution to problems identified by the Commission with respect to queue management.[480] NYISO & NYTO request that the Commission clarify that, consistent with Order No. 2006, it will permit RTOs and ISOs to seek ''independent entity variations'' from any revisions to the *pro forma* SGIP to accommodate regional differences.[481]

267. CAISO states that it has commenced a stakeholder initiative to examine the need for interconnection procedure enhancements, including developing new Fast Track screens that are specific to the networked transmission system, and request that any action in this proceeding not preclude it from proposing enhancements to Fast Track screens consistent with the independent entity variation standard.[482]

[468] *Id.* at 2.

[469] Clean Coalition at 9.

[470] UCS at 22.

[471] *Id.* at 25.

[472] Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 126.

[473] *See infra* section V.

[474] NOPR, FERC Stats. & Regs. ¶ 32,697 at P 50.

[475] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760–63.

[476] CAISO at 2; California Utilities at 4; ISO–NE at 2; IRC at 1; NYISO & NYTO at 2; and PJM at 4.

[477] CAISO at 2; IRC at 1; and NYISO & NYTO at 3.

[478] CAISO at 2.

[479] NYISO & NYTO at 3.

[480] NYISO & NYTO at 4 (referencing *Interconnection Queuing Practices,* Order on Technical Conference, 122 FERC ¶ 61,252 (March 20, 2008) (Queue Management Order)).

[481] *Id.* (referencing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 549).

[482] CAISO at 7.

268. ISO–NE states that its *pro forma* SGIP has varied greatly from the Commission's *pro forma* SGIP since its implementation in 2006. Therefore ISO–NE requests regional flexibility to maintain the previously approved variations.[483] NARUC similarly emphasizes that ''proposals appropriate for one State or region of the country may not be appropriate, or permitted by State law or regulation, in other regions.'' [484] The California Utilities and NARUC also believe that the rules and procedures must be flexible enough to accommodate differences between the standards set by states and those set by the Commission in order for utilities to provide comparable service to generators interconnecting to their electric systems.[485]

C. Commission Determination

269. The Commission requires each public utility Transmission Provider to submit a compliance filing within six months of the effective date of this Final Rule revising its SGIP and SGIA or other document(s) subject to the Commission's jurisdiction as necessary to demonstrate that it meets the requirements set forth herein.

270. The Commission will consider requests for variations from this rule submitted on compliance on the same bases as the variations permitted for compliance with Order No. 2006.[486] Specifically, in cases where provisions in public utility Transmission Providers' existing SGIPs and SGIAs have been found by the Commission to be consistent with or superior to the *pro forma* SGIP and SGIA originally adopted under Order No. 2006 or permissible under the independent entity variation standard or regional reliability variation would be modified by the Final Rule, public utility Transmission Providers must either comply with the Final Rule or demonstrate that these previously-approved variations are consistent with or superior to the *pro forma* SGIP and SGIA as modified by the Final Rule or otherwise meet the requirements of this section.

271. Any non-public utility that has a safe harbor tariff may amend its small generator interconnection agreements and procedures so that they substantially conform or are superior to the *pro forma* SGIP and SGIA as revised by this Final Rule if it wishes to continue to qualify for safe harbor treatment.

272. As in Order Nos. 2003 and 2006, we will apply a regional differences rationale to accommodate variations from the Final Rule during compliance, but with certain restrictions. We conclude that a non-independent transmission provider (such as a Transmission Provider that owns generators or has Affiliates that own generators) and an RTO and ISO should be treated differently because an RTO or ISO does not raise the same level of concern regarding undue discrimination.[487] Accordingly, we will allow an RTO or ISO greater flexibility to propose variations from the Final Rule provisions, as further discussed below.

273. We will require, however, that non-independent transmission providers justify variations in non-price terms and conditions of the Final Rule using the approach taken in Order No. 888, which allows them to propose variations on compliance that are ''consistent with or superior to'' the OATT.[488] The Commission will consider two categories of variations from the Final Rule submitted by a non-independent Transmission Provider.[489] First, the Commission will consider ''regional reliability variations'' that track established reliability requirements (*i.e.,* requirements approved by the applicable NERC Regional Entity and the Commission).[490] Any request for a ''regional reliability variation'' must be supported by references to established reliability requirements, and the text of the reliability requirements must be provided in support of the variation. If the variation is for any other reason, the non-independent Transmission Provider must demonstrate that the variation is ''consistent with or superior to'' the Final Rule provision. Any request for application of this standard will be considered under Federal Power Act section 205 and must be supported by arguments explaining how each variation meets the standard.[491]

274. We will permit ISOs and RTOs to seek ''independent entity variations'' from any revisions to the *pro forma* SGIP and SGIA. This is a balanced approach that recognizes that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is also a market participant. The RTO or ISO shall therefore have greater flexibility to customize its interconnection procedures and agreements to accommodate regional needs.[492]

275. Finally, for a non-independent Transmission Provider that belongs to an RTO or ISO, the RTO's or ISO's Commission-approved agreements and procedures are to govern interconnection with its members' facilities that are under the operational control of the RTO or ISO. An interconnection with a Commission jurisdictional facility that is owned by a non-independent Transmission Provider but is not under the operational control of the RTO or ISO is to be conducted according to the non-independent Transmission Provider's procedures and agreements. A non-independent Transmission Provider, even if it belongs to an RTO or ISO, is not eligible for ''independent entity variations'' for procedures and agreements applicable to interconnection with facilities that remain within its operational control (and, therefore, are subject to a tariff different than the RTO or ISO's OATT).[493]

276. Requests for regional reliability variations or independent entity variations are due on the effective date of this Final Rule. Requests for variations that are ''consistent with or superior to'' the *pro forma* OATT may be submitted on or after the effective date of the Final Rule.

VI. Information Collection Statement

277. The Office of Management and Budget (OMB) regulations require approval of certain information collection and data retention requirements imposed by agency rules.[494] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

278. The Commission is submitting the proposed modifications to its information collections to OMB for review and approval in accordance with section 3507(d) of the Paperwork

[483] ISO–NE at 19.

[484] NARUC at 4.

[485] California Utilities at 4.

[486] *See* Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 546–550.

[487] *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 822.

[488] *Id.* at PP 822–827.

[489] *See* Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 546 (citing Order No. 2003 FERC Stats. & Regs. ¶ 31,146 at PP 824–825).

[490] *Id.*

[491] *Id.*

[492] *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 822–827.

[493] *See* Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 550.

[494] 5 CFR 1320.11(b).

Reduction Act of 1995.[495] In the NOPR, the Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing the respondents' burden, including the use of automated information techniques. The Commission included a table that listed the estimated public reporting burdens for the proposed reporting requirements, as well as a projection of the costs of compliance for the reporting requirements. The Commission also requested comments on three proposed revisions that were not included in the table: (1) The proposed revision of the 2 MW threshold for participation in the Fast Track Process (the Commission estimated that 100 Interconnection Customers annually may participate in the Fast Track Process rather than the Study Process under the NOPR); (2), the proposed revision to section 2.3.2 of the SGIP wherein the Transmission Provider would no longer be required to provide a good faith estimate of the cost of performing the supplemental review to the Interconnection Customer; and (3) the proposal to revise section 1.1.1 of the *pro forma* SGIP to require that if an Interconnection Customer wishes to interconnect its Small Generating Facility using Network Resource Interconnection Service, it must do so under the LGIP and execute the LGIA.

279. The Commission did not receive any comments specifically addressing the burden estimates provided in the NOPR. However, the Commission has made changes to its proposal that are adopted in this Final Rule. First, the number of conforming changes to the SGIP and SGIA have increased (e.g., changes related to the interconnection of storage facilities and the pre-application report request form), so we have increased the burden estimate in the table below. Second, the addition of the pre-application report request form may increase the burden on Interconnection Customers requesting a pre-application report, so we have increased the burden estimate in the table. Third, we added two items to the pre-application report, so we have increased the burden estimate for Transmission Providers to prepare the pre-application report in the table below. Because we did not adopt the proposed revision to section 2.3.2 of the SGIP wherein the Transmission Provider would no longer be required to provide a good faith estimate of the cost of performing the supplemental review to the Interconnection Customer, we are not modifying the burden estimate for the supplemental review. Further, because we did not receive comments on the other proposed revisions discussed above that were not included in the table, we are not modifying the burden estimate to account for these revisions. The Commission believes that the revised burden estimates below are representative of the average burden on respondents.

Burden Estimate: The estimated public reporting burden and cost for the requirements contained in this Final Rule follow:

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[495] 44 U.S.C. 3507(d) (2012).

Data Collection FERC 516A (All changes under 18 CFR 35.28(f) (2013))	Number of Respondents [1]	Number of Responses[496] [2]	Hours per Response [3]	Total Annual Hours [1 X 2 X 3]
Conforming SGIP and SGIA changes to incorporate proposed revisions. First year only.	142 Transmission Providers	1	7	994
Pre-Application Report	800 Interconnection Customers[497]	1	1	800
Pre-Application Report	142 Transmission Providers	5.63	2.5	1,999
Supplemental Review[498]	500 Interconnection Customers	1	0.5	250
Supplemental Review	142 Transmission Providers	3.52	20	9,997
Review of Required Upgrades	250 Interconnection Customers	1	1	250
Review of Required Upgrades	142 Transmission Providers	1.76	2	500
First Year Total				14,790
Year Two and Ongoing Total				13,796

[496] The number of responses represents the average number of responses per respondent.

[497] We assume each request for a pre-application report corresponds with one Interconnection Customer.

[498] While this Final Rule adds a notification requirement if an Interconnection Customer fails any of the supplemental review screens, we believe that the burden is minimal and does not merit a change to the burden hours listed in the table.

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Cost to Comply: Total Annual Hours for Collection in initial year (14,790 hours) @ $75/hour[499] = $1,109,250.

Total Annual Hours for Collection in subsequent years (13,796 hours) @$ $75/hour = $1,034,700.

Title: FERC–516A, Standardization of Small Generator Interconnection Agreements and Procedures.

Action: Revision of Currently Approved Collection of Information.

OMB Control No. 1902–0203.

Respondents for this Rulemaking: Businesses or other for profit and/or not-for-profit institutions.

Frequency of Information: As indicated in the table.

Necessity of Information: The Commission is adopting these amendments to the *pro forma* SGIP and SGIA in order to more efficiently and cost-effectively interconnect generators no larger than 20 MW (small generators) to Commission-jurisdictional transmission systems. The purpose of this Final Rule is to revise the *pro forma* SGIP and SGIA so small generators can be reliably and efficiently integrated into the electric grid and to ensure that Commission-jurisdictional services are provided at rates, terms and conditions that are just and reasonable and not unduly discriminatory. This Final Rule seeks to achieve this goal by amending the *pro forma* SGIP and SGIA as described previously.

Internal Review: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

280. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], email: *DataClearance@ferc.gov*, Phone: (202) 502–8663, fax: (202) 273–0873.

281. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket No. RM13–2–000 and OMB Control No. 1902–0203.

VII. Environmental Analysis

282. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[500] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[501] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[502] Therefore, an environmental assessment is unnecessary and has not been prepared as part of this Final Rule.

VIII. Regulatory Flexibility Act Analysis

283. The Regulatory Flexibility Act of 1980 (RFA)[503] generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities. The Commission estimates that the total number of Transmission Providers impacted by this Final Rule that are small entities is 11. The Commission estimates that the average total cost for each of these entities will be minimal, since most of the cost will be recovered from fees paid by Interconnection Customers. The estimated total number of Interconnection Customers that may be impacted by the requirements of this Final Rule is 800.[504] Of these, all are considered small. The Commission estimates that the total annual cost for each entity is $2,055.[505] The Commission does not consider this to be a significant economic impact. Further, the Commission expects that Interconnection Customers that are able to participate in the Fast Track Process rather than the Study Process will benefit from the proposed revisions to the *pro forma* SGIP.

284. Based on the above, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

IX. Document Availability

285. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

286. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

287. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

X. Effective Date and Congressional Notification

288. These regulations are effective February 3, 2014. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Act of 1996. The Commission will submit this

[499] This figure is the average of the salary plus benefits for an attorney, consultant (engineer), engineer, and administrative staff. The wages are derived from the Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm* and the benefits figure from *http://www.bls.gov/news.release/ecec.nr0.htm.*

[500] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[501] 18 CFR 380.4 (2013).

[502] *See* 18 CFR 380.4(a)(2)(ii) (2013).

[503] 5 U.S.C. 601–612 (2012).

[504] We assume that 800 Commission-jurisdictional interconnection requests will be made annually. For the purposes of this Final Rule, each of these requests is assumed to be made by a separate Interconnection Customer.

[505] This number is derived by multiplying the hourly figure for Interconnection Customers in the Burden Estimate table (1,300) plus an additional 750 hours associated with reviewing the draft facilities study report by the cost per hour ($75); plus the $300 fee per pre-application report multiplied by 800 Interconnection Customers; plus the cost of the supplemental review (assumed to be $2,500) multiplied by 500 Interconnection Customers; all divided by the total number of Interconnection Customers (800). ((2,050 hrs * $75/hr) + ($300 * 800) + ($2,500 * 500))/800 = $2,055.

Final Rule to both houses of Congress and the Government Accountability Office.

The Commission orders:

By the Commission. Chairman Wellinghoff is not participating.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

Note: Appendix A will not be published in the Code of Federal Regulations.

Appendix A: List of Short Names of Commenters on the Notice of Proposed Rulemaking

Short name or acronym	Commenter
AWEA	American Wind Energy Association.
Bonneville	Bonneville Power Administration.
CAISO	California Independent System Operator Corporation.
California Utilities	San Diego Gas & Electric Company, Southern California Edison Company and Pacific Gas and Electric Company.
CEP	ClearEdge Power.
Clean Coalition	Clean Coalition.
ComRent	ComRent International.
CPUC	California Public Utilities Commission.
CREA	Community Renewable Energy Association.
DCOPC	Office of the People's Counsel for the District of Columbia.
Duke Energy	Duke Energy Corporation.
Duquesne Light	Duquesne Light.
ELCON	Electricity Consumers Resource Council, American Chemistry Council, American Forest & Paper Association, American Iron and Steel Institute, CHP Association and Council of Industrial Boiler Owners.
ESA	Electricity Storage Association.
FCHEA	Fuel Cell & Hydrogen Energy Association.
IECA	Industrial Energy Consumers of America.
IREC	Interstate Renewable Energy Council.
IRC	ISO/RTO Council.
ISO–NE	ISO New England.
ITC	International Transmission Company.
LES	Landfill Energy Systems.
Lucia Villaran	Lucia Villaran.
Max Hensley	Max Hensley.
MISO	Midcontinent Independent System Operator.
NARUC	National Association of Regulatory Utility Commissioners.
NRECA, EEI & APPA	National Rural Electric Cooperative Association, Edison Electric Institute and American Public Power Association.
NREL	National Renewable Energy Laboratory.
NRG Companies	NRG Companies.
NYISO & NYTO	New York Independent System Operator and New York Transmission Owners.
Pepco	Pepco Holdings Inc., Atlantic City Electric Company, Delmarva Power & Light Company and Potomac Electric Power Company.
PJM	PJM Interconnection, LLC.
Public Interest Organizations	Center for Rural Affairs, Climate + Energy Project, Conservation Law Foundation, Energy Future Coalition, Environmental Defense Fund, Environmental Law & Policy Center, Environment Northeast, Fresh Energy, Great Plains Institute, National Audubon Society, Natural Resources Defense Council, Northwest Energy Coalition, Pace Energy and Climate Center, Piedmont Environmental Council, Sierra Club, Southern Alliance for Clean Energy, Southern Environmental Law Center, Sustainable FERC Project, Union of Concerned Scientists, Utah Clean Energy, Western Grid Group, Western Resource Advocates, The Wilderness Society and Wind on the Wires.
Sandia	Sandia National Laboratories.
SEIA	Solar Energy Industries Association.
UCS	Union of Concerned Scientists.
VSI	Vote Solar Initiative.

Note: Appendix B will not be published in the Code of Federal Regulations.

Appendix B

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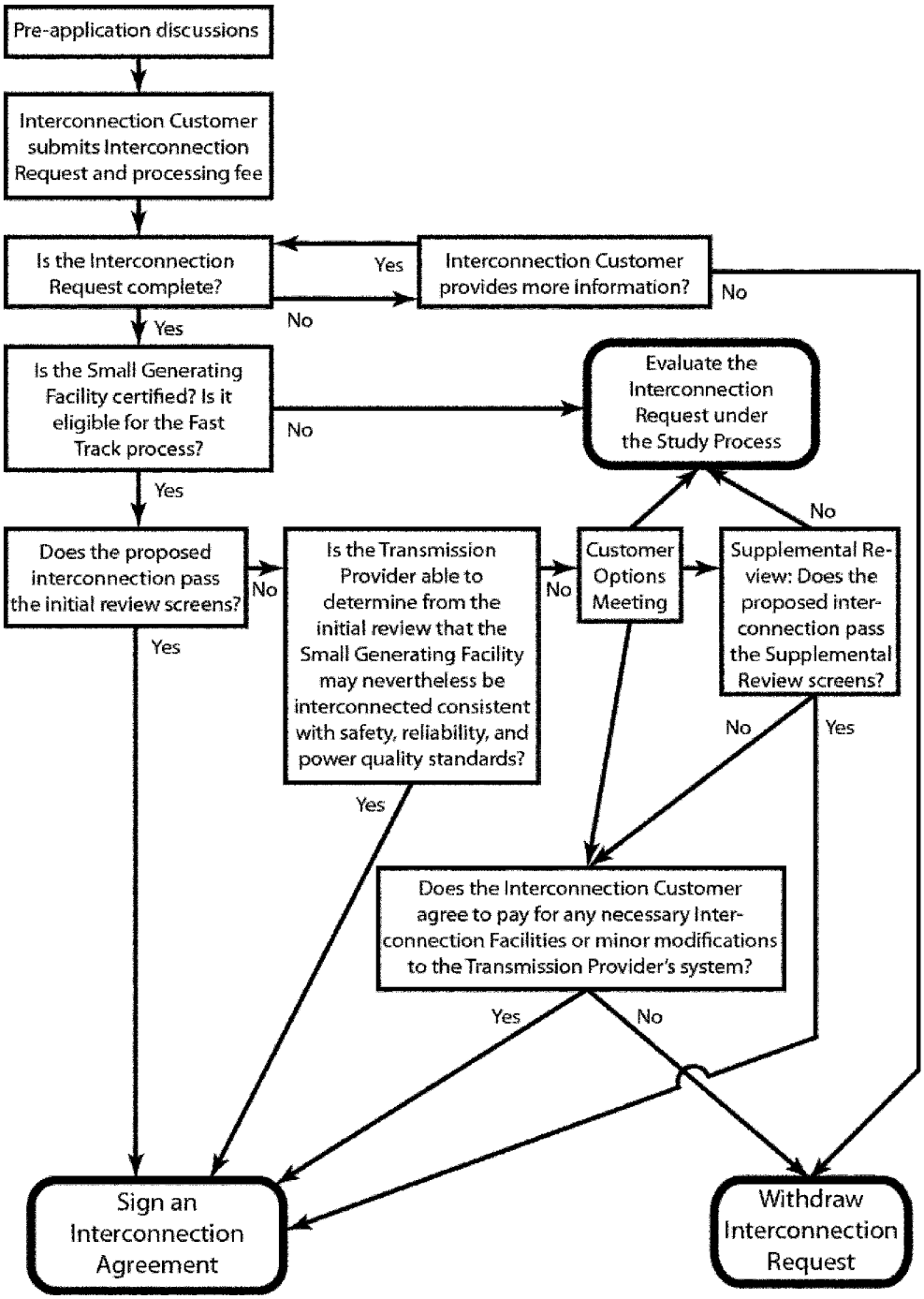
Flow Chart for Interconnecting a Certified Small Generating Facility Using the "Fast Track Process"



Appendix C: Revisions to the *Pro Forma* SGIP

Small Generator Interconnection Procedures (SGIP)

(For Generating Facilities No Larger Than 20 MW)

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Attachment 2 – Small Generator Interconnection Request
Attachment 3 – Certification Codes and Standards
Attachment 4 – Certification of Small Generator Equipment Packages
Attachment 5 – Application, Procedures, and Terms and Conditions for Interconnecting a Certified Invertor-Based Small Generating Facility No Larger than 10 kW ("10 kW Inverter Process").
Attachment 6 – Feasibility Study Agreement
Attachment 7 – System Impact Study Agreement
Attachment 8 – Facilities Study Agreement

Section 1. Application

1.1 Applicability

1.1.1 A request to interconnect a certified Small Generating Facility (See Attachments 3 and 4 for description of certification criteria) ~~no larger than 2 MW~~ to the Transmission Provider's Distribution System shall be evaluated under the section 2 Fast Track Process if the eligibility requirements of section 2.1 are met. A request to interconnect a certified inverter-based Small Generating Facility no larger than 10 kilowatts (kW) shall be evaluated under the Attachment 5 10 kW Inverter Process. A request to interconnect a Small Generating Facility ~~larger than 2 MW but~~ no larger than 20 megawatts (MW) that does not meet the eligibility requirements of section 2.1, or ~~a Small Generating Facility that~~ does not pass the Fast Track Process or the 10 kW Inverter Process, shall be evaluated under the section 3 Study Process. If the Interconnection Customer wishes to interconnect its Small Generating Facility using Network Resource Interconnection Service, it must do so under the Standard Large Generator Interconnection Procedures and execute the Standard Large Generator Interconnection Agreement.

1.1.2 Capitalized terms used herein shall have the meanings specified in the Glossary of Terms in Attachment 1 or the body of these procedures.

1.1.3 Neither these procedures nor the requirements included hereunder apply to Small Generating Facilities interconnected or approved for interconnection prior to 60 Business Days after the effective date of these procedures.

1.1.4 Prior to submitting its Interconnection Request (Attachment 2), the Interconnection Customer may ask the Transmission Provider's interconnection contact employee or office whether the proposed interconnection is subject to these procedures. The Transmission Provider shall respond within 15 Business Days.

1.1.5 Infrastructure security of electric system equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. The Federal Energy Regulatory Commission expects all Transmission Providers, market participants, and Interconnection Customers interconnected with electric systems to comply with the recommendations offered by the President's Critical Infrastructure

Protection Board and best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for electric system infrastructure and operational security, including physical, operational, and cyber-security practices.

1.1.6 References in these procedures to interconnection agreement are to the Small Generator Interconnection Agreement (SGIA).

1.2 Pre-Application

1.2.1 The Transmission Provider shall designate an employee or office from which information on the application process and on an Affected System can be obtained through informal requests from the Interconnection Customer presenting a proposed project for a specific site. The name, telephone number, and e-mail address of such contact employee or office shall be made available on the Transmission Provider's Internet web site. Electric system information provided to the Interconnection Customer should include relevant system studies, interconnection studies, and other materials useful to an understanding of an interconnection at a particular point on the Transmission Provider's Transmission System, to the extent such provision does not violate confidentiality provisions of prior agreements or critical infrastructure requirements. The Transmission Provider shall comply with reasonable requests for such information.

1.2.2 In addition to the information described in section 1.2.1, which may be provided in response to an informal request, an Interconnection Customer may submit a formal written request form along with a non-refundable fee of $300 for a pre-application report on a proposed project at a specific site. The Transmission Provider shall provide the pre-application data described in section 1.2.3 to the Interconnection Customer within 20 Business Days of receipt of the completed request form and payment of the $300 fee. The pre-application report produced by the Transmission Provider is non-binding, does not confer any rights, and the Interconnection Customer must still successfully apply to interconnect to the Transmission Provider's system. The written pre-application report request form shall include the information in sections 1.2.2.1 through 1.2.2.8 below to clearly and sufficiently identify the location of the proposed Point of Interconnection.

1.2.2.1 Project contact information, including name, address, phone number, and email address.

1.2.2.2 Project location (street address with nearby cross streets and town)

1.2.2.3 Meter number, pole number, or other equivalent information identifying proposed Point of Interconnection, if available.

1.2.2.4 Generator Type (e.g., solar, wind, combined heat and power, etc.)

1.2.2.5 Size (alternating current kW)

1.2.2.6 Single or three phase generator configuration

1.2.2.7 Stand-alone generator (no onsite load, not including station service – Yes or No?)

1.2.2.8 Is new service requested? Yes or No? If there is existing service, include the customer account number, site minimum and maximum current or proposed electric loads in kW (if available) and specify if the load is expected to change.

1.2.3. Using the information provided in the pre-application report request form in section 1.2.2, the Transmission Provider will identify the substation/area bus, bank or circuit likely to serve the proposed Point of Interconnection. This selection by the Transmission Provider does not necessarily indicate, after application of the screens and/or study, that this would be the circuit the project ultimately connects to. The Interconnection Customer must request additional pre-application reports if information about multiple Points of Interconnection is requested. Subject to section 1.2.4, the pre-application report will include the following information:

1.2.3.1 Total capacity (in MW) of substation/area bus, bank or circuit based on normal or operating ratings likely to serve the proposed Point of Interconnection.

1.2.3.2 Existing aggregate generation capacity (in MW) interconnected to a substation/area bus, bank or circuit (i.e., amount of generation online) likely to serve the proposed Point of Interconnection.

1.2.3.3 Aggregate queued generation capacity (in MW) for a substation/area bus, bank or circuit (i.e., amount of generation in the queue) likely to serve the proposed Point of Interconnection.

1.2.3.4 Available capacity (in MW) of substation/area bus or bank and circuit likely to serve the proposed Point of Interconnection (i.e., total capacity less the sum of existing aggregate generation capacity and aggregate queued generation capacity).

1.2.3.5 Substation nominal distribution voltage and/or transmission nominal voltage if applicable.

1.2.3.6 Nominal distribution circuit voltage at the proposed Point of Interconnection.

1.2.3.7 Approximate circuit distance between the proposed Point of Interconnection and the substation.

1.2.3.8 Relevant line section(s) actual or estimated peak load and minimum load data, including daytime minimum load as described in section 2.4.4.1.1 below and absolute minimum load, when available.

1.2.3.9 Number and rating of protective devices and number and type (standard, bi-directional) of voltage regulating devices between the proposed Point of Interconnection and the substation/area. Identify whether the substation has a load tap changer.

1.2.3.10 Number of phases available at the proposed Point of Interconnection. If a single phase, distance from the three-phase circuit.

1.2.3.11 Limiting conductor ratings from the proposed Point of Interconnection to the distribution substation.

1.2.3.12 Whether the Point of Interconnection is located on a spot network, grid network, or radial supply.

1.2.3.13 Based on the proposed Point of Interconnection, existing or known constraints such as, but not limited to, electrical dependencies at that location, short circuit interrupting

capacity issues, power quality or stability issues on the circuit, capacity constraints, or secondary networks.

1.2.4 The pre-application report need only include existing data. A pre-application report request does not obligate the Transmission Provider to conduct a study or other analysis of the proposed generator in the event that data is not readily available. If the Transmission Provider cannot complete all or some of a pre-application report due to lack of available data, the Transmission Provider shall provide the Interconnection Customer with a pre-application report that includes the data that is available. The provision of information on "available capacity" pursuant to section 1.2.3.4 does not imply that an interconnection up to this level may be completed without impacts since there are many variables studied as part of the interconnection review process, and data provided in the pre-application report may become outdated at the time of the submission of the complete Interconnection Request. Notwithstanding any of the provisions of this section, the Transmission Provider shall, in good faith, include data in the pre-application report that represents the best available information at the time of reporting.

1.3 Interconnection Request

The Interconnection Customer shall submit its Interconnection Request to the Transmission Provider, together with the processing fee or deposit specified in the Interconnection Request. The Interconnection Request shall be date- and time-stamped upon receipt. The original date- and time-stamp applied to the Interconnection Request at the time of its original submission shall be accepted as the qualifying date- and time-stamp for the purposes of any timetable in these procedures. The Interconnection Customer shall be notified of receipt by the Transmission Provider within three Business Days of receiving the Interconnection Request. The Transmission Provider shall notify the Interconnection Customer within ten Business Days of the receipt of the Interconnection Request as to whether the Interconnection Request is complete or incomplete. If the Interconnection Request is incomplete, the Transmission Provider shall provide along with the notice that the Interconnection Request is incomplete, a written list detailing all information that must be provided to complete the Interconnection Request. The Interconnection Customer will

have ten Business Days after receipt of the notice to submit the listed information or to request an extension of time to provide such information. If the Interconnection Customer does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request will be deemed withdrawn. An Interconnection Request will be deemed complete upon submission of the listed information to the Transmission Provider.

1.4 Modification of the Interconnection Request

Any modification to machine data or equipment configuration or to the interconnection site of the Small Generating Facility not agreed to in writing by the Transmission Provider and the Interconnection Customer may be deemed a withdrawal of the Interconnection Request and may require submission of a new Interconnection Request, unless proper notification of each Party by the other and a reasonable time to cure the problems created by the changes are undertaken.

1.5 Site Control

Documentation of site control must be submitted with the Interconnection Request. Site control may be demonstrated through:

1.5.1 Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Small Generating Facility;

1.5.2 An option to purchase or acquire a leasehold site for such purpose; or

1.5.3 An exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease, or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

1.6 Queue Position

The Transmission Provider shall assign a Queue Position based upon the date- and time-stamp of the Interconnection Request. The Queue Position of each Interconnection Request will be used to determine the cost responsibility for the Upgrades necessary to accommodate the interconnection. The Transmission Provider shall maintain a single queue per geographic region. At the Transmission

Provider's option, Interconnection Requests may be studied serially or in clusters for the purpose of the system impact study.

1.7 Interconnection Requests Submitted Prior to the Effective Date of the SGIP

Nothing in this SGIP affects an Interconnection Customer's Queue Position assigned before the effective date of this SGIP. The Parties agree to complete work on any interconnection study agreement executed prior the effective date of this SGIP in accordance with the terms and conditions of that interconnection study agreement. Any new studies or other additional work will be completed pursuant to this SGIP.

Section 2. Fast Track Process

2.1 Applicability

The Fast Track Process is available to an Interconnection Customer proposing to interconnect its Small Generating Facility with the Transmission Provider's ~~Transmission~~ Distribution System if the Small Generating Facility ~~is no larger than 2 MW and if~~'s capacity does not exceed the size limits identified in the table below. Small Generating Facilities below these limits are eligible for Fast Track review. However, Fast Track eligibility is distinct from the Fast Track Process itself, and eligibility does not imply or indicate that a Small Generating Facility will pass the Fast Track screens in section 2.2.1 below or the Supplemental Review screens in section 2.4.1 below.

Fast Track eligibility is determined based upon the generator type, the size of the generator, voltage of the line and the location of and the type of line at the Point of Interconnection. All Small Generating Facilities connecting to lines greater than 69 kilovolt (kV) are ineligible for the Fast Track Process regardless of size. All synchronous and induction machines must be no larger than 2 MW to be eligible for the Fast Track Process, regardless of location. For certified inverter-based systems, the size limit varies according to the voltage of the line at the proposed Point of Interconnection. Certified inverter-based Small Generating Facilities located within 2.5 electrical circuit miles of a substation and on a mainline (as defined in the table below) are eligible for the Fast Track Process under the higher thresholds according to the table below. In addition to the size threshold, the Interconnection Customer's proposed Small Generating Facility must meet~~s~~ the codes, standards, and certification requirements of Attachments 3 and 4 of these

procedures, or the Transmission Provider has to have reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.

Fast Track Eligibility for Inverter-Based Systems		
Line Voltage	Fast Track Eligibility Regardless of Location	Fast Track Eligibility on a Mainline[1] and ≤ 2.5 Electrical Circuit Miles from Substation[2]
< 5 kV	≤ 500 kW	≤ 500 kW
≥ 5 kV and < 15 kV	≤ 2 MW	≤ 3 MW
≥ 15 kV and < 30 kV	≤ 3 MW	≤ 4 MW
≥ 30 kV and ≤ 69 kV	≤ 4 MW	≤ 5 MW

2.2 Initial Review

Within 15 Business Days after the Transmission Provider notifies the Interconnection Customer it has received a complete Interconnection Request, the Transmission Provider shall perform an initial review using the screens set forth below, shall notify the Interconnection Customer of the results, and include with the notification copies of the analysis and data underlying the Transmission Provider's determinations under the screens.

2.2.1 Screens

2.2.1.1 The proposed Small Generating Facility's Point of Interconnection must be on a portion of the Transmission Provider's Distribution System that is subject to the Tariff.

[1] For purposes of this table, a mainline is the three-phase backbone of a circuit. It will typically constitute lines with wire sizes of 4/0 American wire gauge, 336.4 kcmil, 397.5 kcmil, 477 kcmil and 795 kcmil.

[2] An Interconnection Customer can determine this information about its proposed interconnection location in advance by requesting a pre-application report pursuant to section 1.2.

2.2.1.2 For interconnection of a proposed Small Generating Facility to a radial distribution circuit, the aggregated generation, including the proposed Small Generating Facility, on the circuit shall not exceed 15 % of the line section annual peak load as most recently measured at the substation. A line section is that portion of a Transmission Provider's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

2.2.1.3 For interconnection of a proposed Small Generating Facility to the load side of spot network protectors, the proposed Small Generating Facility must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5 % of a spot network's maximum load or 50 kW.[3]

2.2.1.4 The proposed Small Generating Facility, in aggregation with other generation on the distribution circuit, shall not contribute more than 10 % to the distribution circuit's maximum fault current at the point on the high voltage (primary) level nearest the proposed point of change of ownership.

2.2.1.5 The proposed Small Generating Facility, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or Interconnection Customer equipment on the system to exceed 87.5 % of the short circuit interrupting capability; nor shall the interconnection be proposed for a circuit that already exceeds 87.5 % of the short circuit interrupting capability.

2.2.1.6 Using the table below, determine the type of interconnection to a primary distribution line. This screen includes a review of the type of electrical service provided to the

[3] A spot network is a type of distribution system found within modern commercial buildings to provide high reliability of service to a single customer. (Standard Handbook for Electrical Engineers, 11th edition, Donald Fink, McGraw Hill Book Company)

Interconnecting Customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on the Transmission Provider's electric power system due to a loss of ground during the operating time of any anti-islanding function.

Primary Distribution Line Type	Type of Interconnection to Primary Distribution Line	Result/Criteria
Three-phase, three wire	3-phase or single phase, phase-to-phase	Pass Screen

2.2.1.7 If the proposed Small Generating Facility is to be interconnected on single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed Small Generating Facility, shall not exceed 20 kW.

2.2.1.8 If the proposed Small Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20 % of the nameplate rating of the service transformer.

2.2.1.9 The Small Generating Facility, in aggregate with other generation interconnected to the transmission side of a substation transformer feeding the circuit where the Small Generating Facility proposes to interconnect shall not exceed 10 MW in an area where there are known, or posted, transient stability limitations to generating units located in the general electrical vicinity (e.g., three or four transmission busses from the point of interconnection).

2.2.1.10 No construction of facilities by the Transmission Provider on its own system shall be required to accommodate the Small Generating Facility.

2.2.2 If the proposed interconnection passes the screens, the Interconnection Request shall be approved and the Transmission Provider will provide the Interconnection Customer an executable interconnection agreement within five Business Days after the determination.

2.2.3 If the proposed interconnection fails the screens, but the Transmission Provider determines that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the Transmission Provider shall provide the Interconnection Customer an executable interconnection agreement within five Business Days after the determination.

2.2.4 If the proposed interconnection fails the screens, ~~but~~and the Transmission Provider does not or cannot determine from the initial review that the Small Generating Facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards unless the Interconnection Customer is willing to consider minor modifications or further study, the Transmission Provider shall provide the Interconnection Customer with the opportunity to attend a customer options meeting.

2.3 Customer Options Meeting

If the Transmission Provider determines the Interconnection Request cannot be approved without (1) minor modifications at minimal cost~~;~~, (2) ~~or~~ a supplemental study or other additional studies or actions~~;~~, or (3) ~~or at~~ incurring significant cost to address safety, reliability, or power quality problems, ~~within the five Business Day period after the determination,~~ the Transmission Provider shall notify the Interconnection Customer of that determination within five Business Days after the determination and provide copies of all data and analyses underlying its conclusion. Within ten Business Days of the Transmission Provider's determination, the Transmission Provider shall offer to convene a customer options meeting with the Transmission Provider to review possible Interconnection Customer facility modifications or the screen analysis and related results, to determine what further steps are needed to permit the Small Generating Facility to be connected safely and reliably. At the time of notification of the Transmission Provider's determination, or at the customer options meeting, the Transmission Provider shall:

2.3.1 Offer to perform facility modifications or minor modifications to the Transmission Provider's electric system (e.g., changing meters, fuses, relay settings) and provide a non-binding good faith estimate of the limited cost

to make such modifications to the Transmission Provider's electric system. If the Interconnection Customer agrees to pay for the modifications to the Transmission Provider's electric system, the Transmission Provider will provide the Interconnection Customer with an executable interconnection agreement within ten Business Days of the customer options meeting; or

2.3.2 Offer to perform a supplemental review in accordance with section 2.4 ~~if the Transmission Provider concludes that the supplemental review might determine that the Small Generating Facility could continue to qualify for interconnection pursuant to the Fast Track Process,~~ and provide a non-binding good faith estimate of the costs of such review; or

2.3.3 Obtain the Interconnection Customer's agreement to continue evaluating the Interconnection Request under the section 3 Study Process.

2.4 Supplemental Review

2.4.1 ~~If the Interconnection Customer agrees to~~To accept the offer of a supplemental review, the Interconnection Customer shall agree in writing ~~within 15 Business Days of the offer,~~ and submit a deposit for the estimated costs of the supplemental review in the amount of the Transmission Provider's good faith estimate of the costs of such review, both within 15 Business Days of the offer. If the written agreement and deposit have not been received by the Transmission Provider within that timeframe, the Interconnection Request shall continue to be evaluated under the section 3 Study Process unless it is withdrawn by the Interconnection Customer.

2.4.2 The Interconnection Customer may specify the order in which the Transmission Provider will complete the screens in section 2.4.4.

2.4.3 The Interconnection Customer shall be responsible for the Transmission Provider's actual costs for conducting the supplemental review. The Interconnection Customer must pay any review costs that exceed the deposit within 20 Business Days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced costs, the Transmission Provider will return such excess within 20 Business Days of the invoice without interest.

2.4.4 Within ~~ten~~30 Business Days following receipt of the deposit for a supplemental review, the Transmission Provider ~~will determine if the Small Generating Facility can be interconnected safely and reliably~~shall (1) perform a supplemental review using the screens set forth below; (2) notify in writing the Interconnection Customer of the results; and (3) include with the notification copies of the analysis and data underlying the Transmission Provider's determinations under the screens. Unless the Interconnection Customer provided instructions for how to respond to the failure of any of the supplemental review screens below at the time the Interconnection Customer accepted the offer of supplemental review, the Transmission Provider shall notify the Interconnection Customer following the failure of any of the screens, or if it is unable to perform the screen in section 2.4.4.1, within two Business Days of making such determination to obtain the Interconnection Customer's permission to: (1) continue evaluating the proposed interconnection under this section 2.4.4; (2) terminate the supplemental review and continue evaluating the Small Generating Facility under section 3; or (3) terminate the supplemental review upon withdrawal of the Interconnection Request by the Interconnection Customer.

2.4.4.1 ~~If so, the Transmission Provider shall forward an executable interconnection agreement to the Interconnection Customer within five Business Days~~ Minimum Load Screen: Where 12 months of line section minimum load data (including onsite load but not station service load served by the proposed Small Generating Facility) are available, can be calculated, can be estimated from existing data, or determined from a power flow model, the aggregate Generating Facility capacity on the line section is less than 100% of the minimum load for all line sections bounded by automatic sectionalizing devices upstream of the proposed Small Generating Facility. If minimum load data is not available, or cannot be calculated, estimated or determined, the Transmission Provider shall include

the reason(s) that it is unable to calculate, estimate or determine minimum load in its supplemental review results notification under section 2.4.4.

2.4.4.1.1 The type of generation used by the proposed Small Generating Facility will be taken into account when calculating, estimating, or determining circuit or line section minimum load relevant for the application of screen 2.4.1.1. Solar photovoltaic (PV) generation systems with no battery storage use daytime minimum load (i.e. 10 a.m. to 4 p.m. for fixed panel systems and 8 a.m. to 6 p.m. for PV systems utilizing tracking systems), while all other generation uses absolute minimum load.

2.4. 4.1.2 When this screen is being applied to a Small Generating Facility that serves some station service load, only the net injection into the Transmission Provider's electric system will be considered as part of the aggregate generation.

2.4. 4.1.3 Transmission Provider will not consider as part of the aggregate generation for purposes of this screen generating facility capacity known to be already reflected in the minimum load data.

2.4.4.2 Voltage and Power Quality Screen: In aggregate with existing generation on the line section: (1) the voltage regulation on the line section can be maintained in compliance with relevant requirements under all system conditions; (2) the voltage fluctuation is within acceptable limits as defined by Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or utility practice similar to IEEE Standard 1453; and (3) the harmonic levels meet IEEE Standard 519 limits.

2.4.4.3 Safety and Reliability Screen: The location of the proposed Small Generating Facility and the aggregate generation capacity on the line section do not create impacts to safety or reliability that cannot be adequately addressed without application of the Study Process. The Transmission Provider shall give due consideration to the following and other factors in determining potential impacts to safety and reliability in applying this screen.

2.4.4.3.1 Whether the line section has significant minimum loading levels dominated by a small number of customers (e.g., several large commercial customers).

2.4.4.3.2 Whether the loading along the line section uniform or even.

2.4.4.3.3 Whether the proposed Small Generating Facility is located in close proximity to the substation (i.e., less than 2.5 electrical circuit miles), and whether the line section from the substation to the Point of Interconnection is a Mainline rated for normal and emergency ampacity.

2.4.4.3.4 Whether the proposed Small Generating Facility incorporates a time delay function to prevent reconnection of the generator to the system until system voltage and frequency are within normal limits for a prescribed time.

2.4.4.3.5 Whether operational flexibility is reduced by the proposed Small Generating Facility, such that transfer of the line section(s) of the Small Generating Facility to a neighboring distribution circuit/substation may trigger overloads or voltage issues.

2.4.4.3.6 Whether the proposed Small Generating Facility employs equipment or systems certified by a recognized standards organization to address technical issues such as, but not limited to, islanding, reverse power flow, or voltage quality.

2.4.5 If the proposed interconnection passes the supplemental screens in sections 2.4.4.1, 2.4.4.2, and 2.4.4.3 above, the Interconnection Request shall be approved and the Transmission Provider will provide the Interconnection Customer with an executable interconnection agreement within the timeframes established in sections 2.4.5.1 and 2.4.5.2 below. If the proposed interconnection fails any of the supplemental review screens and the Interconnection Customer does not withdraw its Interconnection Request, it shall continue to be evaluated under the section 3 Study Process consistent with section 2.4.5.3 below.

2.4.5.1 If the proposed interconnection passes the supplemental screens in sections 2.4.1.1, 2.4.1.2, and 2.4.1.3 above and does not require construction of facilities by the Transmission Provider on its own system, the interconnection agreement shall be provided within ten Business Days after the notification of the supplemental review results.

2.4.5.2 If interconnection facilities or minor modifications to the Transmission Provider's system are required for the proposed interconnection to pass the supplemental screens in sections 2.4.1.1, 2.4.1.2, and 2.4.1.3 above, and the Interconnection Customer agrees to pay for the modifications to the Transmission Provider's electric system, the interconnection agreement, along with a non-binding good faith estimate for the interconnection facilities and/or minor modifications, shall be provided to the Interconnection Customer within 15 Business Days after receiving written notification of the supplemental review results.

2.4.5.3 If the proposed interconnection would require more than interconnection facilities or minor modifications to the Transmission Provider's system to pass the supplemental screens in sections 2.4.1.1, 2.4.1.2, and 2.4.1.3 above, the Transmission Provider shall notify the Interconnection Customer, at the same time it notifies the Interconnection Customer with the supplemental review results, that the Interconnection Request shall be evaluated under the section 3 Study Process unless the Interconnection Customer withdraws its Small Generating Facility.

~~2.4.1.2 If so, and Interconnection Customer facility modifications are required to allow the Small Generating Facility to be interconnected consistent with safety, reliability, and power quality standards under these procedures, the Transmission Provider shall forward an executable interconnection agreement to the Interconnection Customer within five Business Days after confirmation that the Interconnection Customer has agreed to make the necessary changes at the Interconnection Customer's cost.~~

~~2.4.1.3 If so, and minor modifications to the Transmission Provider's electric system are required to allow the Small Generating Facility to be interconnected consistent with safety, reliability, and power quality standards under the Fast Track Process, the Transmission Provider shall forward an executable interconnection agreement to the Interconnection Customer within ten Business Days that requires the Interconnection Customer to pay the costs of such system modifications prior to interconnection.~~

~~2.4.1.4 If not, the Interconnection Request will continue to be evaluated under the section 3 Study Process.~~

Section 3. Study Process

3.1 Applicability

The Study Process shall be used by an Interconnection Customer proposing to interconnect its Small Generating Facility with the Transmission Provider's Transmission System or Distribution System if the Small Generating Facility (1) is larger than 2 MW but no larger than 20 MW, (2) is not certified, or (3) is certified but did not pass the Fast Track Process or the 10 kW Inverter Process.

3.2 Scoping Meeting

3.2.1 A scoping meeting will be held within ten Business Days after the Interconnection Request is deemed complete, or as otherwise mutually agreed to by the Parties. The Transmission Provider and the Interconnection Customer will bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

3.2.2 The purpose of the scoping meeting is to discuss the Interconnection Request and review existing studies relevant to the Interconnection Request. The Parties shall further discuss whether the Transmission Provider should perform a feasibility study or proceed directly to a system impact study, or a facilities study, or an interconnection agreement. If the Parties agree that a feasibility study should be performed, the Transmission Provider shall provide the Interconnection Customer, as soon as possible, but not later than five Business Days after the scoping meeting, a feasibility study agreement (Attachment 6) including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

3.2.3 The scoping meeting may be omitted by mutual agreement. In order to remain in consideration for interconnection, an Interconnection Customer who has requested a feasibility study must return the executed feasibility study agreement within 15 Business Days. If the Parties agree not to perform a feasibility study, the Transmission Provider shall provide the Interconnection Customer, no later than five Business Days after the scoping meeting, a system impact study agreement (Attachment 7) including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

3.3 Feasibility Study

3.3.1 The feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the Small Generating Facility.

3.3.2 A deposit of the lesser of 50 percent of the good faith estimated feasibility study costs or earnest money of $1,000 may be required from the Interconnection Customer.

3.3.3 The scope of and cost responsibilities for the feasibility study are described in the attached feasibility study agreement (Attachment 6).

3.3.4 If the feasibility study shows no potential for adverse system impacts, the Transmission Provider shall send the Interconnection Customer a facilities study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study. If no additional facilities are required, the Transmission Provider shall send the Interconnection Customer an executable interconnection agreement within five Business Days.

3.3.5 If the feasibility study shows the potential for adverse system impacts, the review process shall proceed to the appropriate system impact study(s).

3.4 System Impact Study

3.4.1 A system impact study shall identify and detail the electric system impacts that would result if the proposed Small Generating Facility were interconnected without project modifications or electric system modifications, focusing on the adverse system impacts identified in the feasibility study, or to study potential impacts, including but not limited to those identified in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

3.4.2 If no transmission system impact study is required, but potential electric power Distribution System adverse system impacts are identified in the scoping meeting or shown in the feasibility study, a distribution system impact study must be performed. The Transmission Provider shall send the Interconnection Customer a distribution system impact study agreement within 15 Business Days of transmittal of the feasibility study report, including an outline of the scope of the study and a non-binding good faith

estimate of the cost to perform the study, or following the scoping meeting if no feasibility study is to be performed.

3.4.3 In instances where the feasibility study or the distribution system impact study shows potential for transmission system adverse system impacts, within five Business Days following transmittal of the feasibility study report, the Transmission Provider shall send the Interconnection Customer a transmission system impact study agreement, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, if such a study is required.

3.4.4 If a transmission system impact study is not required, but electric power Distribution System adverse system impacts are shown by the feasibility study to be possible and no distribution system impact study has been conducted, the Transmission Provider shall send the Interconnection Customer a distribution system impact study agreement.

3.4.5 If the feasibility study shows no potential for transmission system or Distribution System adverse system impacts, the Transmission Provider shall send the Interconnection Customer either a facilities study agreement (Attachment 8), including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study, or an executable interconnection agreement, as applicable.

3.4.6 In order to remain under consideration for interconnection, the Interconnection Customer must return executed system impact study agreements, if applicable, within 30 Business Days.

3.4.7 A deposit of the good faith estimated costs for each system impact study may be required from the Interconnection Customer.

3.4.8 The scope of and cost responsibilities for a system impact study are described in the attached system impact study agreement.

3.4.9 Where transmission systems and Distribution Systems have separate owners, such as is the case with transmission-dependent utilities ("TDUs") – whether investor-owned or not – the Interconnection Customer may apply to the nearest Transmission Provider (Transmission Owner, Regional Transmission Operator, or Independent Transmission Provider) providing transmission service to the TDU to request project coordination. Affected

Systems shall participate in the study and provide all information necessary to prepare the study.

3.5 Facilities Study

3.5.1 Once the required system impact study(s) is completed, a system impact study report shall be prepared and transmitted to the Interconnection Customer along with a facilities study agreement within five Business Days, including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the facilities study. In the case where one or both impact studies are determined to be unnecessary, a notice of the fact shall be transmitted to the Interconnection Customer within the same timeframe.

3.5.2 In order to remain under consideration for interconnection, or, as appropriate, in the Transmission Provider's interconnection queue, the Interconnection Customer must return the executed facilities study agreement or a request for an extension of time within 30 Business Days.

3.5.3 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s).

3.5.4 Design for any required Interconnection Facilities and/or Upgrades shall be performed under the facilities study agreement. The Transmission Provider may contract with consultants to perform activities required under the facilities study agreement. The Interconnection Customer and the Transmission Provider may agree to allow the Interconnection Customer to separately arrange for the design of some of the Interconnection Facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the Transmission Provider, under the provisions of the facilities study agreement. If the Parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the Transmission Provider shall make sufficient information available to the Interconnection Customer in accordance with confidentiality and critical infrastructure requirements to permit the Interconnection Customer to obtain an independent design and cost estimate for any necessary facilities.

3.5.5 A deposit of the good faith estimated costs for the facilities study may be required from the Interconnection Customer.

3.5.6 The scope of and cost responsibilities for the facilities study are described in the attached facilities study agreement.

3.5.7 Upon completion of the facilities study, and with the agreement of the Interconnection Customer to pay for Interconnection Facilities and Upgrades identified in the facilities study, the Transmission Provider shall provide the Interconnection Customer an executable interconnection agreement within five Business Days.

Section 4. Provisions that Apply to All Interconnection Requests

4.1 Reasonable Efforts

The Transmission Provider shall make reasonable efforts to meet all time frames provided in these procedures unless the Transmission Provider and the Interconnection Customer agree to a different schedule. If the Transmission Provider cannot meet a deadline provided herein, it shall notify the Interconnection Customer, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

4.2 Disputes

4.2.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

4.2.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute.

4.2.3 If the dispute has not been resolved within two Business Days after receipt of the Notice, either Party may contact FERC's Dispute Resolution Service (DRS) for assistance in resolving the dispute.

4.2.4 The DRS will assist the Parties in either resolving their dispute or in selecting an appropriate dispute resolution venue (e.g., mediation,

settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. DRS can be reached at 1-877-337-2237 or via the internet at http://www.ferc.gov/legal/adr.asp.

4.2.5 Each Party agrees to conduct all negotiations in good faith and will be responsible for one-half of any costs paid to neutral third-parties.

4.2.6 If neither Party elects to seek assistance from the DRS, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of these procedures.

4.3 Interconnection Metering

Any metering necessitated by the use of the Small Generating Facility shall be installed at the Interconnection Customer's expense in accordance with Federal Energy Regulatory Commission, state, or local regulatory requirements or the Transmission Provider's specifications.

4.4 Commissioning

Commissioning tests of the Interconnection Customer's installed equipment shall be performed pursuant to applicable codes and standards. The Transmission Provider must be given at least five Business Days written notice, or as otherwise mutually agreed to by the Parties, of the tests and may be present to witness the commissioning tests.

4.5. Confidentiality

4.5.1 Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of these procedures all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

4.5.2 Confidential Information does not include information previously in the public domain, required to be publicly submitted or divulged by Governmental Authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce these procedures. Each

Party receiving Confidential Information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under these procedures, or to fulfill legal or regulatory requirements.

4.5.2.1 Each Party shall employ at least the same standard of care to protect Confidential Information obtained from the other Party as it employs to protect its own Confidential Information.

4.5.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of Confidential Information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

4.5.3 Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR § 1b.20, if FERC, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to these procedures, the Party shall provide the requested information to FERC, within the time provided for in the request for information. In providing the information to FERC, the Party may, consistent with 18 CFR § 388.112, request that the information be treated as confidential and non-public by FERC and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to FERC. The Party shall notify the other Party when it is notified by FERC that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR § 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

4.6 Comparability

The Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in this document. The Transmission

Provider shall use the same reasonable efforts in processing and analyzing Interconnection Requests from all Interconnection Customers, whether the Small Generating Facility is owned or operated by the Transmission Provider, its subsidiaries or affiliates, or others.

4.7 Record Retention

The Transmission Provider shall maintain for three years records, subject to audit, of all Interconnection Requests received under these procedures, the times required to complete Interconnection Request approvals and disapprovals, and justification for the actions taken on the Interconnection Requests.

4.8 Interconnection Agreement

After receiving an interconnection agreement from the Transmission Provider, the Interconnection Customer shall have 30 Business Days or another mutually agreeable timeframe to sign and return the interconnection agreement or request that the Transmission Provider file an unexecuted interconnection agreement with the Federal Energy Regulatory Commission. If the Interconnection Customer does not sign the interconnection agreement, or ask that it be filed unexecuted by the Transmission Provider within 30 Business Days, the Interconnection Request shall be deemed withdrawn. After the interconnection agreement is signed by the Parties, the interconnection of the Small Generating Facility shall proceed under the provisions of the interconnection agreement.

4.9 Coordination with Affected Systems

The Transmission Provider shall coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System operators and, if possible, include those results (if available) in its applicable interconnection study within the time frame specified in these procedures. The Transmission Provider will include such Affected System operators in all meetings held with the Interconnection Customer as required by these procedures. The Interconnection Customer will cooperate with the Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A Transmission Provider which may be an Affected System shall cooperate with the Transmission Provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

4.10 Capacity of the Small Generating Facility

4.10.1 If the Interconnection Request is for an increase in capacity for an existing Small Generating Facility, the Interconnection Request shall be evaluated on the basis of the new total capacity of the Small Generating Facility.

4.10.2 If the Interconnection Request is for a Small Generating Facility that includes multiple energy production devices at a site for which the Interconnection Customer seeks a single Point of Interconnection, the Interconnection Request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

4.10.3 The Interconnection Request shall be evaluated using the maximum ~~rated~~ capacity ~~of~~that the Small Generating Facility is capable of injecting into the Transmission Provider's electric system. However, if the maximum capacity that the Small Generating Facility is capable of injecting into the Transmission Provider's electric system is limited (e.g., through use of a control system, power relay(s), or other similar device settings or adjustments), then the Interconnection Customer must obtain the Transmission Provider's agreement, with such agreement not to be unreasonably withheld, that the manner in which the Interconnection Customer proposes to implement such a limit will not adversely affect the safety and reliability of the Transmission Provider's system. If the Transmission Provider does not so agree, then the Interconnection Request must be withdrawn or revised to specify the maximum capacity that the Small Generating Facility is capable of injecting into the Transmission Provider's electric system without such limitations. Furthermore, nothing in this section shall prevent a Transmission Provider from considering an output higher than the limited output, if appropriate, when evaluating system protection impacts.

Attachment 1
Glossary of Terms

10 kW Inverter Process – The procedure for evaluating an Interconnection Request for a certified inverter-based Small Generating Facility no larger than 10 kW that uses the section 2 screens. The application process uses an all-in-one document that includes a simplified Interconnection Request, simplified procedures, and a brief set of terms and conditions. See SGIP Attachment 5.

Affected System – An electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Business Day – Monday through Friday, excluding Federal Holidays.

Distribution System – The Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades – The additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Small Generating Facility and render the transmission service necessary to effect the Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Fast Track Process – The procedure for evaluating an Interconnection Request for a certified Small Generating Facility ~~no larger than 2 MW~~ that meets the eligibility requirements of section 2.1 and includes the section 2 screens, customer options meeting, and optional supplemental review.

Good Utility Practice – Any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and act which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Interconnection Customer – Any entity, including the Transmission Provider, the Transmission Owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its Small Generating Facility with the Transmission Provider's Transmission System.

Interconnection Facilities – The Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Small Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Small Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Request – The Interconnection Customer's request, in accordance with the Tariff, to interconnect a new Small Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Material Modification – A modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Network Resource – Any designated generating resource owned, purchased, or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis.

Network Resource Interconnection Service – An Interconnection Service that allows the Interconnection Customer to integrate its Generating Facility with the Transmission Provider's System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades – Additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Small Generating Facility interconnects with the Transmission Provider's Transmission System to accommodate the interconnection with the Small Generating Facility to the

Transmission Provider's Transmission System. Network Upgrades do not include Distribution Upgrades.

Party or Parties – The Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Interconnection – The point where the Interconnection Facilities connect with the Transmission Provider's Transmission System.

Queue Position – The order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Small Generating Facility – The Interconnection Customer's device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Study Process – The procedure for evaluating an Interconnection Request that includes the section 3 scoping meeting, feasibility study, system impact study, and facilities study.

Transmission Owner – The entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider – The public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission System – The facilities owned, controlled or operated by the Transmission Provider or the Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades – The required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

Attachment 2
SMALL GENERATOR INTERCONNECTION REQUEST
(Application Form)

Transmission Provider: _____

Designated Contact Person: _____

Address: _____

Telephone Number: _____

Fax: _____

E-Mail Address: _____

An Interconnection Request is considered complete when it provides all applicable and correct information required below. Per SGIP section 1.5, documentation of site control must be submitted with the Interconnection Request.

Preamble and Instructions

An Interconnection Customer who requests a Federal Energy Regulatory Commission jurisdictional interconnection must submit this Interconnection Request by hand delivery, mail, e-mail, or fax to the Transmission Provider.

Processing Fee or Deposit:

If the Interconnection Request is submitted under the Fast Track Process, the non-refundable processing fee is $500.

If the Interconnection Request is submitted under the Study Process, whether a new submission or an Interconnection Request that did not pass the Fast Track Process, the Interconnection Customer shall submit to the Transmission Provider a deposit not to exceed $1,000 towards the cost of the feasibility study.

Interconnection Customer Information

Legal Name of the Interconnection Customer (or, if an individual, individual's name)

Name: _____

Contact Person: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Facility Location (if different from above): _____

_____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Alternative Contact Information (if different from the Interconnection Customer)

Contact Name: _____

Title: _____

Address: _____

_____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Application is for: _____New Small Generating Facility

_____Capacity addition to Existing Small Generating Facility

If capacity addition to existing facility, please describe: _____

_____

Will the Small Generating Facility be used for any of the following?

Net Metering? Yes ___ No ___

To Supply Power to the Interconnection Customer? Yes ___No ___

To Supply Power to Others? Yes ____ No ____

For installations at locations with existing electric service to which the proposed Small Generating Facility will interconnect, provide:

_____ _____

(Local Electric Service Provider*) (Existing Account Number*)

[*To be provided by the Interconnection Customer if the local electric service provider is different from the Transmission Provider]

Contact Name: _____

Title: _____

Address: _____

_____

Telephone (Day): _____ Telephone (Evening): _____

Fax: _____ E-Mail Address: _____

Requested Point of Interconnection: _____

_____

Interconnection Customer's Requested In-Service Date: _____

Small Generating Facility Information

Data apply only to the Small Generating Facility, not the Interconnection Facilities.

Energy Source: ___Solar ___Wind ___Hydro ___ Hydro Type (e.g. Run-of-River):_____
__Diesel __ Natural Gas __ Fuel Oil Other (state type) _____

Prime Mover: __Fuel Cell __Recip Engine __Gas Turb __Steam Turb
__Microturbine __PV __Other

Type of Generator: ____Synchronous ____Induction ____ Inverter

Generator Nameplate Rating: _____kW (Typical) Generator Nameplate kVAR: _____

Interconnection Customer or Customer-Site Load: _____kW (if none, so state)

Typical Reactive Load (if known): _____

Maximum Physical Export Capability Requested: _____ kW

List components of the Small Generating Facility equipment package that are currently certified:

	Equipment Type	Certifying Entity
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Is the prime mover compatible with the certified protective relay package? ____Yes ____No

Generator (or solar collector) Manufacturer, Model Name & Number: _____

Version Number: _____

Nameplate Output Power Rating in kW: (Summer) _____ (Winter) _____

Nameplate Output Power Rating in kVA: (Summer) _____ (Winter) _____

Individual Generator Power Factor

Rated Power Factor: Leading: _____Lagging: _____

Total Number of Generators in wind farm to be interconnected pursuant to this

Interconnection Request: _____ Elevation:_____ ___Single phase ___Three phase

Inverter Manufacturer, Model Name & Number (if used):_____

List of adjustable set points for the protective equipment or software: _____

Note: A completed Power Systems Load Flow data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current: _____ Instantaneous or RMS_____?
Harmonics Characteristics: _____
Start-up requirements: _____

Small Generating Facility Characteristic Data (for rotating machines)

RPM Frequency: _____

(*) Neutral Grounding Resistor (If Applicable): _____

Synchronous Generators:
Direct Axis Synchronous Reactance, X_d: _____ P.U.
Direct Axis Transient Reactance, X'_d: _____P.U.
Direct Axis Subtransient Reactance, X''_d: _____P.U.
Negative Sequence Reactance, X_2: _____ P.U.
Zero Sequence Reactance, X_0: _____ P.U.

KVA Base: _____
Field Volts: _____
Field Amperes: _____

Induction Generators:
Motoring Power (kW): _____
I22t or K (Heating Time Constant): _____
Rotor Resistance, Rr: _____
Stator Resistance, Rs: _____
Stator Reactance, Xs: _____
Rotor Reactance, Xr: _____
Magnetizing Reactance, Xm: _____
Short Circuit Reactance, Xd": _____
Exciting Current: _____
Temperature Rise: _____
Frame Size: _____
Design Letter: _____
Reactive Power Required In Vars (No Load): _____
Reactive Power Required In Vars (Full Load): _____
Total Rotating Inertia, H: _____ Per Unit on kVA Base

Note: Please contact the Transmission Provider prior to submitting the Interconnection Request to determine if the specified information above is required.

Excitation and Governor System Data for Synchronous Generators Only
Provide appropriate IEEE model block diagram of excitation system, governor system and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Interconnection Facilities Information

Will a transformer be used between the generator and the point of common coupling?
__Yes __No
Will the transformer be provided by the Interconnection Customer? ____Yes ____No

Transformer Data (If Applicable, for Interconnection Customer-Owned Transformer):
Is the transformer: ____single phase _____three phase? Size: _____kVA
Transformer Impedance: _____% on _____kVA Base
If Three Phase:
Transformer Primary: _____ Volts _____ Delta _____Wye _____ Wye Grounded
Transformer Secondary: _____ Volts _____ Delta _____Wye _____ Wye Grounded
Transformer Tertiary: _____ Volts _____ Delta _____Wye _____ Wye Grounded

Transformer Fuse Data (If Applicable, for Interconnection Customer-Owned Fuse):

(Attach copy of fuse manufacturer's Minimum Melt and Total Clearing Time-Current Curves)

Manufacturer: _____ Type: _____ Size: _____ Speed: _____

Interconnecting Circuit Breaker (if applicable):

Manufacturer: _____ Type: _____

Load Rating (Amps): _____ Interrupting Rating (Amps): _____ Trip Speed (Cycles): _____

Interconnection Protective Relays (If Applicable):

If Microprocessor-Controlled:

List of Functions and Adjustable Setpoints for the protective equipment or software:

	Setpoint Function	Minimum	Maximum
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

If Discrete Components:

(Enclose Copy of any Proposed Time-Overcurrent Coordination Curves)

Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____
Manufacturer:_____	Type:____	Style/Catalog No.:_____	Proposed Setting:_____

Current Transformer Data (If Applicable):
(Enclose Copy of Manufacturer's Excitation and Ratio Correction Curves)

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

Potential Transformer Data (If Applicable):

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

Manufacturer: _____

Type: _____ Accuracy Class: _____ Proposed Ratio Connection: _____

General Information

Enclose copy of site electrical one-line diagram showing the configuration of all Small Generating Facility equipment, current and potential circuits, and protection and control schemes. This one-line diagram must be signed and stamped by a licensed Professional Engineer if the Small Generating Facility is larger than 50 kW. Is One-Line Diagram Enclosed? ____Yes ____No

Enclose copy of any site documentation that indicates the precise physical location of the proposed Small Generating Facility (e.g., USGS topographic map or other diagram or documentation).

Proposed location of protective interface equipment on property (include address if different from the Interconnection Customer's address)_____

Enclose copy of any site documentation that describes and details the operation of the protection and control schemes. Is Available Documentation Enclosed? ___Yes ____No

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).
Are Schematic Drawings Enclosed? ___Yes ____No

Applicant Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.

For Interconnection Customer: _____ Date: _____

Attachment 3
Certification Codes and Standards

IEEE1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity)

UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems

IEEE Std 929-2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems

NFPA 70 (2002), National Electrical Code

IEEE Std C37.90.1-1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems

IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers

IEEE Std C37.108-1989 (R2002), IEEE Guide for the Protection of Network Transformers

IEEE Std C57.12.44-2000, IEEE Standard Requirements for Secondary Network Protectors

IEEE Std C62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits

IEEE Std C62.45-1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits

ANSI C84.1-1995 Electric Power Systems and Equipment – Voltage Ratings (60 Hertz)

IEEE Std 100-2000, IEEE Standard Dictionary of Electrical and Electronic Terms

NEMA MG 1-1998, Motors and Small Resources, Revision 3

IEEE Std 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems

NEMA MG 1-2003 (Rev 2004), Motors and Generators, Revision 1

Attachment 4
Certification of Small Generator Equipment Packages

1.0 Small Generating Facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if (1) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced below by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Attachment 3, (2) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application, and (3) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.

2.0 The Interconnection Customer must verify that the intended use of the equipment falls within the use or uses for which the equipment was tested, labeled, and listed by the NRTL.

3.0 Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing herein shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow-up production testing by the NRTL.

4.0 If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an Interconnection Customer must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.

5.0 Provided the generator or electric source, when combined with the equipment package, is within the range of capabilities for which it was tested by the NRTL, and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing or additional equipment on the customer side of the point of common coupling shall be required to meet the requirements of this interconnection procedure.

6.0 An equipment package does not include equipment provided by the utility.

7.0 Any equipment package approved and listed in a state by that state's regulatory body for interconnected operation in that state prior to the effective date of these small generator interconnection procedures shall be considered certified under these procedures for use in that state.

Attachment 5

Application, Procedures, and Terms and Conditions for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger than 10 kW ("10 kW Inverter Process")

1.0 The Interconnection Customer ("Customer") completes the Interconnection Request ("Application") and submits it to the Transmission Provider ("Company").

2.0 The Company acknowledges to the Customer receipt of the Application within three Business Days of receipt.

3.0 The Company evaluates the Application for completeness and notifies the Customer within ten Business Days of receipt that the Application is or is not complete and, if not, advises what material is missing.

4.0 The Company verifies that the Small Generating Facility can be interconnected safely and reliably using the screens contained in the Fast Track Process in the Small Generator Interconnection Procedures (SGIP). The Company has 15 Business Days to complete this process. Unless the Company determines and demonstrates that the Small Generating Facility cannot be interconnected safely and reliably, the Company approves the Application and returns it to the Customer. Note to Customer: Please check with the Company before submitting the Application if disconnection equipment is required.

5.0 After installation, the Customer returns the Certificate of Completion to the Company. Prior to parallel operation, the Company may inspect the Small Generating Facility for compliance with standards which may include a witness test, and may schedule appropriate metering replacement, if necessary.

6.0 The Company notifies the Customer in writing that interconnection of the Small Generating Facility is authorized. If the witness test is not satisfactory, the Company has the right to disconnect the Small Generating Facility. The Customer has no right to operate in parallel until a witness test has been performed, or previously waived on the Application. The Company is obligated to complete this witness test within ten Business Days of the receipt of the Certificate of Completion. If the Company does not inspect within ten Business Days or by mutual agreement of the Parties, the witness test is deemed waived.

7.0 Contact Information – The Customer must provide the contact information for the legal applicant (i.e., the Interconnection Customer). If another entity is responsible for interfacing with the Company, that contact information must be provided on the Application.

8.0 Ownership Information – Enter the legal names of the owner(s) of the Small Generating Facility. Include the percentage ownership (if any) by any utility or public utility holding company, or by any entity owned by either.

9.0 UL1741 Listed – This standard ("Inverters, Converters, and Controllers for Use in Independent Power Systems") addresses the electrical interconnection design of various forms of generating equipment. Many manufacturers submit their equipment to a Nationally Recognized Testing Laboratory (NRTL) that verifies compliance with UL1741. This "listing" is then marked on the equipment and supporting documentation.

Application for Interconnecting a Certified Inverter-Based Small Generating Facility No Larger than 10kW

This Application is considered complete when it provides all applicable and correct information required below. Per SGIP section 1.5, documentation of site control must be submitted with the Interconnection Request. Additional information to evaluate the Application may be required.

Processing Fee

A non-refundable processing fee of $100 must accompany this Application.

Interconnection Customer

Name: _____

Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Contact (if different from Interconnection Customer)

Name: _____

Contact Person: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Owner of the facility (include % ownership by any electric utility): _____

_____

Small Generating Facility Information

Location (if different from above): _____

Electric Service Company: _____

Account Number: _____

Inverter Manufacturer: _____ Model: _____
Nameplate Rating:_____(kW) _____(kVA) _____(AC Volts)

Single Phase ____ Three Phase____

System Design Capacity: _____ (kW) _____ (kVA)

Prime Mover: ___Photovoltaic ___Reciprocating Engine ___Fuel Cell

___Turbine ___Other (describe)_____

Energy Source: ___Solar ___Wind ___Hydro ___Diesel ___Natural Gas

___Fuel Oil ___Other (describe) _____

Is the equipment UL1741 Listed? ___Yes ___No

If Yes, attach manufacturer's cut-sheet showing UL1741 listing
Estimated Installation Date: _____Estimated In-Service Date: _____

The 10 kW Inverter Process is available only for inverter-based Small Generating Facilities no larger than 10 kW that meet the codes, standards, and certification requirements of Attachments 3 and 4 of the Small Generator Interconnection Procedures (SGIP), or the Transmission Provider has reviewed the design or tested the proposed Small Generating Facility and is satisfied that it is safe to operate.

List components of the Small Generating Facility equipment package that are currently certified:

	Equipment Type	Certifying Entity
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

Interconnection Customer Signature

I hereby certify that, to the best of my knowledge, the information provided in this Application is true. I agree to abide by the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return the Certificate of Completion when the Small Generating Facility has been installed.

Signed: _____
Title: _____ Date: _____

Contingent Approval to Interconnect the Small Generating Facility
(For Company use only)

Interconnection of the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW and return of the Certificate of Completion.

Company Signature: _____

Title: _____ Date: _____

Application ID number: _____

Company waives inspection/witness test? Yes___No___

Small Generating Facility Certificate of Completion

Is the Small Generating Facility owner-installed? Yes_____ No _____

Interconnection Customer: _____

Contact Person: _____

Address: _____

Location of the Small Generating Facility (if different from above): _____

_____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

Electrician:

Name: _____

Address: _____

Location of the Small Generating Facility (if different from above): _____

_____

City: _____ State: _____ Zip: _____

Telephone (Day): _____ (Evening): _____

Fax: _____ E-Mail Address: _____

License number: _____

Date Approval to Install Facility granted by the Company: _____

Application ID number: _____

Inspection:

The Small Generating Facility has been installed and inspected in compliance with the local building/electrical code of: _____

Signed (Local electrical wiring inspector, or attach signed electrical inspection):

_____

Print Name: _____

Date: _____

As a condition of interconnection, you are required to send/fax a copy of this form along with a copy of the signed electrical permit to (insert Company information below):

Name: _____

Company: _____

Address: _____

_____

City, State ZIP: _____

Fax: _____

.....

Approval to Energize the Small Generating Facility (For Company use only)

Energizing the Small Generating Facility is approved contingent upon the Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW

Company Signature: _____

Title: _____ Date: _____

Terms and Conditions for Interconnecting an Inverter-Based Small Generating Facility No Larger than 10kW

1.0 Construction of the Facility

The Interconnection Customer (the "Customer") may proceed to construct (including operational testing not to exceed two hours) the Small Generating Facility when the Transmission Provider (the "Company") approves the Interconnection Request (the "Application") and returns it to the Customer.

2.0 Interconnection and Operation

The Customer may operate Small Generating Facility and interconnect with the Company's electric system once all of the following have occurred:

2.1 Upon completing construction, the Customer will cause the Small Generating Facility to be inspected or otherwise certified by the appropriate local electrical wiring inspector with jurisdiction, and

2.2 The Customer returns the Certificate of Completion to the Company, and

2.3 The Company has either:

2.3.1 Completed its inspection of the Small Generating Facility to ensure that all equipment has been appropriately installed and that all electrical connections have been made in accordance with applicable codes. All inspections must be conducted by the Company, at its own expense, within ten Business Days after receipt of the Certificate of Completion and shall take place at a time agreeable to the Parties. The Company shall provide a written statement that the Small Generating Facility has passed inspection or shall notify the Customer of what steps it must take to pass inspection as soon as practicable after the inspection takes place; or

2.3.2 If the Company does not schedule an inspection of the Small Generating Facility within ten business days after receiving the Certificate of Completion, the witness test is deemed waived (unless the Parties agree otherwise); or

2.3.3 The Company waives the right to inspect the Small Generating Facility.

2.4 The Company has the right to disconnect the Small Generating Facility in the event of improper installation or failure to return the Certificate of Completion.

2.5 Revenue quality metering equipment must be installed and tested in accordance with applicable ANSI standards.

3.0 Safe Operations and Maintenance

The Customer shall be fully responsible to operate, maintain, and repair the Small Generating Facility as required to ensure that it complies at all times with the interconnection standards to which it has been certified.

4.0 Access

The Company shall have access to the disconnect switch (if the disconnect switch is required) and metering equipment of the Small Generating Facility at all times. The Company shall provide reasonable notice to the Customer when possible prior to using its right of access.

5.0 Disconnection

The Company may temporarily disconnect the Small Generating Facility upon the following conditions:

5.1 For scheduled outages upon reasonable notice.

5.2 For unscheduled outages or emergency conditions.

5.3 If the Small Generating Facility does not operate in the manner consistent with these Terms and Conditions.

5.4 The Company shall inform the Customer in advance of any scheduled disconnection, or as is reasonable after an unscheduled disconnection.

6.0 Indemnification

The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7. 0 Insurance

The Parties agree to follow all applicable insurance requirements imposed by the state in which the Point of Interconnection is located. All insurance policies must be maintained with insurers authorized to do business in that state.

8.0 Limitation of Liability

Each party's liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either party be liable to the other party for

any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever, except as allowed under paragraph 6.0.

9.0 Termination

The agreement to operate in parallel may be terminated under the following conditions:

9.1 **By the Customer**

By providing written notice to the Company.

9.2 **By the Company**

If the Small Generating Facility fails to operate for any consecutive 12 month period or the Customer fails to remedy a violation of these Terms and Conditions.

9.3 **Permanent Disconnection**

In the event this Agreement is terminated, the Company shall have the right to disconnect its facilities or direct the Customer to disconnect its Small Generating Facility.

9.4 **Survival Rights**

This Agreement shall continue in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

10.0 Assignment/Transfer of Ownership of the Facility

This Agreement shall survive the transfer of ownership of the Small Generating Facility to a new owner when the new owner agrees in writing to comply with the terms of this Agreement and so notifies the Company.

Attachment 6
Feasibility Study Agreement

THIS AGREEMENT is made and entered into this _____day of _____

20___ by and between_____,

a _____organized and existing under the laws of the State of

_____, ("Interconnection Customer,") and

_____, a_____

existing under the laws of the State of_____,

("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on_____; and

WHEREAS, Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System; and

WHEREAS, Interconnection Customer has requested the Transmission Provider to perform a feasibility study to assess the feasibility of interconnecting the proposed Small Generating Facility with the Transmission Provider's Transmission System, and of any Affected Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause to be performed an interconnection feasibility study consistent the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of the feasibility study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The feasibility study shall be based on the technical information provided by the Interconnection Customer in the Interconnection Request, as may be modified as the result of the scoping meeting. The Transmission Provider reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard Small Generator Interconnection Procedures. If the Interconnection Customer modifies its Interconnection Request, the time to complete the feasibility study may be extended by agreement of the Parties.

5.0 In performing the study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing studies of recent vintage. The Interconnection Customer shall not be charged for such existing studies; however, the Interconnection Customer shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

6.0 The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the Small Generating Facility as proposed:

6.1 Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

6.2 Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

6.3 Initial review of grounding requirements and electric system protection; and

6.4 Description and non-binding estimated cost of facilities required to interconnect the proposed Small Generating Facility and to address the identified short circuit and power flow issues.

7.0 The feasibility study shall model the impact of the Small Generating Facility regardless of purpose in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the Interconnection Customer later changes the purpose for which the Small Generating Facility is being installed.

8.0 The study shall include the feasibility of any interconnection at a proposed project site where there could be multiple potential Points of Interconnection, as requested by the Interconnection Customer and at the Interconnection Customer's cost.

9.0 A deposit of the lesser of 50 percent of good faith estimated feasibility study costs or earnest money of $1,000 may be required from the Interconnection Customer.

10.0 Once the feasibility study is completed, a feasibility study report shall be prepared and transmitted to the Interconnection Customer. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a feasibility study.

11.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

13.0 Governing Law, Regulatory Authority, and Rules
The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

14.0 Amendment
The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 No Third-Party Beneficiaries
This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 Waiver

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

18.0 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.0 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

20.0 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

21.0 Reservation of Rights

The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations, except to the extent that the Parties otherwise agree as provided herein.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]	[Insert name of Interconnection Customer]
_____	_____
Signed: _____	Signed: _____
Name (Printed):	Name (Printed):
_____	_____
Title: _____	Title: _____

Attachment A to
Feasibility Study Agreement

Assumptions Used in Conducting the Feasibility Study

The feasibility study will be based upon the information set forth in the Interconnection Request and agreed upon in the scoping meeting held on _____:

1) Designation of Point of Interconnection and configuration to be studied.

2) Designation of alternative Points of Interconnection and configuration.

1) and 2) are to be completed by the Interconnection Customer. Other assumptions (listed below) are to be provided by the Interconnection Customer and the Transmission Provider.

Attachment 7
System Impact Study Agreement

THIS AGREEMENT is made and entered into this _____day of_____

20___ by and between_____,

a_____ organized and existing under the laws of the State of

_____, ("Interconnection Customer,") and

_____, a_____

existing under the laws of the State of_____,

("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, the Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by the Interconnection Customer on_____; and

WHEREAS, the Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System;

WHEREAS, the Transmission Provider has completed a feasibility study and provided the results of said study to the Interconnection Customer (This recital to be omitted if the Parties have agreed to forego the feasibility study.); and

WHEREAS, the Interconnection Customer has requested the Transmission Provider to perform a system impact study(s) to assess the impact of interconnecting the Small Generating Facility with the Transmission Provider's Transmission System, and of any Affected Systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause to be performed a system impact study(s) consistent with the standard Small Generator Interconnection Procedures in accordance with the Open Access Transmission Tariff.

3.0 The scope of a system impact study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 A system impact study will be based upon the results of the feasibility study and the technical information provided by Interconnection Customer in the Interconnection Request. The Transmission Provider reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the system impact study may be extended.

5.0 A system impact study shall consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities that are required as a result of the Interconnection Request and non-binding good faith estimates of cost responsibility and time to construct.

6.0 A distribution system impact study shall incorporate a distribution load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, grounding reviews, and the impact on electric system operation, as necessary.

7.0 Affected Systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All Affected Systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the Transmission Provider has 20 additional Business Days to complete a system impact study requiring review by Affected Systems.

8.0 If the Transmission Provider uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required Network Upgrades, the system impact study shall consider all generating facilities (and with respect to paragraph 8.3 below, any identified Upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced –

8.1 Are directly interconnected with the Transmission Provider's electric system; or

8.2 Are interconnected with Affected Systems and may have an impact on the proposed interconnection; and

8.3 Have a pending higher queued Interconnection Request to interconnect with the Transmission Provider's electric system.

9.0 A distribution system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 30 Business Days after this Agreement is signed by the Parties. A transmission system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 45 Business Days after this Agreement is signed by the Parties, or in accordance with the Transmission Provider's queuing procedures.

10.0 A deposit of the equivalent of the good faith estimated cost of a distribution system impact study and the one half the good faith estimated cost of a transmission system impact study may be required from the Interconnection Customer.

11.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

12.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

13.0 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly

reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

14.0 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 Waiver

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

18.0 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

19.0 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

20.0 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

21.0 Reservation of Rights

The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to

modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]	[Insert name of Interconnection Customer]
_____	_____
Signed: _____	Signed: _____
Name (Printed):	Name (Printed):
_____	_____
Title: _____	Title: _____

Attachment A to System Impact Study Agreement

Assumptions Used in Conducting the System Impact Study

The system impact study shall be based upon the results of the feasibility study, subject to any modifications in accordance with the standard Small Generator Interconnection Procedures, and the following assumptions:

1) Designation of Point of Interconnection and configuration to be studied.

2) Designation of alternative Points of Interconnection and configuration.

1) and 2) are to be completed by the Interconnection Customer. Other assumptions (listed below) are to be provided by the Interconnection Customer and the Transmission Provider.

Attachment 8
Facilities Study Agreement

THIS AGREEMENT is made and entered into this _____day of_____

20___ by and between_____,

a _____organized and existing under the laws of the State of

_____, ("Interconnection Customer,") and

_____, a_____

existing under the laws of the State of_____,

("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, the Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by the Interconnection Customer on_____; and

WHEREAS, the Interconnection Customer desires to interconnect the Small Generating Facility with the Transmission Provider's Transmission System;

WHEREAS, the Transmission Provider has completed a system impact study and provided the results of said study to the Interconnection Customer; and

WHEREAS, the Interconnection Customer has requested the Transmission Provider to perform a facilities study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the system impact study in accordance with Good Utility Practice to physically and electrically connect the Small Generating Facility with the Transmission Provider's Transmission System.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated or the meanings specified in the standard Small Generator Interconnection Procedures.

2.0 The Interconnection Customer elects and the Transmission Provider shall cause a facilities study consistent with the standard Small Generator Interconnection Procedures to be performed in accordance with the Open Access Transmission Tariff.

3.0 The scope of the facilities study shall be subject to data provided in Attachment A to this Agreement.

4.0 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s). The facilities study shall also identify (1) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of the Transmission Provider's Interconnection Facilities and Upgrades necessary to accomplish the interconnection, and (3) an estimate of the time required to complete the construction and installation of such facilities.

5.0 The Transmission Provider may propose to group facilities required for more than one Interconnection Customer in order to minimize facilities costs through economies of scale, but any Interconnection Customer may require the installation of facilities required for its own Small Generating Facility if it is willing to pay the costs of those facilities.

6.0 A deposit of the good faith estimated facilities study costs may be required from the Interconnection Customer.

7.0 In cases where Upgrades are required, the facilities study must be completed within 45 Business Days of the receipt of this Agreement. In cases where no Upgrades are necessary, and the required facilities are limited to Interconnection Facilities, the facilities study must be completed within 30 Business Days.

8.0 Once the facilities study is completed, a draft facilities study report shall be prepared and transmitted to the Interconnection Customer. Barring unusual circumstances, the facilities study must be completed and the draft facilities study report transmitted within 30 Business Days of the Interconnection Customer's agreement to conduct a facilities study.

9.0 Interconnection Customer may, within 30 Calendar Days after receipt of the draft report, provide written comments to Transmission Provider, which Transmission Provider shall include in the final report. Transmission Provider shall issue the final Interconnection Facilities Study report within 15 Business Days of receiving Interconnection Customer's comments or promptly upon receiving Interconnection Customer's statement that it will not provide comments. Transmission Provider may reasonably extend such fifteen-day period upon notice to Interconnection Customer if Interconnection Customer's comments

require Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Report. Upon request, Transmission Provider shall provide Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 4.5 of the standard Small Generator Interconnection Procedures.

10.0 Within ten 10 Business Days of providing a draft Interconnection Facilities Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Facilities Study.

~~9~~11.0 Any study fees shall be based on the Transmission Provider's actual costs and will be invoiced to the Interconnection Customer after the study is completed and delivered and will include a summary of professional time.

~~10~~12.0 The Interconnection Customer must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Transmission Provider shall refund such excess within 30 calendar days of the invoice without interest.

~~11~~13.0 Governing Law, Regulatory Authority, and Rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the state of _____ (where the Point of Interconnection is located), without regard to its conflicts of law principles. This Agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a Governmental Authority.

~~12~~14.0 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

~~13~~15.0 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

~~14~~16.0 Waiver

~~14~~16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

~~14~~16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this Agreement shall, if requested, be provided in writing.

~~15~~17.0 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

~~16~~18.0 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

~~17~~19.0 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

~~18~~20.0 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each

Party shall remain primarily liable to the other Party for the performance of such subcontractor.

~~18~~20.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

~~18~~20.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

~~19~~21.0 Reservation of Rights

The Transmission Provider shall have the right to make a unilateral filing with FERC to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and the Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this Agreement under any applicable provision of the Federal Power Act and FERC's rules and regulations; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]	[Insert name of Interconnection Customer]
_____	_____
Signed_____	Signed_____
Name (Printed):	Name (Printed):
_____	_____
Title_____	Title_____

Attachment A to
Facilities Study Agreement

Data to Be Provided by the Interconnection Customer
with the Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc.

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections: _____

Will an alternate source of auxiliary power be available during CT/PT maintenance?
Yes ____ No ____

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? Yes ____ No ____
(Please indicate on the one-line diagram).

What type of control system or PLC will be located at the Small Generating Facility?

_____

_____

What protocol does the control system or PLC use?

_____

_____

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

Physical dimensions of the proposed interconnection station:

_____

Bus length from generation to interconnection station:

_____

Line length from interconnection station to Transmission Provider's Transmission System.

_____

Tower number observed in the field. (Painted on tower leg)*:

_____

Number of third party easements required for transmission lines*:

_____

* To be completed in coordination with Transmission Provider.

Is the Small Generating Facility located in Transmission Provider's service area?
Yes _____ No _____ If No, please provide name of local provider:

_____

Please provide the following proposed schedule dates:

Begin Construction	Date: _____
Generator step-up transformers receive back feed power	Date: _____
Generation Testing	Date: _____
Commercial Operation	Date: _____

Note: Appendix D will not appear in the Code of Federal Regulations.

Appendix D: Revisions to the *Pro Forma* SGIA

Section number	Revision
3.3.5 (Termination)	Replace the first word of the section (''This'') with ''The''.
Attachment 1 (Glossary of Terms)	Revise the definition of Small Generating Facility as follows: Small Generating Facility—The Interconnection Customer's device for the production and/or storage for later injection of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

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Part III

Department of Agriculture

Rural Utilities Service

7 CFR Parts 1710, 1717, 1721, et al.

Energy Efficiency and Conservation Loan Program; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1717, 1721, 1724, and 1730

RIN 0572–AC19

Energy Efficiency and Conservation Loan Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS or Agency) is publishing policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons in their service territory. This final rule amends RUS regulations on General and Pre-Loan Policies and Procedures Common to Electric Loans and Guarantees, which were codified on December 20, 1993. The final rule also includes conforming amendments to additional RUS regulations. Under Section 2 of the Rural Electrification Act (RE Act), RUS is authorized to assist electric borrowers in implementing Demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems. The scope of this regulation falls within the authority of the Act.

DATES: This final rule is effective February 3, 2014.

FOR FURTHER INFORMATION CONTACT: Gerard Moore, USDA-Rural Utilities Service, 1400 Independence Avenue SW., Stop 1569, Washington, DC 20250–1569, telephone (202) 205–9692 or email to *gerard.moore@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

The Rural Utilities Service (RUS or Agency) is publishing policies and procedures for loan and guarantee financial assistance in support of energy efficiency programs (EE Programs) sponsored and implemented by electric utilities for the benefit of rural persons in their service territory. This final rule is designed to supplement the policies contained in 7 CFR part 1710, GENERAL AND PRE–LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES, which were finalized in December 1993. Under Section 2(a) of the Rural Electrification Act of 1936 (7 U.S.C. 902(a)), the Secretary of Agriculture is explicitly ''authorized and empowered to make loans in the several States and Territories of the United States . . . for the purpose of assisting electric borrowers to implement Demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems.'' Section 6101 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) inserted the words ''and energy efficiency'' into this provision. In order to implement this new focus of the program, RUS amends 7 CFR part 1710 by adding a new Subpart H entitled ''Energy Efficiency and Conservation Loan Program.'' (EECLP).

In fiscal year 2014 the Rural Utilities Service will make $250 million available to support energy efficiency as indicated in the President's climate change action plan. In future years, the amount of funding made available will be based on the performance of the program.

The goals of an eligible Energy Efficiency project eligible for funding under this program and Subpart H include: (1) Increasing energy efficiency at the end user level; (2) modifying electric load such that there is a reduction in overall system demand; (3) effecting a more efficient use of existing electric distribution, transmission and generation facilities; (4) attracting new businesses and creating jobs in rural communities by investing in energy efficiency; and (5) encouraging the use of renewable energy fuels for either Demand side management or the reduction of conventional fossil fuel use within the service territory. Although not a goal, RUS recognizes that there will be a reduction of green house gases with energy efficiency improvements.

The Energy Efficiency and Conservation Loan Program may include loans supporting energy efficiency activities undertaken by the utility itself, the finance of energy efficiency projects undertaken by others, and investments made by the utility to accomplish their obligations under utility energy services contracts. It is important to distinguish that there are potentially two different types of loans associated with this regulation. RUS will loan funds to a utility for an energy efficiency program. The utility, in turn, may choose to relend these funds to their consumers (ultimate recipient) for energy efficiency improvements in industrial, commercial, or residential applications. The utility may also use the funds to complete energy efficiency activities on their own property. The anticipated transfers during the first year of the program will be the funding availability of $250 million. RUS expects this to increase over the life of the program.

Impacts

The new Subpart H for the Energy Efficiency and Conservation Loan Program can have several economic impacts. The benefits include: (1) The value of purchased energy saved; (2) the value of corresponding avoided generation, transmission and/or distribution; and (3) savings in energy bills.

The final loan program is estimated to have administrative costs to the applicant and federal government, at about $740,000 total for applicants, and about $1.7 million for the Federal government.

The Energy Efficiency and Conservation Loan Program will impose administrative costs on applicants and the Federal government. Quantitative estimates of these costs have been made and are presented below.

Applicants and Awardees

Estimates of costs for applicants: the twenty expected applications are broken down into two sections—applications and reporting. Table 2 summarizes the estimated costs.

TABLE 2—ESTIMATE BURDEN TO APPLICANTS

Energy Efficiency and Conservation Loan Program	Applications	Reporting	Totals
Existing Electric Program Borrowers	$593,356	$148,339	$741,695

Applications

All entities seeking financial assistance under this program must submit certain information to the Agency in order to apply for a loan. The total estimated cost for applying is approximately $593,356, calculated by multiplying the number of applicants (20) by the labor hours associated with the additional burden (823.20) by an estimated $45 per hour for labor. See OPM's Web site at *http://www.opm.gov/*

policy-data-oversight/pay-leave/salaries-wages/

Reporting

All applicants that are awarded funds must submit reports to the Agency to provide information on their performance. The total estimated cost for reporting is approximately $148,338, calculated by the number of applicants (20) by labor cost ($45) by hours per year (164.82).

Federal Government

Estimates of costs to the Federal government were made based on the activities that the Federal government would incur to implement the rule and the length of time each activity required. A cost of $48.35 per hour was used in making these cost estimates.

TABLE 3—ENERGY EFFICIENCY AND CONSERVATION LOAN PROGRAM BURDEN COST TO THE FEDERAL GOVERNMENT

Activity	Energy efficiency and conservation loan program
Review of loan Application	$1,585,880
Yearly review of financial and statistical information	125,710
Additional costs associated with the collection of information	5,000
Total *	1,716,590

* Data created from OPM salary and wage table at *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/.*

The following paragraphs summarize the activities and costs to be incurred by the Federal government for this program.

Applications

RUS is responsible for reviewing and approving applications. As part of this process, RUS will acknowledge receipt of applications and inform the applicants whether their application was selected for funding. The estimated cost for these application activities is approximately $1,585,880.

Review of Reports

RUS is responsible for reviewing various reports, including, but not limited to, project management plan, energy efficiency work plan, quality control plan, etc. The estimated cost for reviewing these reports annually is approximately $125,710.

Executive Order 12866 and 13563

This final rule has been reviewed under Executive Order (EO) 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), and has been determined to be ''economically significant'' by the Office of Management and Budget. The EO defines an economically significant regulatory action as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. As required by OMB circular A–4 the regulatory impact analysis will be published along with this rule on regulations.gov.

The agency has also reviewed this regulation pursuant to EO 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in EO 12866. To the extent permitted by law, agencies are required by EO 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

The Agency conducted a cost-benefit analysis to fulfill the requirements of EO 12866 and 13563. In this analysis, the Agency identifies potential benefits and costs of the Energy Efficiency and Conservation Loan Program to borrowers, and RUS. The analysis contains quantitative estimates of the burden to the public and the Federal government and qualitative descriptions of the expected economic, environmental, and energy impacts associated with the Energy Efficiency and Conservation Loan Program. This analysis will be made publicly available in the docket

RUS will only make loans for these purposes to electric utility systems. RUS anticipates that borrowers under this subpart will be generation and transmission (G&T) borrowers or their distribution members or unaffiliated distribution borrowers who are current on their loan payments and in compliance with their loan documents. This program is held to the same high standards and regulatory requirements as the existing RUS electric loan program. RUS also anticipates that the energy efficiency improvements installation work may be contracted by either the utility or the Ultimate Recipient, or performed directly by employees of the borrower, at the discretion of the utility designing the energy efficiency program. In all cases, the eligible borrower is expected to hold title to the receivables funded by the RUS loan.

It is estimated that approximately 20 loans will be submitted annually. Considering applicants are existing RUS borrowers, it is anticipated that all 20 loans would be awarded. The administrative cost to the Applicant and the Federal government to apply, award and maintain these loans is $2.458 million.

Catalog of Federal Domestic Assistance

The program described by this rule is an eligible purpose/subsidiary program of the Electrification Loans and Loan Guarantee program as listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural

Electrification Loans and Loan Guarantees. The Catalog is available on the Internet at *http://www.cfda.gov.*

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034).

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection for this program has been approved by the Office of Management and Budget under OMB Control Number 0572–0032.

E-Government Act Compliance

The Agency is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

National Environmental Policy Act Review

In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Agency has prepared and published a Programmatic Environmental Assessment (PEA) for this loan program activity as part of this rulemaking process. The PEA was published on February 6, 2013 in the **Federal Register** at 78 FR 8444, and prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS' NEPA implementing regulations, Environmental Policies and Procedures (7 CFR part 1794). A Notice of Finding of No Significant Impact was published on Friday August 16, 2013 in the **Federal Register** at VOL. 78, NO. 159.

Regulatory Flexibility Act Certification

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

Unfunded Mandates

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

Executive Order 12988

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

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on state and local governments, on the relationship between the national government and the state and local governments, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This Executive Order imposes requirements on the development of regulatory policies that have tribal implications or preempt tribal laws. Between October 2010 and January 2011, the United States Department of Agriculture (USDA) hosted seven regional regulation Tribal consultation sessions to gain input by elected Tribal officials or their designees concerning the impact of this rule (and other 2008 Farm Bill changes) on Tribal governments, communities, and individuals. No comments specific to this rule were received through that process. If a Tribe determines that this rule has implications of which Rural Development is not aware or would like further information regarding the consultation process, please contact Rural Development's Native American Coordinator at (720) 544–2911 or *AIAN@wdc.usda.gov.*

Background

This rulemaking amends 7 CFR part 1710 by adding a new Subpart H entitled ''Energy Efficiency and Conservation Loan Program.'' Under Section 2(a) of the Rural Electrification Act of 1936 (7 U.S.C. 902(a)), the Secretary of Agriculture is explicitly ''authorized and empowered to make loans in the several States and Territories of the United States . . . for the purpose of assisting electric borrowers to implement Demand side management, energy efficiency and conservation programs, and on-grid and off-grid renewable energy systems.'' As noted, Section 6101 of the 2008 Farm Bill inserted the words ''energy efficiency'' into this provision, which was originally added as an amendment to the RE Act by the Rural Electrification Loan Restructuring Act of 1993 (''RELRA'') (Pub. L. 103–129 sec. 2(c)(1)(B)).[1]

RUS has experience with implementing programs that promote energy conservation, and RELRA explicitly recognized that energy conservation is part of the Agency's mission. Starting in 1980, for example, RUS developed an Energy Resources Conservation Program by issuing RUS Bulletin 20–23, Section 12, ''Extensions for Energy Resources Conservation Loans'', dated December 8, 1980.[2] This Bulletin interpreted the Administrator of RUS's discretion under the RE Act to extend the time for payments, and this became the foundation for the ''ERC Loan Program.'' At that time, RUS did not make ERC Loan Program loans directly. It operated the ERC Loan Program by entering into agreements with its borrowers to defer amortization of their loans in order for the borrowers to fund energy conservation improvements. The borrowers, generally electric cooperatives, made loans to their members out of the cash flow resulting from the deferments they received from RUS on their own loans. Even though RUS did not make the ERC loans itself, the Agency provided financial assistance to rural Consumers by using the electric cooperatives as intermediaries.

Congress subsequently amended Section 12 of the RE Act in 1990 and

[1] Senator Patrick Leahy as the Chairman of the Senate Committee on Agriculture, Nutrition and Forestry explained this provision in a letter dated June 18, 1993 to Senator Jim Sasser the Chairman of the Senate Committee on the Budget as follows: ''These amendments also permit REA [now RUS] to make loans for demand side management and energy conservation program[s] which are required by some state agencies. They are also often the most cost effective methods of meeting the energy needs of rural areas.''

[2] This Bulletin was rescinded in 2002 when RUS updated and codified the ERC Loan Program as 7 CFR Part 1721, subpart B. (See 67 FR 484, January 4, 2002).

again in 2008. In 1990, Congress expanded Section 12 to enable deferments such that borrowers could provide financing to local businesses, with the intent of stimulating rural economic development. In 2008, Congress expanded Section 12 of the RE Act to authorize energy efficiency and use audits and to install energy efficiency measures or devices to reduce demand on electric systems.

The recent grant of additional authority in Section 2(a) of the RE Act to make loans and guarantees for energy efficiency, as contrasted with the Section 12 authority to merely defer payments on direct loans, has become increasingly significant as the percentage of the RUS portfolio represented by direct loans continues to amortize. In recent times the Agency delivers nearly all of its electric program assistance in the form of loan guarantees. As a guarantor, RUS does not have the same discretion to defer payments that it does when it is the lender. Consequently, RUS has determined that it is now necessary and appropriate to finalize a loan program for this RE Act purpose.

''The RE Act, 7 U.S.C. 904, commits to the discretion of the Administrator the making of loans for rural electrification. . . .'' *Alabama Power Co.* v. *Ala. Elec. Coop.,* 394 F.2d 672 at 675 (CA 5) *cert. denied* 393 U.S. 1000 (1968). ''REA is the administrative agency charged by Congress with responsibility for facilitating rural electrification. REA was intended by Congress to determine the appropriate course of conduct to accomplish the legislative purpose.'' *Public Utility District No. 1 of Franklin County* v. *Big Bend Electric Cooperative, Inc.,* 618 F.2d 601 at 603 (CA 9 1980). By broadly adding ''energy efficiency'' in the 2008 Farm Bill as a legislative purpose for the RE Act loans, Congress left it to the Administrator's discretion to fashion the appropriate method to accomplish this purpose. Drawing on more than three decades of experience in using electric cooperatives as local intermediaries to accomplish RE Act objectives at the Consumer level, RUS will deliver this energy efficiency program by drawing upon its favorable past successes and using its electric borrowers as intermediaries.

RUS will only make loans for eligible purposes to electric utility systems . An eligible borrower means a utility system that has direct or indirect responsibility for providing retail electric service to persons in a rural area. This definition includes existing borrowers and utilities who meet current RUS borrower requirements. RUS anticipates that borrowers under the Energy Efficiency and Conservation Loan Program will be generation and transmission (G&T) borrowers, their distribution members, or unaffiliated distribution borrowers who are current on their RUS loan payments and in compliance with those loan documents. RUS anticipates that the Energy Efficiency (EE) improvements installation work may be contracted by either the utility, the Ultimate Recipient, or performed directly by employees of the borrower. In all cases, the Eligible Borrower will hold title to the receivables funded by the RUS loan.

RUS is authorized by the RE Act to make loans to implement Demand side management (DSM), EE Programs and conservation programs, and on-grid and off-grid renewable energy systems. Energy efficiency in this regulation is defined as the degree a system or component performs its designated function with minimum consumption of resources. Renewable energy systems have a specific role in this regulation. Renewable generation can be used as load modifiers, which can increase the efficiency of energy consumption from the utilities perspective and are effective at decreasing energy used by decreasing load. Renewable energy and conservation savings associated with this regulation are from the utilities perspective, though the energy savings could be realized by both the Consumer and utility, depending on the type of project, as the utility is the RUS borrower and is culpable for repayment of the loan. Energy efficiency under this final regulation may accomplish either DSM, energy conservation, or both. The goals of an eligible EE Program under Subpart H may include one or more of the following: (1) Increase energy efficiency at the end user level; (2) modify electric load such that there is a reduction in overall system demand; (3) effect a more efficient use of existing electric distribution, transmission and generation facilities; (4) attract new businesses and create jobs in rural communities; and (5) encourage the use of renewable energy fuels.

There are three primary differences between the existing energy resource conservation program codified in 7 CFR part 1721 subpart B (ERC program) and the EECLP final regulation in 7 CFR part 1710, subpart H. First, the existing ERC program is limited to direct loan principal deferments and is not available for RUS guaranteed loans. Second, the list of eligible loan purposes for this program is more expansive than the ERC program and, where applicable, emphasizes that the assets in question must be characterized as an integral part of the Consumer's real property that would typically transfer with the title under applicable state law. Lastly, the term of financing available under Subpart H is longer than the term allowed for principal deferments under the ERC loan program.

Rural electric cooperatives are proponents of energy efficiency measures. According to the National Rural Electric Cooperative Association: 73 percent of these co-ops plan on significantly expanding existing efficiency programs in the next two years: 70 percent of co-ops offer financial incentives to promote greater energy efficiency: 96 percent of co-ops have some form of energy efficiency program in place, co-ops are responsible for nearly 25 percent of residential peak load management capacity, and cooperatives have 10 percent of retail electricity sales but are responsible for 20 percent of actual peak demand reduction. Representatives from rural electric cooperatives have commented that access to low interest funds can be the difference between success and failure for an energy efficiency program.

Eligible EE Programs can be comprised of a variety of activities, performed by either the utility or third parties. This final rule sets forth the policies and procedures related to eligible EE Programs where the RUS will finance: (1) Energy efficiency activities undertaken by the utility itself; (2) loans made by the utility to finance energy efficiency projects undertaken by others; and (3) investments made by the utility to accomplish their obligations under utility energy services contracts. The types of activities that are eligible for RUS financing under Subpart H include but are not limited to: (1) Energy audits; (2) community awareness and outreach programs; (3) services, materials and equipment provided by a qualified local contractor to improve energy efficiency at the Consumer level; and (4) energy efficiency loans made by the utility to its customers. RUS is allowing fuel switching as an eligible activity under this regulation. A description of EE Programs that qualify for RUS financing can be found in § 1710.405. Eligible investments are listed in § 1710.406. Finally, eligible borrowers are defined in § 1710.404.

Some programs designed by utilities may have the utility initially owning an asset even though it is located on a Consumer's premise and the asset is later conveyed to the Consumer after it is paid for or a predetermined time period has elapsed. Where this is the case, RUS is proposing that the application include an additional or

revised Schedule C to the RUS mortgage listing these assets as Excepted Property under the RUS mortgage, so as to preclude the assets being captured under the after acquired clause that is standard in the RUS mortgage codified in 7 CFR part 1718. It is the intent of RUS that a release of lien need not be executed by the Agency for the utility to convey to the Consumer clear title to these assets when this Schedule C is recorded.

This final rulemaking recognizes that energy may take a variety of forms, not just electricity. The criteria to be met by eligible programs include energy efficiency as measured by British Thermal Unit (Btu) input relative to Btu output, in order to facilitate the widest and greatest contribution by the rural utility in optimizing the energy consumption profile of its service territory. This rulemaking also provides that an eligible program must demonstrate that the financial strength of the electric utility is not harmed by EE Program activities funded under Subpart H.

An important distinction between eligible energy efficiency assets to be financed under this new Subpart H and other energy efficiency activities is that the assets located at a Consumer's premises, whether or not title is to be held by the utility must, for the most part, be considered an integral part of the real property that would typically transfer with the title under applicable State law in order to be financed pursuant to an eligible program under Subpart H.

Eligible programs shall provide that the utility will recoup all or part of the costs from specific ratepayers on whose behalf an investment has been made. Recoupment may take the form of Consumer loan repayment or a dedicated tariff. An eligible program reviewed under Subpart H must show that the payment terms and loan term offered to the Consumer are generally correlated with the expected life of the applicable assets. An eligible program must also offer an undertaking that funds, collected from ratepayers, in excess of the current amortization requirements for the RUS loan will be redeployed for EE Program purposes or used to prepay the RUS loan. These prepayments are in addition to scheduled principal and interest debt service payments.

Applications for program financings under Subpart H must fully describe a Business Plan that meets the requirements of § 1710.407.

The Agency recognizes that energy efficiency investments that reduce energy consumption at the Consumer premises (for instance those that affect the power factor) may prompt a need for investments at the system level to sustain the reliability and stability of the grid. The business plan called for in Subpart H must identify the related system investment to be identified as part of the EE Program, but these system level investments would be reflected in the utility's construction work plan and financed as part of a traditional loan application.

It is not required that an eligible program fund energy audits performed at Consumer premises. However, if the utility proposes to provide audits; Subpart H requires that the program must also include a provision for assisting Consumers in implementing changes suggested in aggregate to be cost effective by the audit. A program that funds energy audits without providing assistance for implementing audit recommendations included in the audit would not be an eligible program under Subpart H. Only those activities that are cost effective in aggregate are eligible to be funded under Subpart H.

The list of eligible investments and activities that a qualified plan may incorporate is not intended to be exhaustive. The intent is to facilitate flexibility for the utility's EE Program consistent with the resources and Consumer profiles in its service territory.

This lending program is designed for utility-designed and directed EE Programs. As such it anticipates that eligible loan purposes will include program administrative and other soft costs, such as marketing expenses, where not more than five percent of the loan budget may be used for these purposes. A utility's program may include acting as an intermediary lender, where the utility uses RUS financing to make Consumer loans to finance these investments on the Consumers' premises. Where this is the case, Subpart H requires the borrower to have a maximum interest rate to the ultimate consumer at 1.5 percent above the RUS loan cost to the borrower unless an exception is granted by the Administrator. Exceptions will be made on a case-by-case basis to ensure repayment of the government's loan. We will not accept an exception if the loan is feasible at 1.5 percent. This rate must be discussed in the applicant's business plan.

The process for applying for EECLP loans is intended to largely conform to the Agency's existing process for loans relating to other eligible purposes. Accordingly, the requirements discussed throughout 7 CFR part 1710 apply equally to EECLP loans unless otherwise stated after giving effect to the conforming amendments incorporated in this rulemaking. Expenditures by the utility will be reimbursed by the Agency after the fact pursuant to an inventory of work orders system as is typical for our existing loan process. The analytical material needed to support an EECLP loan is different from what is needed to analyze a generation or transmission loan. Accordingly, Subpart H elaborates on what is needed for RUS to approve an EE Program and loans to execute the program. EE Program activity will be captured under a separate energy efficiency work plan. Energy efficiency investments will not be listed on the traditional construction work plan that applies to utility assets financed by RUS.

As with other loans made pursuant to 7 CFR part 1710, a borrower's Environmental Report (ER) is expected to accompany the energy efficiency work plan associated with the loan request. The ER is in accordance with 7 CFR part 1794. Part 1794 contains the policies and procedures of the Rural Utilities Service for implementing the requirements of the National Environmental Policy Act. In the case of an EECLP loan, this ER will be expected to reference the PEA completed by the Agency for EECLP loans, and identify any investments and their potential environmental impacts proposed in the work plan that were not analyzed in the PEA.

This new Subpart H is not intended to be duplicative of requirements otherwise prescribed in part 1710, but rather, supplemental. It identifies requirements that are unique to loans made under the proposed Subpart H to finance EE Programs. It prescribes requirements for our direct borrowers. Our direct borrowers will then act as intermediary lenders to accomplish the investments outlined in an approved EE program. Where there is an express conflict with requirements elsewhere in part 1710, the provisions of Subpart H would apply, but otherwise Subpart H is not intended to supplant the applicability of the rest of part 1710 or other applicable parts in the Code of Federal Regulations.

In implementing Subpart H, as required for all of part 1710, RUS will work with Department of Energy (DOE), following the requirements set out by the Rural Electrification Act of 1936, Section 16 that states: ''the Secretary in making or guaranteeing loans for the construction, operations, or enlargement of generating plants or electric transmission lines or systems shall consider such general criteria consistent with the provisions of this Act as may

be published by the Secretary of Energy.''

Summary of Major Changes in Response to Comments on the Rule

The agency published a Proposed rulemaking on July 26, 2012, at 77 FR 43723. RUS received 63 comments on the proposed Energy Efficiency and Conservation Loan Program. The sixty three commenters consisted of industry representatives that included: Electric cooperatives, such as South Carolina Electric and Gas company; nonprofit energy efficiency supporters, such as the E3 coalition and the Sierra Club; and envelope organizations that represent RUS borrowers, such as the National Rural Electric Cooperative Association. Sixty two of the sixty three letters were extremely supportive of the regulation, and applauded RUS for proposing the program. The opposing letter stated that it was against all Federal programs.

Major changes in response to these comments, include the following items:

1. Removed restrictions on the size of load modifiers.
2. Adjusted soft cost limitations from 4 percent to 5 percent.
3. Limit Consumer interest rate to 1.5 percent above the cost of the loan to the borrower.
4. Decreased the complexity of the loan program by eliminating performance thresholds.
5. Defined certified energy auditor.
6. Added fuel switching as an eligible purpose.
7. Clarified the definition of eligible borrowers to include former and new RUS borrowers that meet RUS standards specified in regulation and statute.
8. Changed the cost effectiveness requirements, extending requirements to 10 years or equipment useful life on an aggregate basis.
9. Removed the Net Utility Plant language.
10. Allowed some pre-retrofitting as an eligible activity.

Summary of Comments

A summary of the comments and RUS's response are as follows:

Small Scale Renewable Energy Projects

Comment: There were 17 comments addressing the small scale renewable energy limitation of ''nameplate generation capacity that is less than the 50 percent of the average anticipated electrical load associated with the end user.'' Of the 17 comments, only 4 wanted to decrease or eliminate small scale renewables, on the basis that small scale renewables tend to not be cost effective.

Response: The Energy Efficiency and Conservation Loan program regulation has been edited, and will no longer have any restrictions on small scale renewable energy projects. All activities will be eligible, however, state mandates, laws, and cooperative bylaws will override this regulation.

Soft Costs Associated With a Borrower's Loan

Comment: Seven comments requested that RUS not limit the ''administrative'' costs associated with the loan. The current regulation limits administrative costs to 4 percent.

Response: RUS acknowledges that there is a cost to our borrowers to start-up and maintain an energy efficiency program, and has agreed to increase the ''administrative'' cost limitation to 5 percent in the final regulation. However, RUS must protect the Electric Program loan portfolio, and increasing the rate any higher may impair the productivity of the program, and subsequently the subsidy rate. Also, cooperatives may have the opportunity to rate-base certain energy efficiency costs.

The Rate Borrowers Can Charge to the Ultimate Consumer Above the Treasury Based Interest Rate

Comment: RUS requested comments on the appropriate markup borrowers could charge above the Treasury-based interest rate. Twenty-one comments were received. The majority of comments stated that markups must be between 5 and 10 percent, with numerous comments stating that RUS should not specify a cap to make the program economical to the borrower.

Response: Borrowers are limited to interest rates 1.5 percent above the cost of their RUS loan. Exceptions will be given on a case-by-case basis that must be clearly articulated in the business plan such as unavoidable program level costs. We will not accept an exception if the loan is feasible at 1.5 percent.This information, combined with all the other additional information, will allow RUS to determine the feasibility of the loan.

Decrease the Complexity of the Loan Program

Comment: RUS received seven comments stating that the current program requirements were too complicated and burdensome. Requiring an environmental plan, business plan, quality assurance plan, performance thresholds, return on investment demonstrations, additional supporting documents, and load forecasting before and after improvements was too extensive, and would limit borrower's interest in the program.

Response: RUS has simplified the regulation to decrease the Energy Efficiency and Conservation Loan Program's complexity and burden. Performance thresholds have been removed, the cost effectiveness definition has been modified, and procedures edited to keep the program simple and straight forward.

Define Certified Energy Auditor

Comment: Six comments were submitted, asking RUS to clarify the definition of certified energy auditor.

Response: RUS has clarified the definition, allowing a borrower to use an auditor certified under state, local, or federal standards.

Identifying the Appropriate Performance Thresholds

Comment: Twenty comments were received on what were the appropriate performance thresholds for the Energy Efficiency and Conservation Loan Program. Seven comments supported the language in the proposed rule, stating ''existing energy efficiency standards or criteria such as those from Energy Star, Federal Energy Management Program (FEMP), American National Standards Institute (ANSI), or other voluntary consensus standards,'' 2 comments recommended limiting the thresholds to Energy Star or Energy Efficiency Ratio, and the remaining 9 comments recommended that RUS fund all market proven energy products that reduce the Consumer's annual Btu.

Response: RUS clarified that borrowers are encouraged to use existing energy efficiency standards or criteria such as those from ENERGY STAR, FEMP, ANSI, or other voluntary consensus standards rather than performance thresholds to give Borrowers greater latitude.

Fuel Switching

Comment: Twelve comments strongly supported fuel switching. Fuel switching is essential for some borrowers to handle peak demand.

Response: RUS has modified the regulation to allow fuel switching. Many of the 12 comments in support of fuel switching were associations that represent over 1,000 electric cooperatives and millions of households, including NW Energy Coalition, Midwest Energy Efficiency Alliance, Utility Geothermal Working Group, Iowa Environmental Council, The Mountain Association for Community Economic Development, and the National Rural Electric Cooperative Association.

The $250 Million Funding Limitation

Comment: Sixteen comments were received, all in strong support of removing the $250 million limitation.

Response: The $250 million was an estimate of what the Agency believed would be the demand for the program. Public comment indicates more interest in the program than the proposed rule's $250 million per year limitation. In fiscal year 2014, the Rural Utilities Service will make $250 million available to support energy efficiency as indicated in the Presidents climate change action plan. In future years, the amount of funding made available will be based on the performance of the program. Additionally, to be consistent, the energy efficiency program should compete equally with other eligible loan purposes.

A Preferred Lender Program

Comment: One comment was submitted proposing a preferred lender program that borrowers could qualify for if they had a loan total of less than $2 million. Standards would be set for basic, preapproved weatherization practices and be made available to any eligible borrower. Standard benefit levels would be assigned to those practices and applied when determining benefits. There would not be a requirement for energy audits or post tests. This would cut the cost of program delivery while maintaining well established and known benefits for the members. The cooperatives that wish to participate at a higher loan level would have to comply with the standards established in the proposed regulations.

Response: RUS believes that preferred lending criteria is not needed in the regulation. RUS will use current authorities to streamline the application process.

Former RUS Borrowers and Their Eligibility for the Loan Program

Comment: Four comments were submitted supporting allowance of former RUS borrowers to return to the program.

Response: The regulation has been modified to clarify that past borrowers are eligible for the Energy Efficiency and Conservation Loan program, in accordance with the statute and any other regulation relating to new or returning borrowers.

The Cost Effective Requirement in Section 1710.405

Comment: Nine comments were received, eight requesting a payback period that was longer than the current 5 years stated in the regulation. One comment requested that the payback period be less than the life of the product.

Response: The regulation has been modified to more precisely define cost effectiveness and increase the payback to 10 years, except in cases where the useful life of the technology on an aggregate basis can be demonstrated to be longer than the 10 year period. RUS will evaluate the useful life assumption on a case-by-case basis.

Financial Institutions and Cooperative Relending

Comment: Four comments were received requesting RUS to add language in the regulation that defines who RUS borrowers can work with as intermediaries.

Response: RUS will not add any additional language. Business cases will be reviewed to determine the viability of the loan. Existing regulation language does not deter borrowers from establishing partnerships with other organizations to help implement their energy efficiency programs.

Net Utility Plant

Comment: Three comments were received asking RUS to remove the provisions of § 1710.409(d (1)). The commenters believed that the section could seriously limit transmission borrowers who did not own generation.

Response: RUS has removed the section. Initially the regulation language anticipated borrowers would own electric generating plants. Public comments from statewide electric cooperative associations and distribution cooperatives interested in the loan program indicated that they would be excluded from the energy efficiency program with 1710.409(d(1)). These current borrowers are not generation and transmission organizations and therefore do not own electric generation plants. The language has been removed to allow them to participate.

Bulletin and Guidance Documents

Comment: Four comments asked RUS to remove §§ 1710.406(d), 1017.407(g), and 1710.408(i). Each of those sections state borrowers shall follow a bulletin or other publication to be identified later. They claim that the proposed provision violates the Administrative Procedures Act by purporting to establish as regulatory obligations purely administrative determinations to be made later without notice and comment rulemaking.

Response: The proposed rule required borrowers to follow requirements in yet to be developed bulletins. The final regulation has been changed from ''shall'' to ''are strongly encouraged to.'' Please see the following regulatory language ''(g) The borrowers are strongly encouraged to follow a bulletin or such other publication as RUS deems appropriate that contains and describes best practices for energy efficiency business plans. RUS will make this bulletin or publication publicly available and revise it from time to time or eliminate it as RUS deems it necessary. ''

Requiring all Electric Borrowers To Participate in This Program

Comment: Three comments asked if all current borrowers would be required to participate in the Energy Efficiency Loan Program. One of the two comments stated that RUS must require all borrowers to participate in this loan program and have active energy efficiency programs.

Response: The Energy Efficiency and Conservation Loan program allows for energy efficiency improvements as an eligible purpose and will be reviewed and approved as other eligible purposes within the statute and the regulation. RUS does not believe it to be appropriate to require Borrowers to participate in this program.

Requiring all Load Forecasting

Comment: Two comments questioned the need for load forecasting, one comment stated that their current energy efficiency and conservation loan program is made up of only 30–40 members, not affecting the forecast at all.

Response: Load Forecasting is an important accountability component of the Energy Efficiency and Conservation Loan program. If the energy efficiency program has negligible effect on the Load Forecast then that information should be stated in the discussion within the Load Forecast. No changes were made to the regulation.

Quality Assurance plan

Comment: One comment stated that there were very few qualified energy managers and professional engineers in rural areas that are available to conduct the requirements of a program evaluation, and questioned who would have to bear the cost of the evaluation.

Response: RUS recognizes that there will be additional expenses associated with the Energy Efficiency and Conservation Loan program. The borrowers may pass along those costs to the Ultimate Recipient, but it needs to be explained in the submitted work plan.

Loan Advances on a Reimbursement Basis

Comment: Two comments questioned how funds would be distributed. They were not supportive of funding projects on a reimbursable basis.

Response: All of RUS's programs are run on a reimbursable basis, though the regulation currently states that startup capital of up to 5 percent may be made available for an energy efficiency plan. No changes will be made to our current funding model.

Making Post-Installment Evaluations Publically Available

Comment: Two comments requested that all post-installment evaluation and verification requirements be made available to the public.

Response: RUS acknowledges the importance of transparency, but also must weigh the privacy of our borrowers. We will provide information to the public in conformity with the Freedom of Information Act.

Using Qualified Contractors

Comment: One comment reiterated the importance of using qualified contractors to install energy efficiency and conservation activities.

Response: RUS is a strong supporter of using qualified contractors and will require borrowers to state the types of contractors that will be used, if any, in a borrower's quality assurance plan.

Program Aggregation

Comment: One comment stated that borrowers should be able to aggregate their various energy efficiency programs to bring them up to scale, decreasing the total workload.

Response: The Energy Efficiency and Conservation Loan program will hold each borrower accountable. Though borrowers can work with each other to decrease costs, each borrower will be individually held responsible for providing the required level of information and oversight.

Ground Source Heat Pumps

Comment: One comment stated that the regulation should not specifically call out ground source heat pumps, as the technology is advancing quickly.

Response: Ground source heat pumps are just one eligible activity under the Energy Efficiency and Conservation Loan program. Though mentioned in the regulation as an example, we are neither promoting nor discouraging their use.

Offer Technical Assistance to Utilities

Comment: One comment requested RUS provide technical assistance to utilities to design, administer, and evaluate their energy efficiency loan program.

Response: RUS will work closely with the borrower, answering any questions they may have on their business plan, quality assurance plan, etc.

Encourage Peer-to-Peer Networking Through Webinars

Comment: Six comments requested RUS set up regular webinars, phone conferences and an on-line peer-exchange Web site for participating borrowers.

Response: RUS supports the exchange of ideas and will facilitate cross communication when possible, but RUS does not have the resources to commit to this on a large scale. RUS will partner with other federal agencies to support broader peer-to-peer exchange.

The Definition of Energy Efficiency and Conservation measures

Comment: One comment requested that we add the following language to the energy efficiency and conservation measures definition, ''which may also include the onsite generation of electricity from waste heat resources. ''

Response: RUS believes the definition is inclusive, and the additional language is unnecessary.

Promote On-Bill Repayment

Comment: Eight comments stated that RUS stress the importance of using on-bill repayment as an effective financing method for energy efficiencies.

Response: RUS recognizes that on-bill financing is one way for a borrower to be repaid for their activities, however the borrower will have the ultimate decision on how they will recover their expenses. Their method of choice will be articulated in their business plan.

Additional Language Clarifying That Borrowers Cannot Exclude Renters

Comment: Five comments requested that RUS add language to the regulation requiring utilities to identify approaches that would ensure the equitable treatment by all types of consumers, and explicitly include low-income in both single-family and multi-family buildings.

Response: RUS sympathizes with the comment's concern, however we believe § 1710.122 on Equal opportunity and nondiscrimination located in the overarching Electric Program regulation, fulfills the needs specified by the comments.

Pre-Retrofits Should Be Allowed as Program Costs

Comment: Four comments stated that pre-retrofit activities that need to take place to make a house structurally sound before weatherization activities can take place, be an eligible activity under the Energy Efficiency and Conservation loan program

Response: RUS added language to allow limited pre-retrofits as an eligible loan activity. The Department of Energy has established that many opportunities for energy efficiency upgrades exist in low income housing. Often the residential building envelope needs infrastructure improvements to be able to accept energy efficiency upgrades. For example, the floor of a residential building may need structural repairs before efficient insulation can be installed. This would reduce the overall energy requirement for the structure.

Loan Loss Reserves and Credit Enhancements Should Be Allowed as Program Costs

Comment: Four comments stated that RUS allow borrowers to create loan loss reserve funds to allow utilities to attract investors and leverage private capital, as an eligible activity under the Energy Efficiency and Conservation loan program

Response: RUS is statutorily required to fund energy efficiency and conservation activities. Additional activities are outside the agency's authority and would require amendments.

Additional Language Supporting a Diverse Workforce

Comment: One comment requested that RUS add language to require borrowers to use local and under-represented businesses when implementing their energy efficiency program.

Response: A borrower must prove that their energy efficiency program is cost effective; specifying who a borrower must work with is beyond the scope of Subpart H.

Consumer Eligibility

Comment: Seven comments requested that RUS clarify ''due diligence'' to confirm that ability to repay a loan or participate in a program does not have to include a credit check, but rather rely on utility bill payment history.

Response: The borrower is held accountable for paying off the loan, and needs to determine eligible Consumers. Their method of choice will be articulated in their business plan.

Clarifying § 1710.255(b)

Comment: One comment requested clarification on § 1710.255(b), which requires that all facilities being improved be included in the energy

efficiency work plan, to state that this section only applies to utility-owned properties.

Response: RUS believes the Energy Efficiency Work Plan (EEWP) must also itemize Consumer upgrades in aggregate.

Clarifying Demand Side Management

Comment: Three comments requested that RUS specifically state that switches for water heaters and air conditioning units be eligible under Demand side management, or at a minimum clearly state energy efficiency in the definition.

Response: RUS believes the definition is inclusive, and the additional language is unnecessary.

Redefine Energy Efficiency and Conservation Measures

Comment: Two comments requested that RUS change the sentence ''ultimate goal is the reduction of utility energy needs'' to ''ultimate goal is the reduction of all forms of consumer energy needs (based on annual Btu consumption).

Response: RUS believes the current definition fits the ultimate goal, to reduce utility energy needs, Consumer energy needs is too limiting as utilities are also eligible to finance energy efficiency activities in their facilities.

Clarifying § 1710.406(b)(7)

Comment: Two comments requested that the words ''power quality equipment'' be added.

Response: RUS believes the definition is inclusive, and the additional language is unnecessary.

Fuel Cells

Comment: Two comments requested that RUS remove fuel cells as an eligible activity and investment.

Response: Fuel cells can be used in energy efficiency and conservation activities and will keep the activity in the regulation. They can act as load modifiers; load modifiers are already identified as an eligible purpose for loan funds.

Clarifying § 1710.406(a)(1)

Comment: Two comments requested that RUS make changes to § 1710.406 (a)(1). The proposed rule states that eligible program activities and investments ''shall be designed to improve energy efficiency or MANAGED demand on the customer side of the meter. While demand improvements are a primary goal of the rule, demand improvement can be accomplished through managed or passive improvements on the customer side of the meter. Consequently the word 'managed' should be removed from the text and replaced with the word ''reduce'' and the word ''peak'' should be added before ''demand.'' The new text should state ''shall be designed to improve energy efficiency or reduce peak demand on the customer side of the meter.

Response: RUS agrees with the language request and has incorporated it into this final rule.

Clarifying § 1710.405(b)(1)(vii)

Comment: One comment requests additional clarification in the background section on what the rate will be for borrowers.

Response: This section has been revised for other reasons, the issue is moot.

§ 1721.1(a)

Comment: One comment requests the section be modified to remove insured, and revise the language to be ''a) Purpose and amount. With the exception of minor projects, loan funds will be advanced only for projects which are included in a RUS approved borrower's construction work plan (CWP), EE Program work plan (EEWP), or approved amendment, that have also received written Environmental Clearance and/or Approval from RUS prior to the start of construction, and follow RUS' contract and bidding procedures as set forth in 7 CFR part 1726 if applicable. Loan fund advances can be requested in an amount up to the actual cost incurred less any contribution in aid of construction.

Response: RUS accepts the following language change: ''a) Purpose and amount. With the exception of minor projects, loan funds will be advanced only for projects which are included in a RUS approved borrower's EE Program work plan (EEWP), or approved amendment, that have also received written Environmental Clearance and/or Approval from RUS prior to the start of construction, and follow RUS' contract and bidding procedures as set forth in 7 CFR part 1726 if applicable. Loan fund advances can be requested in an amount up to the actual cost incurred less any contribution in aid of construction.

State and Federal Interactions

Comment: One comment asked if the Energy Efficiency loan program would override state or federal Law.

Response: The Energy Efficiency and Conservation Loan program does not override any statutory state or federal laws.

Loan Directly to Consumers

Comment: One comment requested that RUS change the loan program, and loan directly to consumers, bypassing the electric companies.

Response: The Energy Efficiency and Conservation Loan program does not statutorily allow us this discretion.

Natural Gas Expansion and Explicit Support of Water Heaters

Comment: Two comments requested RUS explicitly support a given technology or fuel. One comment requested that RUS create a broader regulation that clearly articulates the importance of natural gas. One comment requested that RUS explicitly include installation of solar thermal, gas, and electric-resistance water heaters as an eligible use of program funds.

Response: RUS does not support one technology or fuel source. No changes will be made to the regulation.

Appropriate Performance Thresholds for Water Heaters

Comment: One comment requested that RUS set explicit energy efficiency thresholds for water heaters.

Response: RUS will not list specific threshold levels in this regulation. Rather, we have clarified that borrowers are encouraged to use existing energy efficiency standards or criteria such as those from: Energy Star, FEMP, ANSI, or other voluntary consensus standards.

Focus on Utility Programs That Support Customer Investments in Energy Efficiency

Comment: One comment asked RUS to establish requirements and guidelines that will ensure program funds are substantially devoted to support utility programs designed to support efficiency investments in customer homes, buildings, and facilities.

Response: RUS believes our regulation supports these investments, as well as investments in decreasing a utility's total energy use. No additional language was added.

Leverage Other Federal Programs With the Energy Efficiency Program

Comment: One comment asked RUS to explore leveraging options with USDA's Rural Housing Service, Federal Housing Administration, Department of Veterans Affairs, and the Federal Housing Finance Authority.

Response: RUS supports program collaboration, and will continue to work with our Federal partners, but no additional language will be included in the regulation.

Consider Combined Heat and Power Projects as Eligible Measures

Comment: One comment asked RUS to explicitly state combined heat and power projects are an eligible energy conservation activity under the regulation.

Response: RUS believes our regulation provides enough flexibility to allow these forms of activities, without specifying every eligible activity in the regulation.

Fuel Switching Definition

Comment: One comment requested RUS change the definition of fuel switching to ''the temporary use of non-electric energy sources as a method to limit electric peak loads during limited time periods. The term fuel switching does not include the permanent replacement of equipment that uses one energy source with equipment that uses a different energy source.''

Response: RUS clarified the definition of ''fuel switching.'

Loan Monitoring

Comment: One comment asked RUS to adopt data collection procedures to track program financials and measure performance.

Response: RUS has and will continue to collect data on loan activities, monitoring and tracking performance measures. No additional language needs to be added to the regulation.

Existing EE Programs

Comment: One comment requested RUS target supplementing existing and planned energy efficiency programs and budgets, not replacing the programs.

Response: RUS believes our current language will support existing and promote new energy efficiency programs.

List of Subjects

7 CFR Part 1710

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

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1721

Electric power, Loan programs-energy, Rural areas.

7 CFR Part 1724

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

7 CFR Part 1730

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

For reasons set forth in the preamble, the Agency amends 7 CFR chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 1. The authority citation for part 1710 continues to read as follows:

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

Subpart A—General

■ 2. In § 1710.2(a) revise the definition of ''Demand side management'' and add a definition of ''Eligible Energy Efficiency Programs'' in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) * * *

Demand side management (DSM) means the deliberate planning and/or implementation of activities to influence Consumer use of electricity provided by a distribution borrower to produce beneficial modifications to the system load profile. Beneficial modifications to the system load profile ordinarily improve load factor or otherwise help in utilizing electric system resources to best advantage consistent with acceptable standards of service and lowest system cost. Load profile modifications are characterized as peak clipping, valley filling, load shifting, strategic conservation, strategic load growth, and flexible load profile. (See, for example, publications of the Electric Power Research Institute (EPRI), 3412 Hillview Avenue, Palo Alto, CA 94304, especially ''Demand-Side Management Glossary'' EPRI TR–101158, Project 1940–25, Final Report, October 1992.) DSM includes energy conservation programs.

* * * * *

Eligible Energy Efficiency and Conservation Programs (Eligible EE Program) means an energy efficiency and conservation program that meets the requirements of Subpart H of this part.

* * * * *

Subpart C—Loan Purposes and Basic Policies

§ 1710.100 [Amended]

■ 3. In § 1710.100, amend the first sentence by adding the words ''efficiency and'' before ''energy conservation''.

§ 1710.101 [Amended]

■ 4. In § 1710.101, amend the second sentence of paragraph (b) by adding the word ''direct'' before ''loans to individual consumers''.

§ 1710.102 [Amended]

■ 5. Amend § 1710.102 as follows:

■ a. Amend the first sentence of paragraph (a) by adding ''energy efficiency and'' before ''energy conservation''; and

■ b. Amend the first sentence of paragraph (b) by adding ''energy efficiency and'' before ''energy conservation''.

■ 6. Amend § 1710.106 by adding paragraph (a)(6) and revising paragraphs (c)(1) and (d) to read as follows:

§ 1710.106 Uses of loan funds.

(a) * * *

(6) Eligible Energy Efficiency and Conservation Programs pursuant to Subpart H of this part.

* * * * *

(c) * * *

(1) Electric facilities, equipment, appliances, or wiring located inside the premises of the Consumer, except for assets financed pursuant to an Eligible EE Program, and qualifying items included in a loan for Demand side management or energy resource conservation programs, or renewable energy systems.

* * * * *

(d) A distribution borrower may request a loan period of up to 4 years. Except in the case of loans for new generating and associated transmission facilities, a power supply borrower may request a loan period of not more than 4 years for transmission and substation facilities and improvements or replacements of generation facilities. The loan period for new generating facilities and DSM activities will be determined on a case-by-case basis. The Administrator may approve a loan period shorter than the period requested by the borrower, if in the Administrator's sole discretion, a loan made for the longer period would fail to meet RUS requirements for loan feasibility and loan security set forth in §§ 1710.112 and 1710.113, respectively.

* * * * *

§ 1710.109 [Amended]

■ 7. In § 1710.109 amend the first sentence of paragraph (a) by adding the words ''energy efficiency and conservation program work plan,'' after ''construction work plan''.

■ 8. Amend § 1710.115 by adding paragraph (c) to read as follows:

§ 1710.115 Final maturity.

* * * * *

(c) The term for loans made to finance Eligible EE Programs will be determined in accordance with § 1710.408 of this part.

* * * * *

§ 1710.120 [Amended]

■ 9. In § 1710.120 add the words ''energy efficiency and conservation program work plans,'' after ''construction work plans,''.

Subpart D—Basic Requirements for Loan Approval

■ 10. Amend § 1710.152 by adding paragraph (e) to read as follows:

§ 1710.152 Primary support documents.

* * * * *

(e) *EE Program work plan (EEWP).* In the case of a loan application to finance an Eligible Energy Efficient Program, an EE Program work plan shall be prepared in lieu of a traditional CWP required pursuant to paragraph (b) of this section. The requirements for an EEWP are set forth in § 1710.255 and in subpart H of this part.

Subpart E—Load Forecasts

■ 11. Amend § 1710.202 by adding paragraph (d) to read as follows:

§ 1710.202 Requirement to prepare a load forecast—power supply borrowers.

* * * * *

(d) Notwithstanding paragraphs (a) through (c) of this section, a power supply borrower that has an outstanding loan for an Eligible EE Program is required to maintain an approved load forecast and an approved load forecast work plan on an ongoing basis.

■ 12. Amend § 1710.203 by adding paragraph (f) to read as follows:

§ 1710.203 Requirement to prepare a load forecast—distribution borrowers.

* * * * *

(f) Notwithstanding paragraphs (a) through (e) of this section, a distribution borrower that has an outstanding loan for an Eligible EE Program is required to maintain an approved load forecast and an approved load forecast work plan on an ongoing basis.

§ 1710.205 [Amended]

■ 13. In § 1710.205 amend paragraph (b)(5) by adding the words ''and energy efficiency and conservation program'' after ''demand side management''.

Subpart F—Construction Work Plans and Related Studies

■ 14. Add § 1710.255 to subpart F to read as follows:

§ 1710.255 Energy efficiency work plans—energy efficiency borrowers.

(a) All energy efficiency borrowers must maintain a current EEWP approved by their board of directors covering in aggregate all new construction, improvements, replacements, and retirements of energy efficiency related equipment and activities;

(b) An energy efficiency borrower's EEWP shall cover a period of between 2 and 4 years, and include all facilities to be constructed or improved which are eligible for RUS financing, whether or not RUS financial assistance will be sought or be available for certain facilities. The construction period covered by an EEWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities;

(c) The borrower's EEWP may only include facilities, equipment and other activities that have been approved by RUS as a part of an Eligible Energy Efficiency and Conservation Program pursuant to subpart H of this part;

(d) The borrower's EEWP must be consistent with the documentation provided as part of the current RUS approved EE Program as outlined in § 1710.410(c); and

(e) The borrower's EEWP must include an estimated schedule for the implementation of included projects.

Subpart G—Long Range Financial Forecasts

■ 15. Amend § 1710.300 by redesignating paragraphs (d)(3) through (5) as paragraphs (d)(4) through (6) respectively; and adding a new paragraph (d)(3) to read as follows:

§ 1710.300 General.

* * * * *

(d) * * *

(3) RUS-approved EE Program work plan;

* * * * *

§ 1710.302 [Amended]

■ 16. In § 1710.302 amend paragraph (d)(5) by removing the reference ''§ 1710.300(d)(5)'' and adding in its place ''§ 1710.300(d)(6)''.

Subpart I—Application Requirements and Procedures for Loans

§§ 1710.400 through 1710.407 [Redesignated as §§ 1710.500 through 1710.507]

■ 17a. In subpart I, redesignate §§ 1710.400 through 1710.407 as §§ 1710.500 through 1710.507, respectively.

■ 17b. Add Subpart H consisting of §§ 1710.400 through 1710.499, to read as follows:

Subpart H—Energy Efficiency and Conservation Loan Program

Sec.
1710.400 Purpose.
1710.401 RUS policy.
1710.402 Scope.
1710.403 General.
1710.404 Definitions.
1710.405 Eligible energy efficiency and conservation programs.
1710.406 Eligible activities and investments.
1710.407 Business plan.
1710.408 Quality assurance plan.
1710.409 Loan provisions.
1710.410 Application documents.
1710.411 Analytical support documentation.
1710.412 Borrower accounting methods, management reporting, and audits.
1710.413 Compliance with other laws and regulations.
1710.414–1710.499 [Reserved]

Subpart H—Energy Efficiency and Conservation Loan Program

§ 1710.400 Purpose.

(a) This subpart establishes policies and requirements that apply to loans and loan guarantees to finance Energy Efficiency and Conservation programs (EE Programs) undertaken by an eligible utility system to finance Demand side management, energy efficiency and conservation, or on-grid and off-grid renewable energy system programs that will result in the better management of their system load growth, a more beneficial load profile, or greater optimization of the use of alternative energy resources in their service territory. These programs may be considered an essential utility service.

(b)(1) The goals of an eligible Energy Efficiency project eligible for funding under this program and Subpart H include:

(i) Increasing energy efficiency at the end user level;

(ii) Modifying electric load such that there is a reduction in overall system demand;

(iii) Effecting a more efficient use of existing electric distribution, transmission and generation facilities;

(iv) Attracting new businesses and creating jobs in rural communities by investing in energy efficiency; and

(v) Encouraging the use of renewable energy fuels for either Demand side management or the reduction of conventional fossil fuel use within the service territory.

(2) Although not a goal, RUS recognizes that there will be a reduction of green house gases with energy efficiency improvements.

§ 1710.401 RUS policy.

EE Programs under this subpart may be financed at the distribution level or by an electric generation and transmission provider. RUS encourages borrowers to coordinate with the relevant member systems regarding their intention to implement a program financed under this subpart. RUS also encourages borrowers to leverage funds available under this subpart with State, local, or other funding sources that may be available to implement such programs.

§ 1710.402 Scope.

This subpart adapts and modifies, but does not supplant, the requirements for all borrowers set forth elsewhere where the purpose of the loan is to finance an approved EE program. In the event there is overlap or conflict between this subpart and the provisions of this part 1710 or other parts of the Code of Federal Regulations, the provisions of this subpart will apply for loans made or guaranteed pursuant to this subpart.

§ 1710.403 General.

EE Programs financed under this subpart may be directed at all forms of energy consumed within a utility's service territory, not just electricity, where the electric utility is in a position to facilitate the optimization of the energy consumption profile within its service territory and do so in a way that enhances the financial or physical performance of the rural electric system and enables the repayment of the energy efficiency loan.

§ 1710.404 Definitions.

For the purpose of this subpart, the following terms shall have the following meanings. In the event there is overlap or conflict between the definitions contained in § 1710.2, the definitions set forth below will apply for loans made or guaranteed pursuant to this subpart.

British thermal unit (Btu) means the quantity of heat required to raise one pound of water one degree Fahrenheit.

Certified energy auditor for commercial and industrial energy efficiency improvements. (1) An energy auditor shall meet one of the following criteria:

(i) An individual possessing a current commercial or industrial energy auditor certification from a national, industry-recognized organization;

(ii) A Licensed Professional Engineer in the State in which the audit is conducted with at least 1 year experience and who has completed at least two similar type Energy Audits;

(iii) An individual with a four-year engineering or architectural degree with at least 3 years experience and who has completed at least five similar type Energy Audits; or

(iv) Beginning in calendar year 2015, an energy auditor certification recognized by the Department of Energy through its Better Buildings Workforce Guidelines project.

(2) For residential energy efficiency improvements, an energy auditor shall meet one of the following criteria: The workforce qualification requirements of the Home Performance with Energy Star Program, as outlined in Section 3 of the Home Performance with Energy Star Sponsor Guide; or an individual possessing a current residential energy auditor or building analyst certification from a national, industry-recognized organization.

Cost effective means the aggregate cost of an EE Program is less than the financial benefit of the program over time. The cost of a program for this purpose shall include the costs of incentives, measurement and verification activity and administrative costs, and the benefits shall include, without limitation, the value of energy saved, the value of corresponding avoided generation, transmission or distribution and reserve investments as may be displaced or deferred by program activities, and the value of corresponding avoided greenhouse gas emissions and other pollutants.

Demand means the electrical load averaged over a specified interval of time. Demand is expressed in kilowatts, kilovolt amperes, kilovars, amperes, or other suitable units. The interval of time is generally 15 minutes, 30 minutes, or 60 minutes.

Demand savings means the quantifiable reduction in the load requirement for electric power, usually expressed in kilowatts (kW) or megawatts (MW) such that it reduces the cost to serve the load.

Eligible borrower means a utility system that has direct or indirect responsibility for providing retail electric service to persons in a rural area. This definition includes existing borrowers and utilities who meet current RUS borrower requirements.

Energy audit means an inspection and analysis of energy flows in a building, process, or system with the goal of identifying opportunities to enhance energy efficiency. The activity should result in an objective standard-based technical report containing recommendations for improving the energy efficiency. The report should also include an analysis of the estimated benefits and costs of pursuing each recommendation and the simple payback period.

Energy efficiency and conservation measures means equipment, materials and practices that when installed and used at a Consumer's premises result in a verifiable reduction in energy consumption, measured in Btus, or demand as measured in Btu-hours, or both, at the point of purchase relative to a base level of output. The ultimate goal is the reduction of utility or consumer energy needs.

Energy efficiency and conservation program (EE Program) means a program of activities undertaken or financed by a utility within its service territory to reduce the amount or rate of energy used by Consumers relative to a base level of output.

HVAC means heating, ventilation, and air conditioning.

Load means the Power delivered to power utilization equipment performing its normal function.

Load factor means the ratio of the average load over a designated period of time to the peak load occurring in the same period.

Peak demand (or maximum demand) means the highest demand measured over a selected period of time, e.g., one month.

Peak demand reduction means a decrease in electrical demand on an electric utility system during the system's peak period, calculated as the reduction in maximum average demand achieved over a specified interval of time.

Power means the rate of generating, transferring, or using energy. The basic unit is the watt, where one Watt is approximately 3.41213 Btu/hr.

Re-lamping means the initial conversion of bulbs or light fixtures to more efficient lighting technology but not the replacement of like kind bulbs or fixtures after the initial conversion.

SI means the International System of Units: the modern metric system.

Smart Grid Investments means capital expenditures for devices or systems that are capable of providing real time, two way (utility and Consumer) information and control protocols for individual Consumer owned or operated appliances and equipment, usually

through a Consumer interface or smart meter.

Ultimate recipient means a Consumer that receives a loan from a borrower under this subpart.

Utility Energy Services Contract (UESC) means a contract whereby a utility provides a Consumer with comprehensive energy efficiency improvement services or demand reduction services.

Utility system means an entity in the business of providing retail electric service to Consumers (distribution entity) or an entity in the business of providing wholesale electric supply to distribution entities (generation entity) or an entity in the business of providing transmission service to distribution or generation entities (transmission entity), where, in each case, the entities provide the applicable service using self-owned or controlled assets under a published tariff that the entity and any associated regulatory agency may adjust.

Watt means the SI unit of power equal to a rate of energy transfer (or the rate at which work is done), of one joule per second.

§ 1710.405 Eligible energy efficiency and conservation programs.

(a) *General.* Eligible EE Programs shall:

(1) Be developed and implemented by an Eligible borrower and applied within its service territory;

(2) Consist of eligible activities and investments as provided in § 1710.406

(3) Provide for the use of State and local funds where available to supplement RUS loan funds;

(4) Incorporate the applicant's policy applicable to the interconnection of distributed resources;

(5) Incorporate a business plan that meets the requirements of § 1710.407;

(6) Incorporate a quality assurance plan that meets the requirements of § 1710.408;

(7) Demonstrate that the program can be expected to be Cost effective;

(8) Demonstrate that the program will have a net positive or neutral cumulative impact on the borrower's financial condition over the time period contemplated in the analytical support documents demonstrating that the net present value of program costs incurred by the borrower are positive, pursuant to § 1710.411;

(9) Demonstrate energy savings or peak demand reduction for the service territory overall; and

(10) Be approved in writing by RUS prior to the investment of funds for which reimbursement will be requested.

(b) *Financial Structures.* Eligible EE Programs may provide for direct recoupment of expenditures for eligible activities and investment from Ultimate Recipients as follows:

(1) Loans made to Ultimate Recipients located in a rural area where —

(i) The Ultimate Recipients may be wholesale or retail;

(ii) The loans may be secured or unsecured;

(iii) The loan receivables are owned by the Eligible Borrower;

(iv) The loans are made or serviced directly by the Eligible Borrower or by a financial institution pursuant to a contractual relationship between the Eligible Borrower and the financial institution;

(v) Due diligence is performed to confirm the repayment ability of the Ultimate Recipient;

(vi) Loans are funded only upon completion of the project financed or to reimburse startup costs that have been incurred;

(vii) The rate charged the Ultimate Recipient is less than or equal to the direct Treasury rate established daily by the United States Treasury pursuant to § 1710.51(a)(1) or § 1710.52, as applicable, plus the borrower's interest rate from RUS and 1.5 percent . Exceptions will be made on a case-by-case basis to ensure repayment of the government's loan and must be clearly articulated in the business plan RUS will not accept an exception request if the loan is feasible at 1.5 percent; and

(viii) Loans are not used to refinance a preexisting loan.

(2) A tariff that is specific to an identified rural Consumer, premise or class of ratepayer; or

(3) On bill repayment and other financial recoupment mechanisms as may be approved by RUS.

(c) *Period of performance*—(1) *Performance standards.* (i) Eligible EE Programs activities that are listed under § 1710.406(b) should be designed to achieve the applicable operating performance standards within one year of the date of installation of the facilities.

(ii) All activities other than those included in paragraph (c)(1)(i) of this section should be designed to achieve the applicable operating performance targets within the time period contemplated by the analytic support documents for the overall EE Program as approved by RUS.

(2) *Cost effectiveness.* Eligible EE Programs must demonstrate that Cost effectiveness as measured for the program overall will be achieved within ten years of initial funding, except in cases where the useful life of the technology on an aggregate basis can be demonstrated to be longer than the ten year period. RUS will evaluate the useful life assumption on a case-by-case basis.

§ 1710.406 Eligible activities and investments.

(a) *General.* Eligible program activities and investments:

(1) Shall be designed to improve energy efficiency and/or reduce peak demand on the customer side of the meter;

(2) Shall be Cost effective in the aggregate after giving effect to all activities and investments contemplated in the approved EE Program; and

(3) May apply to all Consumer classes.

(b) *Eligible activities and investments.* Eligible program activities and investments may include, but are not limited to, the following:

(1) Energy efficiency and conservation measures where assets financed at an Ultimate Recipient premises can be characterized as an integral part of the real property that would typically transfer with the title under applicable state law. Where applicable, it is anticipated that the loan obligation would also be expected to transfer with ownership of the metered account serving that property.

(2) Renewable Energy Systems, including —

(i) On or Off Grid Renewable energy systems;

(ii) Fuel cells;

(3) Demand side management (DSM) investments including Smart Grid Investments;

(4) Energy audits;

(5) Utility Energy Services Contracts;

(6) Consumer education and outreach programs;

(7) Power factor correction equipment on the Ultimate Recipient side of the meter;

(8) Re-lamping to more energy efficient lighting; and

(9) Fuel Switching as in:

(i) The replacement of existing fuel consuming equipment using a particular fuel with more efficient fuel consuming equipment that uses another fuel but which does not increase direct greenhouse gas emissions; or

(ii) The installation of non-electric fuel consuming equipment to facilitate management of electric system peak loads. Fuel switching to fossil or biomass fueled electric generating equipment is expressly excluded.

(10) Other activities and investments as approved by RUS as part of the EE Program such as, but not limited to, pre-retrofit improvements.

(c) *Intermediary lending.* EE Program loan funds may be used for direct re-lending to Ultimate Recipients where

the requirements of § 1710.405(b) are met.

(d) *Performance standards.* Borrowers are required to use Energy Star qualified equipment where applicable or meet or exceed efficiency requirements designated by the Federal Energy Management Program.

§ 1710.407 Business plan.

An Eligible EE Program must have a business plan for implementing the program. The business plan is expected to have a global perspective on the borrower's energy efficiency plan. Therefore, energy efficiency upgrades should be identified in aggregate. The business plan must have the following elements:

(a) *Executive summary.* The executive summary shall capture the overall objectives to be met by the Eligible EE Program and the timeframe in which they are expected to be achieved.

(b) *Organizational background.* The background section shall include descriptions of the management team responsible for implementing the Eligible EE Program.

(c) *Marketing plan.* The marketing section should identify the target Consumers, promotional activities to be pursued and target penetration rates by Consumer category and investment activity.

(d) *Operations plan.* The operations plan shall include but is not limited to:

(1) A list of the activities and investments to be implemented under the EE Program and the Btu savings goal targeted for each category;

(2) An estimate of the dollar amount of investment by the utility for each category of activities and investments listed under paragraph (d)(1) of this section;

(3) A staffing plan that identifies whether and how outsourced contractors or subcontractors will be used to deliver the program;

(4) A description of the process for documenting and perfecting collateral arrangements for Ultimate Recipient loans, if applicable; and

(5) The overall Btu savings to be accomplished over the life of the EE Program.

(e) *Financial plan.* The financial plan shall include but is not limited to:

(1) A schedule showing sources and uses of funds for the program;

(2) An itemized budget for each activity and investment category listed in the operations plan;

(3) An aggregate Cost effectiveness forecast;

(4) Where applicable, provision for Ultimate Recipient loan loss reserves. These loan loss reserves will not be funded by RUS. Loan loss reserves are not required when a utility will not be relending RUS funds.

(5) Identify expected Ultimate Recipient loan delinquency and default rates and report annually on deviations from the expected rates.

(f) *Risk analysis.* The business plan shall include an evaluation of the financial and operational risk associated with the program, including an estimate of prospective Consumer loan losses consistent with the loan loss reserve to be established pursuant to paragraph (e)(4) of this section.

(g) The borrowers are strongly encouraged to follow a bulletin or such other publication as RUS deems appropriate that contains and describes best practices for energy efficiency business plans. RUS will make this bulletin or publication publicly available and revise it from time-to-time as RUS deems it necessary.

§ 1710.408 Quality assurance plan.

An eligible EE program must have a quality assurance plan as part of the program. The quality assurance plan is expected to have a global perspective on the borrower's energy efficiency plan. Therefore, energy efficiency upgrades should be identified in aggregate. Every effort is made to fund only EE programs that are administered in accordance with quality assurance plans meeting standards designed to achieve the purposes of this subpart. However, RUS and its employees assume no legal liability for the accuracy, completeness or usefulness of any information, product, service, or process funded directly or indirectly with financial assistance provided under this subpart. Nothing in the loan documents between RUS and the energy efficiency borrower shall confer upon any other person any right, benefit or remedy of any nature whatsoever. Neither RUS nor its employees makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, with respect to any information, product, service, or process available from an energy efficiency borrower. The approval by RUS and its employees of an energy efficiency borrower's quality assurance plan is solely for the benefit of RUS. Approval of the quality assurance plan does not constitute an RUS endorsement. The quality assurance plan must have the following elements:

(a) Quality assurance assessments shall include the use of qualified energy managers or professional engineers to evaluate program activities and investments;

(b) Where applicable, program evaluation activities should use the protocols for determining energy savings as developed by the U.S. Department of Energy in the Uniform Methods Project.

(c) Energy audits shall be performed for energy efficiency investments involving the building envelope at an Ultimate Recipient premises;

(d) Energy audits must be performed by certified energy auditors; and

(e) Follow up audits shall be performed within one year after installation on a sample of investments made to confirm whether efficiency improvement expectations are being met.

(f) In cases involving energy efficiency upgrades to a single system (such as a ground source heat pump) the new system must be designed and installed by certified and insured professionals acceptable to the utility.

(g) Industry or manufacturer standard performance tests, as applicable, shall be required on any system upgraded as a result of an EE Program. This testing shall indicate the installed system is meeting its designed performance parameters.

(h) In some programs the utility may elect to recommend independent contractors who can perform energy efficiency related work for their customers. In these cases utilities shall monitor the work done by the contractors and confirm that the contractors are performing quality work. Utilities should remove substandard contractors from their recommended lists if the subcontractors fail to perform at a satisfactory level. RUS does not endorse or recommend any particular independent contractors.

(i) Contractors not hired by the utility may not act as agents of the utility in performing work financed under this subpart.

(j) The borrowers are strongly encouraged to follow a bulletin or other publication that RUS deems appropriate and contains and describes best practices for energy efficiency quality assurance plans. RUS will make this bulletin or publication publicly available and revise it from time-to-time as RUS deems it necessary.

§ 1710.409 Loan provisions.

(a) *Loan term.* The maximum term for loans under this subpart shall be 15 years unless the loans relate to ground source loop investments or technology on an aggregate basis that has a useful life greater than 15 years. Ground source loop investments as the term is used in this paragraph do not include ancillary

equipment related to ground source heat pump systems.

(b) *Loan feasibility.* Loan feasibility must be demonstrated for all loans made under this subpart. Loans made under this subpart shall be secured.

(c) *Reimbursement for completed projects.* (1) A borrower may request an initial advance not to exceed five percent of the total loan amount for working capital purposes to implement an eligible EE Program;

(2) Except for the initial advance provided for in paragraph (c)(1) of this section, all advances under this subpart shall be used for reimbursement of expenditures relating to a completed activity or investment; and

(3) Advances shall be in accordance with RUS procedures.

(d) *Loan amounts.* (1) Cumulative loan amounts outstanding under this subpart will be determined by the Assistant Administrator of the Electric Program and based an applicant's business plan; and

(2) Financing for administrative costs may not exceed 5 percent of the total loan amount.

(3) The Rural Utilities Service reserves the right to place a cap on both the total amount of funds an eligible entity can apply for, as well as a cap on the total amount of funds the Energy Efficiency and Conservation Program can utilize in the appropriations.

§ 1710.410 Application documents.

The required application documentation listed in this section is not all inclusive but is specific to Eligible borrowers requesting a loan under this subpart and in most cases is supplemental to the general requirements for loan applications provided for in this part 1710:

(a) A letter from the Borrower's General Manager requesting a loan under this subpart.

(b) A copy of the board resolution establishing the EE Program that reflects an undertaking that funds collected in excess of then current amortization requirements for the related RUS loan will be redeployed for EE Program purposes or used to prepay the RUS loan.

(c) Current RUS-approved EE Program documentation that includes:

(1) A Business Plan that meets the requirements of § 1710.407;

(2) A Quality Assurance Plan that meets the requirements of § 1710.408;

(3) Analytical support documentation that meets the requirements of § 1710.411;

(4) A copy of RUS' written approval of the EE Program.

(d) An EE program work plan that meets the requirements of § 1710.255;

(e) A statement of whether an initial working capital advance pursuant to § 1710.409(c)(1) is included in the loan budget together with a schedule of how these funds will be used.

(f) A proposed draft Schedule C pursuant to 7 CFR part 1718 that lists assets to be financed under this subpart as excepted property under the RUS mortgage, as applicable.

§ 1710.411 Analytical support documentation.

Applications for loans under this subpart may only be made for eligible activities and investments included in an RUS-approved EE Program. In addition to a business plan and operations plan, a request for EE program approval must include analytical support documentation that demonstrates the program meets the requirements of § 1710.303 and assures RUS of the operational and financial integrity of the EE Program. This documentation must include, but is not necessarily limited to, the following:

(a) A comparison of the utility's projected annual growth in demand after incorporating the EE Program together with an updated baseline forecast on file with RUS, where each includes an estimate of energy consuming devices used by customers in the service territory and a specific time horizon as determined by the utility for meeting the performance objectives established by them for the EE Program;

(b) Demonstration that the required periods of performance under § 1710.405(c) can reasonably be expected to be met;

(c) A report of discussions and coordination conducted with the power supplier, where applicable, issues identified as a result, and the outcome of this effort.

(d) An estimate of the amount of direct investment in utility-owned generation that will be deferred as a result of the EE Program;

(e) A description of efforts to identify state and local sources of funding and, if available, how they are to be integrated in the financing of the EE Program; and

(f) Copies of sample documentation used by the utility in administering its EE Program.

(g) Such other documents and reports as the Administrator may require.

§ 1710.412 Borrower accounting methods, management reporting, and audits.

Nothing in this subpart changes a Borrower's obligation to comply with RUS's accounting, monitoring and reporting requirements. In addition thereto, the Administrator may also require additional management reports that provide the agency with a means of evaluating the extent to which the goals and objectives identified in the EE Plan are being accomplished.

§ 1710.413 Compliance with other laws and regulations.

Nothing in this subpart changes a Borrower's obligation to comply with all laws and regulations to which it is subject.

§§ 1710.414–1710.499 [Reserved]

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 18. The authority citation for part 1717 continues to read as follows:

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

Subpart R—Lien Accommodations and Subordinations for 100 Percent Private Financing

■ 19. Amend § 1717.852 by revising paragraph (b)(2)(ii) to read as follows:

§ 1717.852 Financing purposes.

* * * * *

(b) * * *

(2) * * *

(ii) Renewable energy systems and RUS-approved programs of Demand side management, energy efficiency and energy conservation; and

* * * * *

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED AND GUARANTEED ELECTRIC LOANS

■ 20. The authority citation for part 1721 continues to read as follows:

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

Subpart A—Advance of Funds

■ 21. Amend § 1721.1 by revising paragraph (a) to read as follows:

§ 1721.1 Advances.

(a) *Purpose and amount.* With the exception of minor projects, loan funds will be advanced only for projects which are included in an RUS approved construction work plan (CWP), EE Program work plan (EEWP), or approved amendment, and in an approved loan as amended. Loan fund advances can be requested in an amount representing actual costs incurred.

* * * * *

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

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

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

Subpart C—Engineering Services

■ 23. Amend § 1724.30 by revising paragraph (a) to read as follows:

§ 1724.30 Borrowers' requirements—engineering services.

* * * * *

(a) Each borrower shall select one or more qualified persons to perform the engineering services involved in the planning (including the development of an EE Program eligible for financing pursuant to subpart H of part 1710 of this chapter, design, and construction management of the system.

* * * * *

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

■ 24. The authority citation for part 1730 continues to read as follows:

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

Subpart B—Operations and Maintenance Requirements

■ 25. Amend Appendix A to subpart B of Part 1730 by adding paragraph 13.f. to read as follows:

Appendix A to Subpart B of Part 1730—Review Rating Summary, RUS Form 300

* * * * *

13. * * *

f. Energy Efficiency and Conservation Program quality assurance compliance—Rating:_____

* * * * *

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2013–29158 Filed 12–4–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Thursday,

No. 234 December 5, 2013

Part IV

The President

Proclamation 9065—National Impaired Driving Prevention Month, 2013

Federal Register
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Thursday, December 5, 2013

Presidential Documents

Title 3—

The President

Proclamation 9065 of November 29, 2013

National Impaired Driving Prevention Month, 2013

By the President of the United States of America

A Proclamation

During the holiday season, Americans join with family, friends, and neighbors to take part in longstanding traditions. For some, those celebrations are tempered by the absence of loved ones taken too soon in traffic crashes involving drugs or alcohol, or caused by distracted driving. During National Impaired Driving Prevention Month, we dedicate ourselves to saving lives and eliminating drunk, drugged, and distracted driving.

Impaired drivers are involved in nearly one-third of all deaths from motor vehicle crashes in the United States, taking almost 30 lives each day. This is unacceptable. My Administration is committed to raising awareness about the dangers of impaired driving, improving screening methods, and ensuring law enforcement has the tools and training to decrease drunk and drugged driving. We are designing effective, targeted prevention programs, and are working to curtail all forms of distracted driving, including texting and cell phone use. To keep the American people safe this holiday season, law enforcement across our Nation will participate in the national *Drive Sober or Get Pulled Over* campaign from December 13 to January 1. This initiative increases enforcement and reminds us all to consider the consequences of impaired driving.

Everyone has a role to play in keeping our roads safe—from parents, schools, and businesses to faith-based and community organizations. Together, we can teach young people, friends, and fellow citizens how to avoid a crash brought on by impaired driving. I encourage all Americans to designate a non-drinking driver, plan ahead for alternative transportation, or make arrangements to stay with family and friends before consuming alcohol. Americans should also know what precautions to take if using over-the-counter or prescription medication. For more information, please visit www.WhiteHouse.gov/ONDCP and www.NHTSA.gov/Impaired.

This month and always, let every American drive sober, buckle-up, and avoid distractions while driving. If we take these actions and encourage those around us to do the same, we will save thousands of lives and keep thousands of families whole.

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 December 2013 as National Impaired Driving Prevention Month. I urge all Americans to make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-eighth.

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