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FEDERAL REGISTER

Vol. 79 Tuesday,

No. 23 February 4, 2014

Pages 6453–6794

OFFICE OF THE FEDERAL REGISTER

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Title 3—

The President

Memorandum of January 20, 2014

Delegation of Authority Under Section 1245(d)(5) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81)

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State, in consultation with the Secretary of the Treasury, the authority conferred upon the President by section 1245(d)(5) of the Fiscal Year (FY) 2012 National Defense Authorization Act (NDAA).

Any reference in this memorandum to provisions of the FY 2012 NDAA related to the subject of this memorandum shall be deemed to include references to any hereafter enacted provisions of law that is the same or substantially the same as such provisions.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 20, 2014.

[FR Doc. 2014–02422
Filed 2–3–14; 8:45 am]
Billing code 4710–10

Presidential Documents

Memorandum of January 29, 2014

Retirement Savings Security

Memorandum for the Secretary of the Treasury

All Americans deserve the ability to save for retirement. Since taking office, my Administration has committed to strengthening retirement security for all Americans, including by helping workers find ways to save for retirement and to protect those hard earned savings. Unfortunately, too few Americans have enough savings to maintain their standard of living in retirement.

But we know there are proven strategies that can help the average family save. Workplace-based retirement savings that allow workers to automatically take a portion of their pay and put it into a retirement account can increase retirement savings dramatically. Approximately 9 out of 10 workers automatically enrolled in a 401(k) plan continue to make contributions to that account compared to the less than 1 out of 10 eligible workers who voluntarily contribute to Individual Retirement Accounts. The positive effect of automatic contributions is especially pronounced among lower-income households and others with traditionally low savings rates.

Unfortunately, only about half of all American workers have access to employer-sponsored retirement savings accounts. It is clear that we cannot continue on this course.

The Department of the Treasury has worked diligently to develop a new tool that can make long-term savings a reality for more working Americans. A new kind of retirement savings tool could help American families as they start to build for their retirement. In order to make this tool available to working Americans, I hereby direct as follows:

Section 1. *Retirement Savings Security.* (a) By December 31, 2014, you shall finalize the development of a new retirement savings security that can be made available through employers to their employees. This security shall be focused on reaching new and small-dollar savers and shall have low barriers to entry, including a low minimum opening amount. In developing this security, you shall ensure that it:

(i) protects the principal contributed while earning interest at a rate based on yields on outstanding Treasury securities;

(ii) offers savers the flexibility to take money out if they have an emergency and keep the same Treasury security if they change jobs; and

(iii) is designed to help savers start on a path to long-term saving and serve as a stepping stone to the broader array of retirement products available in today's marketplace.

(b) Within 90 days of the date of this memorandum, you shall begin work with employers, stakeholders, and, as appropriate, other Federal agencies to develop a pilot project to make the security developed pursuant to subsection (a) of this section available through payroll deduction to facilitate easy and automatic contributions.

Sec. 2. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 29, 2014.

[FR Doc. 2014–02423
Filed 2–3–14; 8:45 am]
Billing code 4811–33

Rules and Regulations

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2013–0361]

RIN 1625–AA08

Special Local Regulations; Eleventh Coast Guard District Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is updating the list of marine events that occur annually within the Eleventh Coast Guard District. These updates include adding specific marine events to the list of marine events held annually in the Eleventh Coast Guard District as well as removing marine events that no longer occur. In addition to updating the list of marine events held annually in the Eleventh Coast Guard District, the Coast Guard is amending the special local regulations by standardizing the language and format of listed events. When these special local regulations are activated, and thus subject to enforcement, this rule will restrict vessels from transiting inside the regulated area.

DATES: This rule is effective March 6, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0361. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Junior Grade Blake Morris, Eleventh Coast Guard District Prevention Division, Waterways Management Branch, U.S. Coast Guard; telephone 510–437–3801, email *Blake.J.Morris@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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DHS Department of Homeland Security
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NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On November 18th, 2013, we published a NPRM entitled Special Local Regulations: Eleventh Coast Guard District Annual Marine Events, in the **Federal Register** (78 FR 69007). We received no comments on the NPRM, or a request for public meeting. A public meeting was not held.

B. Basis and Purpose

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 1233.

Specific marine events are annually held on a recurring basis on the navigable waters within the Eleventh Coast Guard District and require special local regulations to keep spectators and vessels a safe distance away from the vessels and individuals that are participating in the specified events. These events include sailing regattas, powerboat races, rowboat races, parades, and swim events. Some of these marine events are not currently listed in 33 CFR part 100, sections 1101, 1102 and 1104 or many of the annual events that are listed in these sections do not correctly reflect the date or approximate date of the event or do not correctly identify other important information specific to the event.

The effect of these special local regulations will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the specified events to help ensure the safety of participants, spectators, and transiting vessels.

C. Discussion of Comments, Changes and the Final Rule

We received no comments or request for a public meeting after publishing the NPRM for this rule. Therefore, no changes have been made to the regulatory text of this rule.

The Coast Guard is amending 33 CFR 100.1101, Southern California annual marine events for the San Diego Captain of the Port zone, by adding 12 new events and updating 1 event with correct verbiage. The 12 new events in this section are as follows: ''ITU World Triathlon'' occurring late April or early May at Bonita Cove and Ventura Cove in Mission Bay, San Diego; ''Fearless Triathlon'' occurring in March at the South Shores Boat Ramp in Mission Bay, San Diego; ''Bay to Bay Rowing and Paddling Regatta'' occurring in July from Mission Bay to San Diego Bay; ''San Diego Sharkfest Swim'' occurring one Saturday in September or October in the waters from Seaport Village across the federal channel to the Coronado Ferry Landing; ''San Diego TriRock Triathlon'' occurring on a Saturday in March in the East Embarcadero Marina Basin; ''San Diego Bayfair'' occurring the second or third weekend in September at Mission Bay, San Diego; ''Oceanside Harbor Days Tiki Swim'' occurring on one Saturday in late September or early October in Oceanside Harbor, Oceanside; ''U.S. Open Ski Racing Nationals'' occurring one weekend in October at Mission Bay, San Diego; ''San Diego Maritime Museum Tall Ship Festival of Sail'' occurring one weekend in September in San Diego Bay; ''Hanohano Ocean Challenge'' an outrigger canoe race occurring on a Saturday in January in Mission Bay, San Diego; ''Crystal Pier Outrigger Race'' an outrigger canoe race occurring in Mission Bay and Mission Bay Entrance Channel on a Saturday in May, Mission Bay, San Diego; and the ''San Diego Ho'olaule'a & Keiki Heihei Wa'a Stand Up for the Kids Race'' occurring on a weekend in May in Mission Bay, San Diego. We are also updating the information specific to the

''San Diego Parade of Lights'' by inserting a new event sponsor, date, and regulated area.

The Coast Guard is amending 33 CFR 100.1102, annual marine events on the Colorado River, between Davis Dam (Bullhead City, AZ) and Headgate Dam (Parker, AZ) within the San Diego Captain of the Port zone, by adding 9 new events and updating 1 event with correct verbiage. The 9 new events in this section are as follows: ''BlueWater Resort and Casino Southwest Showdown'' occurring one weekend in March in the waters of the Colorado River between BlueWater Resort and Casino and just north of Headgate Rock Dam in Parker, AZ; ''BlueWater Resort and Casino West Coast Nationals'' occurring one weekend in April in the Lake Moovalya area of the Colorado River and the portion of the Colorado River adjacent to the BlueWater River Casino, in Parker, AZ; ''Great Western Tube Float'' occurring one Saturday in early June in the navigable waters of the Colorado River from La Paz County Park to the BlueWater Resort and Casino, immediately before the Headgate Dam; ''Mark Hahn Memorial 300 PWC Endurance Race'' occurring in late February at Lake Havasu; ''Lake Havasu Triathlon'' occurring in March at Lake Havasu; ''Bullhead City River Regatta'' occurring one Saturday in August in the Colorado River from Camp Davis to Rotary Park; ''BlueWater Triathlon'' occurring one Saturday in October in the waters of the Colorado River between Blue Water Resort and Casino Amphitheater and just north of Headgate Rock Dam in Parker, AZ; ''BlueWater Resort and Casino 300 Enduro'' occurring in late October at river mile markers 179 and 185 in the Colorado River; and ''Another Dam Race'' occurring one Saturday in November in the waters of the Colorado River between Blue Water Resort and Casino Amphitheater and just north of Headgate Rock Dam in Parker, AZ. We are also updating the information specific to the ''Lake Havasu City Boat Parade of Lights'' by inserting a new regulated area.

Lastly, the Coast Guard is reinstating 16 annually recurring marine events previously listed in 33 CFR 100.1104, Captain of the Port zone Los Angeles-Long Beach. The 16 marine events being reinstated were mistakenly deleted in 2011 and are not new events. By reinstating these 16 marine events, Table 1 of this section will accurately reflect the 17 annually recurring events that are held in the Captain of the Port zone Los Angeles-Long Beach.

These changes effectively update special local regulations with annually occurring marine events in the Eleventh Coast Guard District. Table 1 for each of the listed sections will reflect current information. This rulemaking limits the unnecessary burden of continually establishing temporary special local regulations every year for events that occur on an annual basis. These events include swimming competitions, sailboat and power boat races and rowing events within the San Diego and Los Angeles-Long Beach Captain of the Port zones.

Regulated areas listed in these events are needed to protect both the event participants, spectators, and other mariners and provide on-water awareness for safety. To reduce associated safety risks, special local regulations restrict vessels and water craft around the location of each marine event. Within the regulated areas of the listed marine events, persons and vessels not associated with the event are prohibited from entering, transiting through, remaining, anchoring or mooring within the regulated area unless specifically authorized by the Captain of the Port (COTP) or designated representative. Persons or vessels will be able to request authorization to enter, transit through, remain, anchor or moor within the regulated areas by contacting the Captain of the Port for the respective location, COTP San Diego 619–278–7033 and COTP Los Angeles-Long Beach 310–521–3801 or designated representative on VHF radio channel 16. If any person is authorized to enter, transit through, remain, anchor or moor within any of the regulated areas, the individual is required to comply with the instructions of the COTP or designated representative.

Designated representatives are comprised of commissioned, warrant, and petty officers of the Coast Guard. The Coast Guard may also be assisted by other federal, state, and local agencies in the enforcement of these regulated areas.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule is not a significant regulatory action because the regulations exist for a limited period of time on a limited portion of the waterways. Further, individuals and vessels desiring to use the affected portion of the waterways may, upon permission from the Patrol Commander, use the affected areas.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We expect this rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to fish, transit, or anchor in the waters affected by these special local regulations. These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in event activities, sightseeing and commercial fishing have ample space outside of the area governed by the special local regulations to engage in these activities. Small entities and the maritime public will be advised of implementation of these special local regulations via public notice to mariners or notice of implementation published in the **Federal Register**.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for

compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves updating the list of marine events that occur annually within the Eleventh Coast Guard District. These updates include adding specific marine events to the list of marine events held annually in the Eleventh Coast Guard District as well as removing marine events that no longer occur. In addition to updating the list of marine events held annually in the Eleventh Coast Guard District, the Coast Guard is amending the special local regulations in 33 CFR 100, sections 1101, 1102 and 1104 by standardizing the language and format of listed events. When these special local regulations are activated, and thus subject to enforcement, this rule will restrict vessels from transiting inside the regulated area. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and Recordkeeping Requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Revise § 100.1101 to read as follows:

§ 100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. **Note:** Sponsors of events listed in Table 1 of this section must submit an application each year in accordance with 33 CFR 100.15 to the cognizant Coast Guard

Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard or other vessel assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to control the movement of all vessels in the regulated area or to restrict vessels from entering the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign ''PATCOM.''

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1101

[All coordinates referenced use datum NAD 83]

1. San Diego Fall Classic	
Sponsor	San Diego Rowing Club.
Event Description	Competitive rowing race.
Date	Sunday in November.
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include South Pacific Passage, Fiesta Bay, and the waters around Vacation Isle.
2. California Half Ironman Triathlon	
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Sponsor	World Triathlon Corporation.
Event Description	Swimming Portion of Triathlon Race.
Date	Saturday in late March or early April.
Location	Oceanside Harbor, CA.
Regulated Area	The waters of Oceanside Harbor, CA, including the entrance channel.
3. San Diego Crew Classic	
Sponsor	San Diego Crew Classic.
Event Description	Competitive rowing race.
Date	First Saturday and Sunday in April.
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include South Pacific Passage, Fiesta Bay, and the waters around Vacation Isle.
4. Dutch Shoe Regatta	
Sponsor	San Diego Yacht Club.
Event Description	Sailboat Race.
Date	Friday in late July.
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay, CA, from Shelter Island to Glorietta Bay.
5. San Diego Parade of Lights	
Sponsor	San Diego Bay Parade of Lights.
Event Description	Boat Parade.
Date	Two Sunday nights in December.
Location	San Diego Bay, CA.
Regulated Area	A pre-determined course in the northern portion of the San Diego Main Ship Channel from Shelter Island Basin, past the Embarcadero, crossing the federal navigable channel and ending off of Coronado Island.
6. Mission Bay Parade of Lights	
Sponsor	Mission Bay Yacht Club.
Event Description	Boat Parade.
Date	December.
Location	Mission Bay, San Diego, CA.

TABLE 1 TO § 100.1101—Continued

[All coordinates referenced use datum NAD 83]

Regulated Area	Mission Bay, the Main Entrance Channel, Sail Bay, and Fiesta Bay.
7. ITU World Triathlon	
Sponsor	Lagardere Unlimited Upsolut USAT LLC.
Event Description	Swimming Portion of Triathlon Race.
Date	Late April or early May.
Location	Mission Bay, San Diego, CA.
Regulated Area	Bonita Cove San Diego, CA and Ventura Cove, Mission Bay, San Diego, CA.
8. Fearless Triathlon	
Sponsor	Fearless Races, LLC.
Event Description	Swimming Portion of Triathlon Race.
Date	Weekend in March.
Location	Mission Bay, San Diego, CA.
Regulated Area	South Shores Boat Ramp, Mission Bay.
9. Bay to Bay Rowing and Paddling Regatta	
Sponsor	Peninsula Family YMCA.
Event Description	Kayak, surfboard, and stand up paddle board paddling race.
Date	Saturday in July.
Location	San Diego, CA.
Regulated Area	The waters of Mission Bay, CA, to San Diego Bay, CA.
10. San Diego Sharkfest Swim	
Sponsor	Enviro-Sports Productions Inc.
Event Description	Swim race.
Date	Saturday in September or October.
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay, CA, from Seaport Village to Coronado Ferry Landing.
11. San Diego TriRock Triathalon	
Sponsor	Competitor Group Inc.
Event Description	Swim race.
Date	Saturday in September.
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay, CA, off the East Basin of Embarcadero Park.
12. San Diego Bayfair	
Sponsor	Thunderboats Unlimited Inc.
Event Description	Professional High-speed powerboat race, closed course.
Date	Second or third weekend in September (Friday thru Sunday).
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include Fiesta Bay, the east side of Vacation Isle, and Crown Point shores.
13. Oceanside Harbor Days Tiki Swim	
Sponsor	City of Oceanside.
Event Description	Swim race.
Date	Saturday in late September or early October.
Location	Oceanside Harbor, CA.
Regulated Area	The waters of Oceanside Harbor, CA, including the entrance channel.
14. U.S. Open Ski Racing Nationals	
Sponsor	National Water-ski Race Association.
Event Description	Professional High-speed water ski powerboat race, closed course.
Date	One weekend in October.
Location	Mission Bay, San Diego, CA.
Regulated Area	The waters of Mission Bay to include Fiesta Bay, the east side of Vacation Isle.
15. San Diego Maritime Museum Tall Ship Festival of Sail	
Sponsor	San Diego Maritime Museum.

TABLE 1 TO § 100.1101—Continued

[All coordinates referenced use datum NAD 83]

Event Description	Tall ship festival.
Date	Annually over a weekend in September (3 day event).
Location	San Diego Bay, CA.
Regulated Area	The waters of San Diego Bay Harbor.
16. Hanohano Ocean Challenge	
Sponsor	Hanohano Outrigger Canoe Club.
Event Description	Outrigger canoes and kayak race.
Date	Saturday in January.
Location	Mission Bay, San Diego, CA.
Regulated Area	Mission Bay, the Main Entrance Channel, Bonita Cove, South Shores Cove.
17. Crystal Pier Outrigger Race	
Sponsor	Hanohano Outrigger Canoe Club.
Event Description	Outrigger canoe race.
Date	Saturday in May.
Location	Mission Bay, San Diego, CA.
Regulated Area	Mission Bay, the Main Entrance Channel, Sail Bay, Fiesta Bay, South Shore Channel, and waters adjacent to Crown Point Beach Park.
18. San Diego Hoʻolaueʻa and Keiki Heihei Waʻa Stand Up For the Kids Race	
Sponsor	Na Koa Kai Canoe Club.
Event Description	Outrigger Canoe and Stand Up Paddle Board race.
Date	Weekend in May.
Location	Mission Bay, San Diego, CA.
Regulated Area	Mission Bay, De Anza Cove, and North Pacific Passage.

■ 3. Revise § 100.1102 to read as follows:

§ 100.1102 Annual Marine Events on the Colorado River, between Davis Dam (Bullhead City, Arizona) and Headgate Dam (Parker, Arizona).

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. **Note:** Sponsors of events listed in Table 1 of this section must submit an application each year in accordance with 33 CFR 100.15 to the cognizant Coast Guard Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property. A Coast Guard-National Park Service agreement exists for both the Glen Canyon and Lake Mead National Recreational Areas; applicants shall contact the cognizant authority for approval of events in these areas.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, other Federal, state or local law enforcement, and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to control the movement of all vessels in the regulated area or to restrict vessels from entering the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign ''PATCOM.''

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1102

[All coordinates referenced use datum NAD 83.]

1. Lake Havasu Winter Water-Ski Race	
Sponsor	National Water-ski Racing Association.
Event Description	Water-ski races.
Date	Saturday and Sunday in late February or early March.
Location	Lake Havasu, AZ.
Regulated Area	That portion of the lower Colorado River on the Arizona side between Thompson Bay and Copper Canyon.
2. Havasu Landing Regatta	
Sponsor	Southern Outboard Association.
Event Description	Boat Races on closed course.
Date	Saturday and Sunday in February.
Location	Havasu Lake, CA.
Regulated Area	That portion of the lower Colorado River on the California side at Havasu Landing Resort and Casino.
3. Parker International Water-Ski Race	
Sponsor	International Water-ski Race Association.
Event Description	Water-ski Show.
Date	Second Saturday and Sunday in March.
Location	Parker, AZ.
Regulated Area	The entire water area of the Colorado River beginning at BlueWater Marina in Parker, AZ, and extending approximately 10 miles to La Paz County Park.
4. Desert Storm	
Sponsor	Lake Racer LLC.
Event Description	Boat Poker Run and Exhibition Runs.
Date	April weekend (3 day event).
Location	Lake Havasu, AZ.
Regulated Area	The waters of the lower Colorado River encompassed from the eastern line off of Algoma Pier Head Lighthouse to the Split Rock Lighthouse as the western line, with the following boundaries: Eastern Boundary Line: 34°26′51″ N, 114°20′41″ W to 34°27′17″ N, 114°20′51″ W. Western Boundary Line: 34°27′18″ N, 114°22′34″ W to 34°26′55″ N, 114°22′59″ W.
5. Lake Havasu Grand Prix	
Sponsor	Pacific Offshore Powerboat Racing Association (POPRA).
Event Description	Boat Races on closed course.
Date	April weekend (2 day event).
Location	Lake Havasu, AZ.
Regulated Area	The waters of the lower Colorado River encompassed by the following boundaries: Boundary one from 34°27′44″ N, 114°20′53″ W to 34°27′51″ N, 114°20′43″ W. Boundary two from 34°26′50″ N, 114°20′41″ W to 34°27′14″ N, 114°20′55″ W. Boundary three from 34°26′10″ N, 114°18′40″ W to 34°25′50″ N, 114°18′52″ W.
6. BlueWater Resort and Casino Spring Classic	
Sponsor	Southern California Speedboat Club.
Event Description	Professional High-speed powerboat race, closed course.
Date	Saturday and Sunday in April.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River in Parker, AZ.
7. BlueWater Resort and Casino Southwest Showdown	
Sponsor	Arizona Drag Boat Association.
Event Description	Professional High-speed powerboat drag race, on a measured course.
Date	Saturday and Sunday in March.
Location	Parker, AZ.

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83.]

Regulated Area	Adjacent to the BlueWater River Casino, Arizona side of the Colorado River in Parker, AZ.
8. BlueWater Resort and Casino West Coast Nationals	
Sponsor	RPM Racing Enterprises.
Event Description	Professional High-speed powerboat race, closed course.
Date	Saturday and Sunday in April.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River and the portion of the Colorado River adjacent to the BlueWater River Casino, in Parker, AZ.
9. Great Western Tube Float	
Sponsor	City of Parker, AZ.
Event Description	River float.
Date	One Saturday in June.
Location	Parker, AZ.
Regulated Area	The navigable waters of the Colorado River from La Paz County Park to the BlueWater Resort and Casino, immediately before the Headgate Dam.
10. IJSBA World Finals	
Sponsor	International Jet Sports Boating Association (IJSBA).
Event Description	Personal Watercraft Race.
Date	Second Saturday through third Sunday of October (10 Days).
Location	Lake Havasu City, AZ.
Regulated Area	The navigable waters of Lake Havasu, AZ in the area known as Crazy Horse Campgrounds.
11. Parker Enduro	
Sponsor	Parker Area Chamber of Commerce.
Event Description	Hydroplane, flatbottom, tunnel, and v-bottom powerboat race.
Date	Late October.
Location	Parker, AZ.
Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).
12. BlueWater Resort and Casino Thanksgiving Regatta	
Sponsor	Southern California Speedboat Club.
Event Description	Boat Races.
Date	Thursday, Friday, Saturday, and Sunday during Thanksgiving week.
Location	Parker, AZ.
Regulated Area	The Lake Moovalya area of the Colorado River and the portion of the Colorado River adjacent to the BlueWater River Casino, in Parker, AZ.
13. Lake Havasu City Boat Parade of Lights	
Sponsor	London Bridge Yacht Club.
Event Description	Boat parade during which vessels pass by a pre-designated vessel and then transit through the London Bridge Channel.
Date	First Saturday and Sunday in December.
Location	Lake Havasu, AZ.
Regulated Area	A pre-determined course that travels through the waters of North Lake Havasu, London Bridge Channel and Thompson Bay.
14. Mark Hahn Memorial 300 PWC Endurance Race	
Sponsor	DSM Events.
Event Description	300 Nautical Mile PWC Race Loop Track.
Date	Late February.
Location	Lake Havasu City, AZ.
Regulated Area	A 10 mile course on Northern Lake Havasu from London Bridge to North Lake Havasu Landing.
15. Lake Havasu Triathlon	
Sponsor	Tucson Racing.
Event Description	Swim race.

TABLE 1 TO § 100.1102—Continued

[All coordinates referenced use datum NAD 83.]

Date	March.
Location	Lake Havasu, AZ.
Regulated Area	Waters North of London Bridge to waters just north of Crazy Horse Camp Ground.
16. Bullhead City River Regatta	
Sponsor	Bullhead City.
Event Description	River float.
Date	One Saturday in August.
Location	Bullhead City, AZ.
Regulated Area	The navigable waters of the Colorado River from Camp Davis to the Rotary Park.
17. BlueWater Triathlon	
Sponsor	Blue Water Resort & Casino
Event Description	Swimming Portion of Triathlon Race.
Date	One Saturday in October.
Location	Parker, AZ.
Regulated Area	The waters of the Colorado River between river between the BlueWater Resort & Casino Amphitheater and just North of Headgate Rock Dam in Parker, AZ.
18. BlueWater Resort and Casino 300 Enduro	
Sponsor	RPM Racing Enterprises.
Event Description	Boat Race.
Date	Late October.
Location	Parker, AZ.
Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).
19. Another Dam Race	
Sponsor	Blue Water Resort and Casino.
Event Description	Kayak, surbboard, surfski, stand up paddle board race.
Date	A Saturday in November.
Location	Parker, AZ.
Regulated Area	Between river miles 179 and 185 (between the Roadrunner Resort and Headgate Dam).

■ 4. Revise § 100.1104 to read as follows:

§ 100.1104 Southern California Annual Marine Events for the Los Angeles Long Beach Captain of the Port Zone.

(a) *General.* Special local regulations are established for the events listed in Table 1 of this section. Notice of implementation of these special local regulations will be made by publication in the **Federal Register** 30 days prior to the event for those events without specific dates or by Notice to Mariners 20 Days prior to the event for those events listing a period for which a firm date is identifiable. In all cases, further information on exact dates, times, and other details concerning the number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast Guard District in the Local Notice to Mariners at least 20 days prior to each event. To be placed on the mailing list for Local Notice to Mariners contact: Commander (dpw), Eleventh Coast Guard District, Coast Guard Island, Building 50–2, Alameda, CA 94501–5100. **Note:** Sponsors of events listed in Table 1 of this section must submit an application each year in accordance with 33 CFR 100.15 to the cognizant Coast Guard Sector Commander no less than 60 days before the start of the proposed event. Sponsors are informed that ample lead time is required to inform all Federal, state, local agencies, and/or other interested parties and to provide the sponsor the best support to ensure the safety of life and property.

(b) *Special local regulations.* All persons and vessels not registered with the sponsor as participants or as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard; other Federal, state, or local law enforcement; and any public or sponsor-provided vessels assigned or approved by the cognizant Coast Guard Sector Commander to patrol each event.

(1) No spectator shall anchor, block, loiter, nor impede the through transit of participants or official patrol vessels in the regulated areas during all applicable effective dates and times unless cleared to do so by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, any spectator located within a regulated area during all applicable effective dates and times shall come to an immediate stop.

(3) The Patrol Commander (PATCOM) is empowered to control the movement of all vessels in the regulated area or to restrict vessels from entering the regulated area. The Patrol Commander shall be designated by the cognizant Coast Guard Sector Commander; will be a U.S. Coast Guard commissioned officer, warrant officer, or petty officer to act as the Sector Commander's official representative; and will be located aboard the lead official patrol vessel. As the Sector Commander's representative, the PATCOM may terminate the event any time it is deemed necessary for the protection of

life and property. PATCOM may be reached on VHF–FM Channel 13 (156.65MHz) or 16 (156.8MHz) when required, by the call sign ''PATCOM.''

(4) The Patrol Commander may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

TABLE 1 TO § 100.1104

[All coordinates referenced use datum NAD 83.]

1. Newport to Ensenada Yacht Race	
Sponsor	Newport Ocean Sailing Association.
Event Description	Sailing vessel race; open ocean.
Date	Fourth Friday in April.
Location	Newport Beach, CA.
Regulated Area	Starting area only. All waters of the Pacific Ocean near Newport Beach, CA bounded by a line starting 33°35′18″ N, 117°53′18″ W thence to 33°34′54″ N, 117°53′18″ W thence to 33°34′54″ N, 117°54′30″ W thence to 33°35′18″ N, 117°54′30″ W thence returning to the point of origin.
2. Congressional Cup	
Sponsor	Long Beach Yacht Club.
Event Description	Competitive sailboat race series.
Date	Annually in March.
Location	Long Beach Harbor, CA.
Regulated Area	The waters of Long Beach Harbor surrounded by Island White, Island Freeman, and Island Chaffee. The race area is designated at Congressional Cup Stadium.
3. Transpac	
Sponsor	Transpac Yacht Club.
Event Description	Competitive long distance sailboat race from Los Angeles to Honolulu.
Date	Bi-annually in early Summer.
Location	Long Beach Harbor, CA.
Regulated Area	All navigable waters from the surface to the sea floor within positions 33° – 41.9390′N 118° – 18.747′ W, 34° – 41.205′ N 118° – 18.747′ W, 33° – 41.205′ N 118° – 17.553′ W, and 33° – 41.939′ N 118° – 17.553′ W.
4. Dana Point Tall Ship Festival	
Sponsor	Dana Point Marine Institute
Event Description	Tall ship festival.
Date	Annually in September.
Location	Dana Point Harbor, CA.
Regulated Area	The waters of Dana Point Harbor.
5. Morro Bay Holiday Boat Parade	
Sponsor	City of Morro Bay.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Morro Bay Harbor, CA.
Regulated Area	The waters of Morro Bay Harbor.
6. Santa Barbara Holiday Boat Parade	
Sponsor	City of Santa Barbara.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Santa Barbara Harbor, CA.
Regulated Area	The waters of Santa Barbara Harbor.
7. Ventura Harbor Holiday Boat Parade	
Sponsor	Ventura Harbor District.
Event Description	Holiday lighted boat parade.
Date	Two nights annually in mid December.
Location	Ventura Harbor, CA.
Regulated Area	The waters of Ventura Harbor.
8. Channel Islands Harbor Holiday Boat Parade	
Sponsor	Channel Islands Harbor District.

TABLE 1 TO § 100.1104—Continued

[All coordinates referenced use datum NAD 83.]

Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	Channel Islands Harbor, CA.
Regulated Area	The waters of Channel Islands Harbor.

9. Marina del Rey Holiday Boat Parade

Sponsor	Los Angeles County Department of Beaches and Harbors.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Marina del Rey, CA.
Regulated Area	The waters of Marina del Rey.

10. King Harbor Holiday Boat Parade

Sponsor	King Harbor Yacht Club.
Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	King Harbor, CA.
Regulated Area	The waters of King Harbor.

11. Port of Los Angeles Holiday Boat Parade

Sponsor	Port of Los Angeles.
Event Description	Holiday lighted boat parade.
Date	Annually in early December.
Location	Port of Los Angeles, CA.
Regulated Area	The waters of the Port of Los Angeles.

12. Parade of 1,000 Lights

Sponsor	Shoreline Yacht Club.
Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	Long Beach Harbor, CA.
Regulated Area	Queensway Bay, Rainbow Harbor.

13. Naples Island Holiday Boat Parade

Sponsor	Naples Island Improvement Association.
Event Description	Holiday lighted boat parade.
Date	Annually in December.
Location	Naples Island, CA.
Regulated Area	The waters of Alamitos Bay.

14. Huntington Harbor Holiday Boat Parade

Sponsor	Huntington Philharmonic Association.
Event Description	Holiday lighted boat parade.
Date	Two nights annually in December.
Location	Huntington Harbor, CA.
Regulated Area	The waters and canals of Huntington Harbor.

15. Newport Beach Holiday Boat Parade

Sponsor	Newport Beach Chamber of Commerce.
Event Description	Holiday lighted boat parade.
Date	Five nights annually in mid December.
Location	Newport Beach Harbor, CA.
Regulated Area	The waters of Newport Beach Harbor.

16. Dana Point Holiday in the Harbor

Sponsor	Dana Point Harbor.
Event Description	Holiday festival and lighted boat parade.
Date	4 nights annually in December.
Location	Dana Point Harbor, CA.
Regulated Area	The waters of Dana Point Harbor.

17. Catalina Ski Race

Sponsor	Long Beach Waterski Club.
Event Description	Competitive high speed waterski race.
Date	Annually in July.

TABLE 1 TO § 100.1104—Continued

[All coordinates referenced use datum NAD 83.]

Location	Long Beach Harbor, CA, to Santa Catalina Island, CA and back.
Regulated Area	The waters of Long Beach Harbor bordered by Queens Way Bridge, the Long Beach Breakwater, and the Alamitos Bay West Jetty.

Dated: January 16, 2014.

K.L. Schultz,

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

[FR Doc. 2014–02217 Filed 2–3–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0365]

RIN 1625–AA00

Safety Zone; Alaska Marine Highway System Port Valdez Ferry Terminal, Port Valdez; Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone on the navigable waters of Port Valdez within a 200-yard radius of the Alaska Marine Highway System (AMHS) Port Valdez Ferry Terminal. The purpose of the safety zone is to restrict all vessels except AMHS vessels from entering within 200-yards of the AMHS Port Valdez Ferry Terminal whenever an AMHS ferry is underway within 200 yards of the terminal and there is a declared Commercial Salmon Fishery Opener. This safety zone is necessary to provide for the safety of life, property and the environment during periods of vessel traffic congestion during a declared Commercial Salmon Fishery Opener.

DATES: This rule is effective March 6, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0365]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Jason A. Smiley, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Valdez, telephone 907–835–7223, email *jason.a.smiley@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On February 1, 2013, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (78 FR 7336). We received no comments on the proposed rule. No public meeting was requested and none was held.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

A representative of the Alaska Marine Highway System requested that the Coast Guard establish a safety zone in the immediate vicinity of the AMHS Port Valdez Ferry Terminal whenever a Commercial Salmon Fishery Opener is declared, because of previous incidents of near collisions in the vicinity of the ferry terminal between AMHS ferry vessels and commercial fishing vessels. During Commercial Salmon Fishery Openers, increased vessel traffic in the vicinity of the AMHS Port Valdez Ferry Terminal adds additional congestion to the waterways and is a cause for navigational safety concerns, especially when the commercial fleet is active along the shoreline adjacent to the AMHS Port Valdez Ferry Terminal.

The Coast Guard began issuing temporary final rules to establish temporary safety zones during Commercial Salmon Fishery Openers in 2010. Because Commercial Salmon Fishery Openers are not announced until the night before the opener, these temporary final rules were issued late in the evening or at night (becoming effective the following morning) leaving very little time to disseminate news of the safety zone to affected waterway users.

Given that, the Coast Guard proposed to establish a permanent safety zone to restrict non-AMHS vessels from entering within a 200-yard radius of the AMHS Port Valdez Ferry Terminal whenever an AMHS ferry is underway within a 200-yard radius of the AMHS Terminal and there is a declared Commercial Salmon Fishery Opener that includes the navigable waters within 200 yards of the terminal.

C. Discussion of Comments, Changes and the Final Rule

No comments were received. No changes were made to the regulatory text as published in the NPRM.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard enforcement of this safety zone will be of short duration. The safety zone will be enforced for a limited amount of time, only when there is a declared Commercial Salmon Fishery Opener and there is an AMHS ferry underway within 200 yards of the AMHS Port Valdez Ferry Terminal. Vessels will be able to navigate around the safety zone. Furthermore, vessels may be authorized to transit through the safety zone with the permission of the COTP.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the navigable waters of Port Valdez whenever a Commercial Salmon Fishery Opener is declared and there is an AMHS ferry underway within 200 yards of the AMHS Port Valdez Ferry Terminal.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, only when there is an announced Commercial Salmon Fishery Opener and there is an AMHS ferry underway within 200 yards of the AMHS Port Valdez Terminal. Vessel traffic could pass safely around the safety zone. Before the activation of the zone, we would issue maritime advisories widely available to users of the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a permanent safety zone on the navigable waters of Port Valdez. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1712 to read as follows:

§ 165.1712 Safety Zone; Alaska Marine Highway System Port Valdez Ferry Terminal, Port Valdez; Valdez, AK.

(a) *Location.* The following area is a safety zone: all navigable waters of Port Valdez extending 200 yards in all directions from the edges of the Alaska Marine Highway System Terminal dock located in Port Valdez at 61 °07′26″ N and 146 °21′50″ W.

(b) *Enforcement period.* The rule will be enforced whenever there is an Alaska Marine Highway System Ferry vessel transiting within the area described in paragraph (a) of this section and there is a Commercial Salmon Fishery Opener that includes the navigable waters within the safety zone. Each enforcement period will be announced by a broadcast notice to mariners when the Commercial Salmon Fishery Opener is announced.

(c) *Definitions.* The following definitions apply to this section:

(1) The term ''designated representative'' means any Coast Guard commissioned, warrant or petty officer of the U. S. Coast Guard who has been designated by the Captain of the Port, Prince William Sound, to act on his or her behalf.

(2) The term ''official patrol vessel'' may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP, Prince William Sound.

(3) The term 'AMHS vessel' means any vessel owned or operated by the Alaska Marine Highway System, including, but not limited to: M/V AURORA, M/V CHENEGA, M/V COLUMBIA, M/V FAIRWEATHER, M/V KENNICOTT, M/V LECONTE, M/V LITUYA, M/V MALASPINA, M/V MATANUSKA, M/V TAKU and M/V TUSTUMENA.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the requirements in paragraphs (d)(2) through (5) of this section, apply.

(2) No vessels, except for AMHS ferries and vessels owned or operated by AMHS will be allowed to transit the safety zone without the permission of the COTP Prince William Sound or the designated representative during periods of enforcement.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel or other official patrol vessel by siren, radio, flashing light or other means, the operator of the hailed vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area may contact the COTP or the designated representative via VHF channel 16 or 907–835–7205 (Prince William Sound Vessel Traffic Service) to request permission to do so.

(5) The COTP, Prince William Sound may be aided by other Federal, state, borough and local law enforcement officials in the enforcement of this regulation. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Dated: January 9, 2013.

Benjamin J. Hawkins,

Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound.

[FR Doc. 2014–02219 Filed 2–3–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2012–0182; FRL–9399–1]

RIN 2070–AB27

Significant New Use Rule on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a significant new use rule (SNUR) under the Toxic Substances Control Act (TSCA) for chemical substances identified generically as complex strontium aluminate, rare earth doped, which were the subject of several premanufacture notices (PMNs). This action requires persons who intend to manufacture (including import) or process any of the chemical substances for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

DATES: This final rule is effective April 7, 2014.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0182, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this final rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR

12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this final rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

II. Background

A. What action is the agency taking?

EPA is finalizing a SNUR under TSCA section 5(a)(2) for five chemical substances which were the subject of PMNs. The five chemical substances are all identified generically as complex strontium aluminate, rare earth doped, which were the subject of PMNs P–12–22, P–12–23, P–12–24, P–12–25, and P–12–26. This SNUR requires persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** issue of April 25, 2012 (77 FR 24613) (FRL–9345–4), EPA issued a direct final SNUR on these five chemical substances in accordance with the procedures at § 721.160(c)(3)(i). EPA received notice of intent to submit adverse comments on this SNUR. Therefore, as required by § 721.160(c)(3)(ii), in the **Federal Register** issue of June 22, 2012 (77 FR 37609) (FRL–9353–2), EPA withdrew the direct final SNUR in a separate document, and subsequently proposed a SNUR on the five chemical substances using notice and comment procedures in the **Federal Register** issue of June 22, 2012 (77 FR 37634) (FRL–9353–3). More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** documents announcing the direct final SNUR or the proposed SNUR. The docket for the direct final SNUR on these chemical substances was established as docket ID number EPA–HQ–OPPT–2012–0182. That docket includes information considered by the Agency in developing the direct final rule and this final rule, including comments on those rules. EPA received several comments on the proposed rule. A full discussion of EPA's response to these comments is included in Unit V. Based on these comments, this final rule:

1. Corrects the chemical identity of the PMN substances.

2. Simplifies the description of the significant new use.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III. Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture or process the chemical substance for that use. Persons who must report are described in § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for these five chemical substances, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit II. and IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this final rule:

- EPA will receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA can ensure that all manufacturers and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

IV. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute requires EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the five chemical

substances that are the subject of this SNUR, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

V. Response to Comments on Proposed SNUR

A summary and discussion of the comments received on the proposed rule and the Agency's response follow.

Comment 1: The commenter noted that EPA incorrectly identified the chemical substances as ''complex strontium aluminum, rare earth doped (generic)'' in the proposed rule.

EPA Response: EPA acknowledges the error and has corrected the generic name to read: ''complex strontium aluminate, rare earth doped (generic)''.

Comment 2: The commenter stated the proposed significant new uses are ongoing with respect to chemical substances very similar to the PMN substances. Activated phosphors, including strontium aluminates similar to the PMN substances, have been manufactured, processed, and used in the United States for many years.

EPA Response: Regardless of whether chemical substances similar to the PMN substances are currently being used for purposes similar to the significant new use proposed, such use is irrelevant to determining ongoing use of the PMN substances for this rulemaking.

Comment 3: The health and safety data on the PMN substances do not justify a SNUR.

EPA Response: EPA believes that these chemicals will act in the respiratory tract similarly to other poorly soluble respirable particles causing adverse lung effects. The submitter provided no health and safety data information on the PMN substance or analogous chemical substances. The commenter submitted no data refuting EPA's concerns regarding poorly soluble respirable particles, as more than 5% of the PMN substances particles are less than 10 microns. The SNUR is therefore appropriate.

Comment 4: The commenter stated that EPA did not properly consider the four factors in TSCA section 5(a)(2) to determine that use of a chemical substance is a significant new use, and reasonable consideration of them shows that a SNUR is not justified for use of the PMN substances. The commenter also contended that because chemical substances similar to the PMN substances are widely manufactured (including imported) and processed in the United States, and because worker safety and environmental laws already apply to the PMN substances, approval of the PMN substances without imposing a SNUR will not increase the magnitude or duration of exposure of human beings or the environment to the PMN substances because the scale of current use is significantly larger than any potential increase of use without the SNUR. The commenter also stated that strontium aluminates and titanium dioxide are regulated by the Occupational Safety and Health Administration (OSHA) as an inert or nuisance dust with a permissible exposure limit (PEL) of 5 milligrams/cubic meter (mg/m^3) and that the level of exposure required for effects would not be a ''reasonably anticipated condition of exposure.''

EPA Response: Among the factors that must be considered under TSCA section 5(a)(2) is ''(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.'' This factor pertains to the potential changes in exposure to a specific chemical substance, not to other, possibly related, chemical substances which may have other exposure patterns. EPA identified concerns for potential lung overload to workers from inhalation exposure to the PMN substance based on analogous respirable, poorly soluble particulate chemical substances and predicts potential toxicity to workers from inhalation when more than 5% of the PMN substances particles are less than 10 microns. The fact that similar chemical substances are widely manufactured and processed in the United States and that worker safety and environmental laws apply to the PMN substance does not affect the potential for change in magnitude and duration of exposure to the PMN substances that are the subject of the SNUR. The commenter submitted no information to alleviate EPA's concern, based on analogy to exposure patterns of other respirable, poorly soluble particulates, that the significant new uses (manufacture, process or use of the chemical substances where more than 5% of the particles are less than 10 microns) could increase the magnitude and duration of exposure of human beings to respirable particles of the PMN substances when greater than 5% of the PMN substances particles are less than 10 microns. The OSHA PEL for nuisance dust is 5 milligrams/cubic meter (mg/m^3) respirable fraction (OSHA, 29 CFR 1910.1000, Table Z–3). The change in particle size at the reasonably anticipated levels of inhalation exposure to the PMN substances, which is the PEL of 5 mg/m^3, could result in potential lung effects.

Comment 5: The commenter stated that activated phosphors, including strontium aluminates, have been subject to reporting under TSCA section 8(e) for many years, and is aware of no TSCA section 8(e) reports, and EPA references no such reports in the regulations.gov for this docket. The docket does not support that use of the strontium aluminate other than as described in the PMNs may cause serious health effects.

EPA Response: EPA acknowledges that it has not received TSCA section 8(e) information for these chemical substances. However, the fact that data has not been received does not demonstrate that hazards for activated phosphors containing respirable particles do not exist, just that none have been reported under TSCA section 8(e). Based on analogous respirable and poorly soluble chemical substances, any use of the chemical substances other than as described in the PMNs may cause serious health effects to workers from inhalation when more than 5% of the PMN substances particles are less than 10 microns.

Comment 6: The commenter stated that EPA identified concerns regarding potential lung overload to workers from inhalation exposure to the PMN substance based on data for titanium oxide, and that apparently based on these concerns, EPA found that changes in exposure or release levels for ''any use of the substances other than as described in the PMNs may cause serious health effects.'' The commenter stated that the PMN substances are not closely analogous to titanium oxide, however, and the docket contains no support for the conclusion that their use other than as described in the PMNs would involve changes in exposure or release levels that are significant in relation to the health or environmental concerns in accordance with § 721.170(c)(2)(ii). The commenter also stated that the data on titanium oxide does not justify a SNUR for the PMN substances. Even if titanium oxide were closely analogous to the PMN substances, the toxicological data on titanium oxide are inconclusive.

EPA Response: The Agency's concern for the PMN substances is based on how these chemical substances will physically act in the respiratory tract, not on chemical composition or how they chemically interact with the respiratory tract. This concern is for the ability of the chemicals to enter the deep lung via inhalation of small particles. The PMN substances are

considered analogous in their physical properties to respirable, poorly soluble particulates (RPSP). See ''TSCA New Chemicals Program Chemical Categories,'' at *http://www.epa.gov/oppt/newchems/pubs/npcchemicalcategories.pdf,* for a discussion of these concerns. The RPSP category identifies that there is potential for lung effects if workers are exposed by inhalation to particles less than or equal to 10 microns in diameter, based on five different types, or subcategories, of poorly soluble particulates. Accordingly, the significant new use in this SNUR is based on an increased exposure to particles less than 10 microns which may cause lung effects. Each subcategory in the RPSP category lists a New Chemicals Exposure Limit based on available information for specific compounds. As is described in the RPSP category, EPA will also consider the specific toxicity of the metal compound that is a respirable poorly soluble particulate. However, no such data was provided for the PMN substances. As there is no toxicity data available on the PMN substances indicating potential for chemical toxicity, EPA is considering only its attributes as a respirable, poorly soluble particulate chemical substance. As a result, EPA believes the metal oxide titanium dioxide subcategory is the appropriate subcategory based on physical-chemical considerations. Adverse lung effects are associated with the inhalation of crystalline metal compound particulates. Crystalline particles more readily embed in lung alveolar sacs than amorphous particles, and are difficult to clear with mucous flow or coughing, leading to irritation and clogging of the sacs and hampering of carbon dioxide-oxygen exchange in the lungs. EPA considers the metal compound titanium dioxide to be a surrogate for most non-silica, crystalline poorly soluble respirable metal compound particulates, such as the PMN substances, that contain this type of crystalline structure. This physical analogy with the metallic poorly soluble respirable PMN substances is the primary driver in this case. There are several studies, cited in the EPA's RPSP category, that document lung effects from titanium dioxide exposure, and the RPSP category also states that available data are inconclusive for carcinogenicity effects from exposure to titanium dioxide. The National Institute for Occupational Safety and Health (NIOSH) Current Intelligence Bulletin 63: Occupational Exposure to Titanium Dioxide (*http://www.cdc.gov/niosh/docs/2011-160/pdfs/2011-160.pdf*) also cites data demonstrating lung effects from exposure to titanium dioxide.

Comment 7: The definition of the significant new use is ambiguous and, as drafted, could be interpreted to impose the proposed SNUR on uses described in the PMN, referenced in § 721.10423(a)(2). The commenter would like EPA to change the language of the proposed rule to make clear that the particle size limitation does not apply to the uses of the strontium aluminates described in the PMN.

EPA Response: Although § 721.10423(a)(2) of the proposed rule is correct as written, EPA agrees that the wording in the regulatory text for § 721.80(j) can be confusing. Therefore, EPA has simplified the wording in the regulatory text to now read ''A significant new use of the substance is a use other than manufacture, processing, or use where no more than 5 percent of particles are less than 10 microns.'' The SNUR would permit any use of the PMN substances as long as the particle size limits are being met.

VI. Applicability of the Significant New Use Designation

If uses begun after the proposed rule was published were considered ongoing rather than new, any person could defeat the SNUR by initiating the significant new use before the final rule was issued. Therefore, EPA has designated the date of publication of the proposed rule as the cutoff date for determining whether the new use is ongoing. See the **Federal Register** notice of April 24, 1990 (55 FR 17376) (FRL–3658–5) for a more detailed discussion of the cutoff date for ongoing uses. Any person who began commercial manufacture, import, or processing of the chemical substances identified generically as complex strontium aluminate, rare earth doped, which were the subject of PMNs P–12–22, P–12–23, P–12–24, P–12–25, and P–12–26 for any of the significant new uses, designated in the proposed SNUR after the date of publication of the proposed SNUR, must stop that activity before the effective date of the final rule. Persons who ceased those activities will have to first comply with all applicable SNUR notification requirements, and wait until the notice review period, including any extensions, expires, before engaging in any activities designated as significant new uses. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN. The two exceptions are:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule, or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, EPA has the authority to require appropriate testing. Unit IV. of the proposed rule lists the testing recommended by EPA. Specifically, EPA has determined that a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) would help characterize the human health effects of the PMN substances. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection and test selection. To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VIII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in § 721.25 and 40 CFR 720.40. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this final rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2012–0182.

X. Statutory and Executive Order Reviews

A. Executive Order 12866

This final rule establishes a SNUR for 5 chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this final rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

On February 18, 2012, EPA certified pursuant to RFA section 605(b) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true:

1. A significant number of SNUNs would not be submitted by small entities in response to the SNUR.

2. The SNUN submitted by any small entity would not cost significantly more than $8,300.

A copy of that certification is available in the docket for this final rule.

This final rule is within the scope of the February 18, 2012, certification. Based on the Economic Analysis discussed in Unit IX. and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true:

- A significant number of SNUNs would not be submitted by small entities in response to the SNUR.
- Submission of the SNUN would not cost any small entity significantly more than $8,300. Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this final rule. As such, EPA has determined that this final rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This final rule does not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This final rule does not significantly nor uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this final rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this

action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XI. Congressional Review Act (CRA)

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 20, 2014.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, add the following section in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.10423	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10423 to subpart E to read as follows:

§ 721.10423 Complex strontium aluminate, rare earth doped (generic).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as complex strontium aluminate, rare earth doped (PMNs P–12–22, P–12–23, P–12–24, P–12–25, and P–12–26) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* A significant new use of the substance is a use other than manufacture, processing, or use where no more than 5 percent of particles are less than 10 microns.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2014–02223 Filed 2–3–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–6046–N]

Medicare, Medicaid, and Children's Health Insurance Programs: Announcement of New and Extended Temporary Moratoria on Enrollment of Ambulances and Home Health Agencies in Designated Geographic Locations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Extension and establishment of temporary moratoria.

SUMMARY: This document announces the imposition of temporary moratoria on the enrollment of new ambulance suppliers and home health agencies in designated geographic locations to prevent and combat fraud, waste, and abuse.

DATES: Effective January 30, 2014.

FOR FURTHER INFORMATION CONTACT: August Nemec, (410) 786–0612. News media representatives must contact CMS' Public Affairs Office at (202) 690–6145 or email them at *press@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. CMS' Authority To Impose Temporary Enrollment Moratoria

Under the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively known as the Affordable Care Act), the Congress provided the Secretary with new tools and resources to combat fraud, waste, and abuse in Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). Section 6401(a) of the Affordable Care Act added a new section 1866(j)(7) to the Social Security Act (the Act) to provide the Secretary with authority to impose a temporary moratorium on the enrollment of new Medicare, Medicaid or CHIP providers and suppliers, including categories of providers and suppliers, if the Secretary determines a moratorium is necessary to prevent or combat fraud, waste, or abuse under these programs. Section 6401(b) of the Affordable Care Act added specific moratorium language applicable to Medicaid at section 1902(kk)(4) of the Act, requiring States to comply with any

moratorium imposed by the Secretary unless the state determines that the imposition of such moratorium would adversely impact Medicaid beneficiaries' access to care. Section 6401(c) of the Affordable Care Act amended section 2107(e)(1) of the Act to provide that all of the Medicaid provisions in sections 1902(a)(77) and 1902(kk) are also applicable to CHIP.

In the February 2, 2011 **Federal Register** (76 FR 5862), CMS published a final rule with comment period titled, ''Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers,'' which implemented section 1866(j)(7) of the Act by establishing new regulations at 42 CFR 424.570. Under § 424.570(a)(2)(i) and (iv), CMS, or CMS in consultation with the Department of Health and Human Services' Office of Inspector General (HHS–OIG) or the Department of Justice (DOJ), or both, may impose a temporary moratorium on newly enrolling Medicare providers and suppliers if CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type or particular geographic locations or both. At § 424.570(a)(1)(ii), CMS stated that it would announce any temporary moratorium in a **Federal Register** document that includes the rationale for the imposition of such moratorium. This document fulfills that requirement.

In accordance with section 1866(j)(7)(B) of the Act, there is no judicial review under sections 1869 and 1878 of the Act, or otherwise, of the decision to impose a temporary enrollment moratorium. A provider or supplier may use the existing appeal procedures at 42 CFR part 498 to administratively appeal a denial of billing privileges based on the imposition of a temporary moratorium, however the scope of any such appeal would be limited solely to assessing whether the temporary moratorium applies to the provider or supplier appealing the denial. Under § 424.570(c), CMS denies the enrollment application of a provider or supplier if the provider or supplier is subject to a moratorium. If the provider or supplier was required to pay an application fee, the application fee will be refunded if the application was denied as a result of the imposition of a temporary moratorium (see § 424.514(d)(2)(v)(C)).

B. Determination of the Need for a Moratorium

In imposing these enrollment moratoria, CMS considered both qualitative and quantitative factors suggesting a high risk of fraud, waste, or abuse. CMS relied on law enforcement's longstanding experience with ongoing and emerging fraud trends and activities through civil, criminal, and administrative investigations and prosecutions. CMS' determination of high risk fraud in these provider and supplier types within these geographic locations was then confirmed by CMS' data analysis, which relied on factors the agency identified as strong indicators of fraud risk.

Because fraud schemes are highly migratory and transitory in nature, many of CMS' program integrity authorities and anti-fraud activities are designed to allow the agency to adapt to emerging fraud in different locations. The laws and regulations governing CMS' moratoria authority give us flexibility to use any and all relevant criteria for future moratoria, and CMS may rely on additional or different criteria as the basis for future moratoria.

1. Application to Medicaid and the Children's Health Insurance Program (CHIP)

The February 2, 2011 final rule also implemented section 1902(kk)(4) of the Act, establishing new Medicaid regulations at § 455.470. Under § 455.470(a)(1) through (3), the Secretary [1] may impose a temporary moratorium, in accordance with § 424.570, on the enrollment of new providers or provider types after consulting with any affected State Medicaid agencies. The State Medicaid agency will impose a temporary moratorium on the enrollment of new providers or provider types identified by the Secretary as posing an increased risk to the Medicaid program unless the state determines that the imposition of a moratorium would adversely affect Medicaid beneficiaries' access to medical assistance and so notifies the Secretary. The final rule also implemented section 2107(e)(1)(D) of the Act by providing, at § 457.990 of the regulations, that all of the provisions that apply to Medicaid under sections 1902(a)(77) and 1902(kk) of the Act, as well as the implementing regulations, also apply to CHIP.

Section 1866(j)(7) of the Act authorizes imposition of a temporary enrollment moratorium for Medicare, Medicaid, and/or CHIP, ''if the Secretary determines such moratorium is necessary to prevent or combat fraud, waste, or abuse under either such program.'' While there may be exceptions, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. Many of the new anti-fraud provisions in the Affordable Care Act reflect this concept of ''reciprocal risk'' in which a provider that poses a risk to one program poses a risk to the other programs. For example, section 6501 of the Affordable Care Act titled, ''Termination of Provider Participation under Medicaid if Terminated Under Medicare or Other State Plan,'' which amends section 1902(a)(39) of the Act, requires State Medicaid agencies to terminate the participation of an individual or entity if such individual or entity is terminated under Medicare or any other State Medicaid plan.[2] Additional provisions in title VI, Subtitles E and F of the Affordable Care Act also support the determination that categories of providers and suppliers pose the same risk to Medicaid as to Medicare. Section 6401(a) of the Affordable Care Act required us to establish levels of screening for categories of providers and suppliers based on the risk of fraud, waste, and abuse determined by the Secretary. Section 6401(b) of the Affordable Care Act required State Medicaid agencies to screen providers and suppliers based on the same levels established for the Medicare program. This reciprocal concept is also reflected in the Medicare moratoria regulations at § 424.570(a)(2)(ii) and (iii), which permit CMS to impose a Medicare moratorium based solely on a state imposing a Medicaid moratorium. Therefore, CMS has determined that there is a reasonable basis for concluding that a category of providers or suppliers that poses a risk to Medicare also poses a similar risk to Medicaid and CHIP, and that a moratorium in all of these programs is necessary to effectively combat this risk.

[1] The Secretary has delegated to CMS authority to administer Titles XVIII, XIX, and XXI of the Act. For more information, see the September 6, 1984 **Federal Register** (49 FR 35247) and the December 16, 1997 **Federal Register** (62 FR 65813).

[2] Although section 6501 of Affordable Care Act does not specifically state that individuals or entities that have been terminated under Medicare or Medicaid must also be terminated from CHIP, CMS has required CHIP, through federal regulation, to take similar action regarding termination of a provider that is also terminated or had its billing privileges revoked under Medicare or any State Medicaid plan.

2. Consultation With Law Enforcement

In consultation with the HHS–OIG and the Department of Justice (DOJ), CMS identified two provider and supplier types in five geographic locations that warrant a temporary enrollment moratorium. CMS reached this determination based in part on the federal government's experience with the Health Care Fraud Prevention and Enforcement Action Team (HEAT), a joint effort between DOJ and HHS to prevent fraud, waste, and abuse in the Medicare and Medicaid programs. The Medicare Fraud Strike Force teams are a key component of HEAT and operate in nine locations nationwide.[3] Each HEAT Medicare Fraud Strike Force team combines the programmatic and administrative action capabilities of CMS, the analytic and investigative resources of the FBI and HHS–OIG, and the prosecutorial resources of DOJ's Criminal Division's Fraud Section and the United States Attorney's Offices. The Strike Force teams use advanced data analysis techniques to identify high billing levels in health care fraud hotspots so that interagency teams can target emerging or migrating schemes along with chronic fraud by criminals masquerading as health care providers or suppliers. The locations of the Strike Force teams are identified by analyzing where Medicare claims data reveal aberrant billing patterns and intelligence data analysis suggests that fraud may be occurring. The presence of a Strike Force team within or near a particular geographic area is one factor that CMS considered in identifying the locations subject to the moratoria announced in this document.

As a part of ongoing antifraud efforts, the HHS–OIG and CMS have learned that some fraud schemes are viral, meaning they replicate rapidly within communities, and that health care fraud also migrates—as law enforcement cracks down on a particular scheme, the criminals may redesign the scheme or relocate to a new geographic area.[4] As a result, CMS has determined that it is necessary to extend these moratoria beyond the target counties to bordering counties, unless otherwise noted, to prevent potentially fraudulent providers and suppliers from enrolling in a neighboring county with the intent of providing services in a moratorium-targeted area. CMS will monitor the surrounding counties, as well as the entirety of each affected state, by reviewing claims utilization and activity, for indicia of activity designed to evade these moratoria. Throughout the duration of these moratoria, CMS will continue to consult with law enforcement, to assess and address the spread of any significant risk of fraud beyond the moratoria locations.

3. Data Analysis

CMS analyzed its own data to determine the extent to which it confirms the specific provider and supplier types within geographic locations recommended by law enforcement as having a significant potential for fraud, waste or abuse, and therefore warranting the imposition of enrollment moratoria. CMS identified all counties across the nation with 200,000 or more Medicare beneficiaries (''comparison counties''), and analyzed certain key metrics, which we believe to be strong indicators of potential fraud risk. These metrics included factors such as the number of providers or suppliers per 10,000 Medicare fee-for-service (FFS) beneficiaries and the compounded annual growth rate in provider or supplier enrollments. CMS also reviewed the 2012 FFS Medicare payments to providers and suppliers in the target locations based on the average amount spent per beneficiary who used services furnished by the targeted provider and supplier types.

The four locations subject to the temporary enrollment moratoria for home health agencies (HHAs) are counties that contain or are adjacent to HEAT Medicare Fraud Strike Force locations and are also consistently ranked near the top for the identified metrics among counties with at least 200,000 Medicare beneficiaries in 2012. See Table 1 of this document for a summary of the moratoria locations and some of the metrics examined.

4. Beneficiary Access To Care

Beneficiary access to care in Medicare, Medicaid, and CHIP is of critical importance to CMS and its state partners, and CMS carefully evaluated access for the five target moratorium locations. To determine if the moratoria would create an access to care issue for Medicaid and CHIP beneficiaries in the targeted locations and surrounding counties, CMS consulted with the appropriate State Medicaid Agencies and with the appropriate State Department of Emergency Medical Services. All of CMS' state partners were supportive of CMS analysis and proposals, and together with CMS, have determined that these moratoria will not create access to care issues for Medicaid or CHIP beneficiaries.

In order to determine if the moratoria would create an access to care issue for Medicare beneficiaries, CMS reviewed its own data regarding the number of providers and suppliers in the target and surrounding counties, and confirmed that there are no reports to CMS of access to care issues for these provider and supplier types. This conclusion is also supported by recent reports issued by the Medicare Payment Advisory Commission (MedPAC), an independent Congressional agency established by the Balanced Budget Act of 1997 to advise Congress on issues affecting the Medicare program. MedPAC has a Congressional mandate to monitor beneficiaries' access to care and publishes its review of Medicare expenditures annually. Based on MedPAC's March 2013 report (finding no access issues to Medicare home health services[5]), and its June 2013 report (finding no access issues to Medicare ambulance services[6]), CMS does not believe these moratoria will cause an access to care issue for Medicare beneficiaries.

In the March 2013 report, MedPAC also recommended that CMS use its authorities under current law to examine providers with aberrant patterns of utilization for possible fraud and abuse. With regard to home health services, MedPAC stated that a moratorium on the enrollment of new HHAs would prevent new agencies from entering markets that may already be saturated.[7] CMS will continuously monitor for reductions in the number of HHA providers and Part B ambulance suppliers, as well as beneficiary complaints, and will continue consultation with the states, for any indication of a potential access to care issue.

5. When a Temporary Moratorium Does Not Apply

Under § 424.570(a)(1)(iii), a temporary moratorium does not apply to changes in practice locations, changes to provider or supplier information such as phone number, address, or changes in ownership (except changes in

[3] The HEAT Medicare Strike Force operates in Miami, FL; Los Angeles, CA: Detroit, MI; Houston, TX; Brooklyn, NY; Southern Louisiana (the Strike Force in Southern Louisiana started in Baton Rouge and now operates in New Orleans as well); Tampa, FL; Chicago, IL; and Dallas, TX.

[4] Testimony of the Inspector General, ''Preventing Health Care Fraud: New Tools and Approaches to Combat Old Challenges.'' See *http://www.hhs.gov/asl/testify/2011/03/t20110302i.html.*

[5] MedPAC, March 2013, ''Report to Congress: Medicare Payment Policy, Chapter 9 home health services.'' *http://www.medpac.gov/documents/Mar13_entirereport.pdf.*

[6] MedPAC, June 2013, ''Chapter 7, Mandated Report: Medicare payment for ambulance services.'' *http://www.medpac.gov/chapters/Jun13_Ch07.pdf.*

[7] MedPAC, March 2013, ''Report to Congress: Medicare Payment Policy, Chapter 9 home health services.'' *http://www.medpac.gov/documents/Mar13_entirereport.pdf.*

ownership of HHAs that require initial enrollments under § 424.550). Also, in accordance with § 424.570(a)(1)(iv), the moratorium does not apply to an enrollment application that a CMS contractor has already approved, but has not yet entered into the Provider Enrollment Chain and Ownership System (PECOS) at the time the moratorium is imposed.

6. Lifting a Temporary Moratorium

In accordance with § 424.570(b), a temporary enrollment moratorium imposed by CMS will remain in effect for 6 months. If CMS deems it necessary, the moratorium may be extended in 6-month increments. CMS will evaluate whether to extend or lift the moratorium before the end of the initial 6-month period and, if applicable, any subsequent moratorium periods. If one or more of the moratoria announced in this document are extended, CMS will publish document of such extensions in the **Federal Register**.

As provided in § 424.570(d), CMS may lift a moratorium at any time if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if circumstances warranting the imposition of a moratorium have abated, if the Secretary has declared a public health emergency, or if in the judgment of the Secretary, the moratorium is no longer needed.

Once a moratorium is lifted, the provider or supplier types that were unable to enroll because of the moratorium will be designated to CMS' high screening level under §§ 424.518(c)(3)(iii) and 455.450(e)(2) for 6 months from the date the moratorium was lifted.

II. Imposition of Home Health Moratoria—Geographic Locations

Under its authority at § 424.570(a)(2)(i) and (iv), CMS is implementing temporary moratoria on the Medicare enrollment of HHAs in the geographic locations discussed in this section. Under regulations at §§ 455.470 and 457.990, these moratoria will also apply to the enrollment of HHAs in Medicaid and CHIP.

A. Moratorium on Enrollment of HHAs in the Florida County of Broward

CMS has determined that there are factors in place that warrant the imposition of a temporary Medicare enrollment moratorium for HHAs in Broward County (which contains the City of Fort Lauderdale, FL). Florida has divided the state into 11 home health ''licensing districts,'' that prevent an HHA from providing services outside its own licensing district. Broward is the only county in its licensing district. In this instance, it is not necessary to extend the moratorium to the other counties that border Broward because of the state's home health licensing rules that prevent providers enrolling in these counties from serving beneficiaries in Broward. CMS has also consulted with the State Medicaid Agency and reviewed available data, and determined that the moratorium will also apply to Medicaid and CHIP.

Beginning on the effective date of this document, no new HHAs will be enrolled into Medicare, Medicaid or CHIP with a practice location in the Florida county of Broward, unless their enrollment application has already been approved, but not yet entered into PECOS or the State Provider/Supplier Enrollment System at the time the moratorium is imposed.

1. Consultation With Law Enforcement

Consistent with § 424.570(a)(2)(iv), CMS has consulted with both the HHS–OIG and DOJ regarding the imposition of a moratorium on new HHAs in Broward County. Both HHS–OIG and DOJ agree that a significant potential for fraud, waste, or abuse exists with respect to HHAs in the affected geographic location. Miami-Dade, which is adjacent to Broward, is a Strike Force location. CMS has identified these counties as the target of program integrity special projects, and beneficiaries that reside in these counties are the recipients of monthly Medicare Summary Notices due to the high risk of fraud in these counties.[8] The HHS–OIG has previously identified Florida as a state that had a high percentage of HHAs with questionable billing.[9] There has also been considerable Strike Force and law enforcement activity in this area of the country. In FYs 2012 and 2013, the U.S. Attorney's Office for the Southern District of Florida charged 113 defendants in 51 HHA cases, 55 individuals pled guilty, and there have been 8 trial convictions, including cases that involved conduct in Broward. In addition to criminal prosecutions, the government has also pursued civil fraud enforcement, such as its intervention in July 2013 in a whistleblower lawsuit against a home health care company in Fort Lauderdale, alleging that the company was engaged in a multi-million dollar kickback scheme.[10] CMS program integrity contractors are also actively investigating HHAs in this area.

2. Data Analysis

a. Medicare Data Analysis

CMS' data show that in 2012, there were 31 U.S. counties nationally, including Broward, with at least 200,000 Medicare beneficiaries. CMS excluded Broward County, FL, New York County, NY, Miami-Dade County, FL and Cook County, IL, and used the remaining 27 counties as ''comparison counties.''[11] In the comparison counties, there was an average of 5.9 HHAs per 10,000 Medicare FFS beneficiaries. In Broward County, there were 11.2 HHAs per 10,000 Medicare FFS beneficiaries. This means that the ratio of HHAs to Medicare FFS beneficiaries was 89.8 percent greater in Broward County than in the comparison counties. Broward had the fifth highest ratio of providers, behind locations all also subject to moratoria on HHA enrollment.[12]

CMS' data show that in 2012, HHAs in Broward County were receiving payments of $6,432 per average Medicare home health user per year, compared to HHAs in the comparison counties, which received payments of $5,387. Payments to HHAs in Broward were 19 percent greater than the average for the comparison counties. Broward had the sixth highest payments to

[8] HHS and DOJ, ''Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2012.'' See *http://oig.hhs.gov/publications/docs/hcfac/hcfacreport2012.pdf.*

[9] Office of Inspector General Report, ''CMS and Contractor Oversight of Home Health Agencies.'' (OEI–04–11–00220). See *https://oig.hhs.gov/oei/reports/oei-04-11-00220.pdf.* The HHS–OIG defines an ''HHA fraud-prone area'' as those that are—(1) Strike Force Cities; (2) Strike Force cities where individuals have been charged with billing potentially fraudulent home health services; and (3) located in a state that had a high percentage of HHAs with questionable billing identified by the HHS–OIG.

[10] Department of Justice, ''US Intervenes in False Claims Act Lawsuit Against Fla. Home Health Care Company and Its Owner.'' See *http://www.justice.gov/opa/pr/2013/July/13-civ-717.html.*

[11] CMS's data shows that there are 31 counties that have at least 200,000 Medicare beneficiaries. For the home health analysis, 27 ''comparison counties'' are used. Besides Broward, three other counties were excluded from the comparison counties. New York County, NY, is excluded due to unique local conditions, such as that location's high density, its compact geography, its high real estate costs, and the fact that very few HHAs that serve the large number of beneficiaries in that location are actually located within New York County. We believe that this outlier would have biased the average by making it artificially low, and could potentially over-represent the difference in ratios between the target county and the comparison counties. Miami-Dade County, FL and Cook County, IL are also excluded because CMS already determined that the data and other factors indicated a risk of fraud in those counties, and imposed HHA moratoria there on July 30, 2013, which are being extended by way of this document.

[12] The areas with the highest ratio of providers to Medicare FFS beneficiaries are: Miami-Dade County, FL; Dallas County, TX; Harris County, TX; and Oakland County, MI.

HHAs, behind locations all also subject to the moratoria on HHA enrollment.[13]

b. Medicaid Data Analysis

As discussed previously in section I.B.1. of this document, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. In addition, the data also show a significantly higher annual utilization of Medicaid home health services in Broward County compared to the entire state. CMS compared Broward County against the rest of the state rather than against comparison counties nationally because Medicaid policies are not necessarily uniform across different states. In 2011 [14] in Broward County, Medicaid paid HHAs an average of $281,609 per provider per year, or 95 percent more than the average of $144,704 that Medicaid paid to HHAs in the rest of the state.

3. Beneficiary Access to Care

Based upon CMS' consultation with the State Medicaid agency, CMS has concluded that imposing this temporary moratorium will not create an access to care issue for Medicaid or CHIP beneficiaries in Broward at this time. Accordingly, under §§ 455.470 and 457.990, this moratorium will apply to the enrollment of HHAs in Medicaid and CHIP, unless the State later determines that imposition of the moratorium will adversely impact beneficiary access to care and so notifies CMS under § 455.470(a)(3).

CMS reviewed Medicare data for the target county, and found that there are no problems with access to HHAs in Broward. Additionally, as described in section I.B.4. of this document, MedPAC has not reported any problems with Medicare beneficiary access to home health care. While CMS has determined there are no access to care issues for Medicare beneficiaries, nevertheless, the agency will continuously monitor these locations under a moratorium for changes such as an increase in beneficiary complaints to ensure that no access to care issues arise in the future.

B. Moratorium on Enrollment of HHAs in the Texas Counties of Dallas, Collin, Denton, Ellis, Kaufman, Rockwall, and Tarrant

CMS has determined there are factors in place that warrant the imposition of a temporary enrollment moratorium for HHAs in Dallas County, TX (which contains the City of Dallas), as well as the six surrounding Texas counties—Collin, Denton, Ellis, Kaufman, Rockwall, and Tarrant. CMS has determined that it is necessary to extend this moratorium to the surrounding counties to prevent potentially fraudulent HHAs from enrolling in a neighboring county to avoid the moratorium. CMS has consulted with the State Medicaid agency and reviewed available data and determined that this moratorium will also apply to Medicaid and CHIP.

Beginning on the effective date of this document, no new HHAs will be enrolled into Medicare, Medicaid or CHIP with a practice location in the Texas Counties of Dallas, Collin, Denton, Ellis, Kaufman, Rockwall, and Tarrant unless their enrollment application has already been approved but not yet entered into PECOS or the State Provider/Supplier Enrollment System at the time the moratorium is imposed.

1. Consultation With Law Enforcement

Consistent with § 424.570(a)(2)(iv), CMS has consulted with both the HHS–OIG and DOJ regarding the imposition of a moratorium on new HHAs in Dallas County, TX and the surrounding counties. Both HHS–OIG and DOJ agree that a significant potential for fraud, waste, or abuse exists with respect to HHAs in the affected geographic locations. The HHS–OIG has previously identified Dallas, TX as an HHA fraud-prone area because it is a Strike Force location where individuals have been charged with billing potentially fraudulent home health services, and is located in a State that had a high percentage of HHAs with questionable billing identified by the OIG.[15] There has also been considerable Strike Force and law enforcement activity in this area of the country. Since February 2011, the Strike Force has filed 4 home health fraud cases, and charged 18 individuals that have resulted in 7 guilty pleas in Dallas county TX. For example, in February 2013, two owners of a Dallas, TX home health care agency, were sentenced to 37 months in federal prison for their roles in a nearly $1.3 million health care fraud conspiracy.[16] In October 2012, a Dallas, TX area home health services company owner admitted his role in a $374 million home health fraud scheme in which he and others conspired to bill Medicare for unnecessary services that were never performed.[17] In February 2012, a Federal grand jury indicted a Dallas, TX area doctor and owner of an association of health care providers, along with five others, in a $374 million home health care fraud scheme, the largest fraud case ever indicted in terms of the amount of loss charged against a single doctor.[18]

2. Data Analysis

a. Medicare Data Analysis

CMS' data show that in 2012, there were 31 U.S. counties nationally, including Dallas, TX, with at least 200,000 Medicare beneficiaries. CMS excluded Dallas County, TX and three other counties as explained previously and used the remaining 27 counties as ''comparison counties.'' [19] In 2012, there was an average of 5.2 HHAs per 10,000 FFS beneficiaries in the comparison counties. In Dallas County, TX, there were 24.4 HHAs per 10,000 Medicare FFS beneficiaries. This means that the ratio of HHAs to FFS beneficiaries was 369 percent greater in Dallas County, TX than in the comparison counties. Only Miami-Dade County, FL had a higher ratio of HHAs to Medicare FFS beneficiaries compared to the comparison counties.

CMS' data show that in 2012, HHAs in Dallas County, TX were receiving payments of $7,336 per average home health user per year, compared to HHAs in the comparison counties, which received payments of $5,312. Payments to HHAs in Dallas County, TX were 38 percent higher than the average for HHAs in the comparison counties in 2012. Only payments in the counties of Miami-Dade, FL and Harris, TX (which contains the City of Houston) were higher in 2012.

[13] The areas with the highest payments providers to Medicare FFS are: Miami-Dade County, FL; Harris County, TX; Dallas County, TX; Tarrant County, TX; and Cook County, IL.

[14] CMS used 2011 data from the Medicaid Statistical Information System (MSIS) because it was the most recent data available for all three states in this document.

[15] Office of Inspector General Report, ''CMS and Contractor Oversight of Home Health Agencies.'' (OEI–04–11–00220). See *https://oig.hhs.gov/oei/reports/oei-04-11-00220.pdf.*

[16] DOJ, ''Local Home Health Agency Owners are sentenced for Roles in Nearly $1.3 million Health Care Fraud Conspiracy.'' See *http://www.justice.gov/usao/txn/PressRelease/2013/FEB2013/feb21opurum_george_agatha_hcf_sen.html.*

[17] DOJ, ''Owners of Texas Home Health Services Company Pleads Guilty, Admits Role in $374 million fraud scheme.'' See *http://www.fbi.gov/dallas/press-releases/2012/owner-of-texas-home-health-services-company-pleads-guilty-admits-role-in-374-million-fraud-scheme.*

[18] HHS and DOJ, ''Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2012.'' See *http://oig.hhs.gov/publications/docs/hcfac/hcfacreport2012.pdf.*

[19] See footnote 11 for explanation of the 3 additional counties that were excluded for purposes of the HHA comparison county analysis.

b. Medicaid Data Analysis

As discussed previously in section I.B.1. of this document, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. In addition, the data also show a significantly higher annual utilization of Medicaid home health services in Dallas County, TX compared to the entire state. CMS compared Dallas County, TX against the rest of the state rather than against comparison counties nationally because Medicaid policies are not necessarily uniform across different states. In 2011 [20] in Dallas County, TX Medicaid spent an average of $3,236 per home health user per year, or 35 percent more than the average $2,404 per home health user that Medicaid spent in the rest of the state.

3. Beneficiary Access

Based upon CMS' consultation with the State Medicaid agency, CMS has concluded that imposing this temporary moratorium will not create an access to care issue for Medicaid or CHIP beneficiaries in Dallas, TX or the surrounding counties at this time. Accordingly, under §§ 455.470 and 457.990, this moratorium will apply to the enrollment of HHAs in Medicaid and CHIP, unless the State later determines that imposition of the moratorium will adversely impact beneficiary access to care and so notifies CMS under § 455.470(a)(3).

CMS reviewed Medicare data for the target and surrounding counties, and found that there are no problems with access to HHAs in Dallas, TX or surrounding counties. Additionally, as described in section I.B.4 of this document, MedPAC has not reported any problems with Medicare beneficiary access to home health care. While CMS has determined there are no access to care issues for Medicare beneficiaries, nevertheless, the agency will continuously monitor these locations under a moratorium for changes, such as an increase in beneficiary complaints, to ensure that no access to care issues arise in the future.

C. Moratorium on Enrollment of HHAs in the Texas Counties of Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller

CMS has determined that the imposition of a temporary enrollment moratorium for HHAs that enroll in Medicare, Medicaid or CHIP in Harris County, TX (which contains the City of Houston) is warranted, and is extending the moratorium to the seven surrounding counties—Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller. CMS has determined that it is necessary to extend this moratorium to the surrounding counties to prevent potentially fraudulent HHAs from enrolling in a neighboring county to avoid the moratorium. CMS has also consulted with the State Medicaid Agency and reviewed available data and has determined that the moratorium will also apply to Medicaid and CHIP.

Beginning on the effective date of this document, no new HHAs will be enrolled into Medicare, Medicaid or CHIP with a practice location in the Texas Counties of Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery or Waller unless their enrollment application has already been approved, but not yet entered into PECOS or the State Provider/Supplier Enrollment System at the time the moratorium is imposed.

1. Consultation With Law Enforcement

Consistent with § 424.570(a)(2)(iv), CMS has consulted with both the HHS–OIG and DOJ regarding the imposition of a moratorium on new Medicare, Medicaid or CHIP HHAs in Harris County, TX and surrounding counties. Both the HHS–OIG and DOJ agree that a significant potential for fraud, waste or abuse exists with respect to HHAs in the affected geographic locations. The HHS–OIG has previously identified Houston as an HHA fraud-prone area because it is a Strike Force location where individuals have been charged with billing potentially fraudulent home health services, and is located in a State that had a high percentage of HHAs with questionable billing identified by the OIG.[21] There has also been considerable Strike Force and law enforcement activity in this area of the country. Since June 2010, the HEAT Strike Force has filed 7 cases in Houston, TX alleging home health fraud, and 16 individuals have been charged in connection with these cases resulting in 9 guilty pleas and 3 trial conviction. For example, in March 2013, a physician was sentenced to 63 months in prison for his role in a $17.3 million Medicare home health care fraud scheme.[22] In June 2012, former co-owners of a home health care company were sentenced to 9 years in prison for their participation in a $5.2 million fraud scheme.[23]

2. Data Analysis

a. Medicare Data Analysis

CMS' data show that in 2012, there were 31 U.S. counties nationally, including Harris County, TX with at least 200,000 Medicare beneficiaries. CMS excluded Harris County, TX and three other counties as explained previously and used the remaining 27 counties as ''comparison counties.'' [24] In the comparison counties in 2012, there was an average of 5.2 HHAs per 10,000 Medicare FFS beneficiaries. In Harris County, TX, there were 19.6 HHAs per 10,000 Medicare FFS beneficiaries. This means that the ratio of HHAs to Medicare FFS beneficiaries was 277 percent greater in Harris County, TX than in the comparison counties. Harris County, TX had the third highest ratio of HHAs to Medicare FFS beneficiaries compared to the comparison counties, behind Miami-Dade, FL and Dallas, TX counties.

CMS' data show that in 2012, HHAs in Harris County, TX were receiving payments of $7,631 per average home health user per year, compared to HHAs in the comparison counties, which received payments of $5,253. Payments to HHAs in Dallas County, TX were 45 percent higher than the average for HHAs in comparison counties in 2012, second only to Miami-Dade, FL.

b. Medicaid Data Analysis

As discussed previously in section I.B.1. of this document, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. In addition, the data also show a significantly higher annual utilization of Medicaid home health services in Harris County, TX compared to the entire state. CMS compared Harris County, TX against the rest of the state rather than against comparison counties nationally because Medicaid policies are not necessarily uniform across different states. In

[20] CMS used 2011 data from the Medicaid Statistical Information System (MSIS) because it was the most recent data available for all three states in this document.

[21] Office of Inspector General Report, ''CMS and Contractor Oversight of Home Health Agencies.'' (OEI–04–11–00220). See *https://oig.hhs.gov/oei/reports/oei-04-11-00220.pdf.*

[22] Department of Justice, ''Houston-area Doctor Sentenced to 63 months in Prison for Role in $17.3 Million Medicare Fraud Scheme.'' See *http://www.justice.gov/opa/pr/2013/March/13-crm-313.html.*

[23] HHS and DOJ, ''Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2012.'' See *http://oig.hhs.gov/publications/docs/hcfac/hcfacreport2012.pdf.*

[24] See footnote 11 for explanation of the 3 additional counties that were excluded for purposes of the HHA comparison county analysis.

2011[25] in Harris County, TX Medicaid spent an average of $4,251 per home health user per year, or 83 percent more than the average of $2,324 per home health user that Medicaid spent in the rest of the state.

3. Beneficiary Access

Based upon CMS' consultation with the State Medicaid agency, CMS has concluded that imposing this temporary moratorium will not create an access to care issue for Medicaid or CHIP beneficiaries in Harris County, TX or the surrounding counties at this time. Accordingly, under §§ 455.470 and 457.990, this moratorium will apply to the enrollment of HHAs in Medicaid and CHIP, unless the State later determines that imposition of the moratorium will adversely impact beneficiary access to care and so notifies CMS under § 455.470(a)(3).

CMS reviewed Medicare data for the target and surrounding counties, and found that there are no problems with access to HHAs in Harris County, TX or surrounding counties. Additionally, as described in section I.B.4. of this document, MedPAC has not reported any problems with Medicare beneficiary access to home health care. While CMS has determined there are no access to care issues for Medicare beneficiaries, nevertheless, the agency will continuously monitor these locations under a moratorium for changes such as an increase in beneficiary complaints to ensure that no access to care issues arise in the future.

D. Moratorium on Enrollment of HHAs in the Michigan Counties of Wayne, Macomb, Monroe, Oakland, and Washtenaw

CMS has determined there are factors in place that warrant the imposition of a temporary enrollment moratorium for HHAs in Wayne County, MI (which contains the City of Detroit), as well as the four surrounding counties; Macomb, Monroe, Oakland, and Washtenaw. CMS has determined that it is necessary to extend this moratorium to the surrounding counties to prevent potentially fraudulent HHAs from enrolling in a neighboring county to avoid the moratorium. CMS has also consulted with the State Medicaid agency and reviewed available data and determined that the temporary moratorium will also apply to Medicaid and CHIP.

Beginning on the effective date of this document, no new HHAs will be enrolled into Medicare, Medicaid or CHIP with a practice location in the Michigan Counties of Wayne, Macomb, Monroe, Oakland, and Washtenaw unless their enrollment application has already been approved but not yet entered into PECOS or the State Provider/Supplier Enrollment System at the time the moratorium is imposed.

1. Consultation With Law Enforcement

Consistent with § 424.570(a)(2)(iv), CMS has consulted with both the HHS–OIG and DOJ regarding the imposition of a moratorium on new HHAs in Wayne County, MI and the surrounding counties. Both HHS–OIG and DOJ agree that a significant potential for fraud, waste, or abuse exists with respect to HHAs in the affected geographic locations. The HHS–OIG has previously identified Detroit has an HHA fraud-prone area because it is a Strike Force location where individuals have been charged with billing potentially fraudulent home health services, and is located in a State that had a high percentage of HHAs with questionable billing identified by the OIG.[26] There has been considerable Strike Force and law enforcement activity in this area of the country. Since January 2010, the Strike Force filed 14 home health fraud cases, and charged 84 individuals that have resulted in 44 guilty pleas and 6 trial convictions. For example, in May 2013, a Detroit-area home health care agency owner was sentenced to 60 months in prison for causing the submission of over $1 million in false and fraudulent billing to Medicare as part of a $13.8 million health care fraud conspiracy.[27] In April 2013, an employee of a Detroit medical service company pled guilty for her role in a $24 million home health care fraud scheme.[28] Also in April 2013, a federal jury in Detroit convicted the office manager of a home health agency for her participation in a $5.8 million Medicare fraud scheme.[29] As of March 2013, 44 individuals were charged in a health care fraud and drug distribution scheme that centered on an allegation that three home health agency owners would provide kickbacks, bribes, and other illegal benefits to physicians to induce them to write prescriptions for patients with Medicare, Medicaid, and private insurance.[30]

2. Data Analysis

a. Medicare Data Analysis

CMS data show that in 2012, there were 31 U.S. counties nationally, including Wayne County, MI with at least 200,000 Medicare beneficiaries. CMS excluded Wayne County, MI and three other counties as explained previously and used the remaining 27 counties as ''comparison counties.''[31] In 2012, there was an average of 5.9 HHAs per 10,000 Medicare FFS beneficiaries in the comparison counties. In Wayne County, MI there were 7.1 HHAs per 10,000 Medicare FFS beneficiaries. This means that the ratio of HHAs to FFS beneficiaries was 19 percent greater in Wayne County, MI than in the comparison counties.

b. Medicaid Data Analysis

As discussed previously in section I.B.1. of this document, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. Additionally, the data also show a significantly higher annual utilization of Medicaid home health services in Wayne County, MI compared to the entire state. CMS compared Wayne County, MI against the rest of the state rather than to comparison counties nationally because Medicaid policies are not necessarily uniform across different states. In 2011[32] in Wayne County, MI Medicaid paid HHAs an average of $26,981 per provider per year, or 24 percent more than the average of $21,842 that Medicaid paid HHAs in the rest of the state.

3. Beneficiary Access

Based upon CMS' consultation with the State Medicaid agency, CMS has concluded that imposing this temporary moratorium will not create an access to care issue for Medicaid or CHIP

[25] CMS used 2011 data from the Medicaid Statistical Information System (MSIS) because it was the most recent data available for all three states in this document.

[26] Office of Inspector General Report, ''CMS and Contractor Oversight of Home Health Agencies.'' (OEI–04–11–00220). See *https://oig.hhs.gov/oei/reports/oei-04-11-00220.pdf.*

[27] DOJ, ''Detroit Area Home Health Agency Owner Sentenced to 60 Months for Role in $13 Million Health Care Fraud Scheme.'' See *http://www.justice.gov/opa/pr/2013/May/13-crm-544.html.*

[28] Federal Bureau of Investigation, ''Detroit Home Health Company Employee Pleads Guilty to Role in Medicare Fraud Scheme.'' See *http://www.fbi.gov/detroit/press-releases/2013/detroit-home-health-company-employee-pleads-guilty-to-role-in-medicare-fraud-scheme.*

[29] DOJ, ''Detroit-Area Home Health Agency Office Manager Convicted in $5.8 million Medicare Fraud Scheme.'' See *http://www.justice.gov/opa/pr/2013/April/13-crm-443.html.*

[30] DOJ, ''Forty-Four Individuals Indicted in Health Care Fraud and Drug Distribution Scheme.'' See *http://www.justice.gov/usao/mie/news/2013/2013_3_20_stayreal.html.*

[31] See footnote 11 for explanation of the 3 additional counties that were excluded for purposes of the HHA comparison county analysis.

[32] CMS used 2011 data from the Medicaid Statistical Information System (MSIS) because it was the most recent data available for all three states in this document.

beneficiaries in Wayne County, MI or the surrounding counties at this time. Accordingly, under §§ 455.470 and 457.990, this moratorium will apply to the enrollment of HHAs in Medicaid and CHIP, unless the State later determines that imposition of the moratorium will adversely impact beneficiary access to care and so notifies CMS under § 455.470(a)(3).

CMS reviewed Medicare data for the target and surrounding counties, and found that there are no problems with access to HHAs in Wayne County, MI or surrounding counties. Additionally, as described in section I.B.4. of this document, MedPAC has not reported any problems with Medicare beneficiary access to home health care. While CMS has determined there are no access to care issues for Medicare beneficiaries, nevertheless, the agency will continuously monitor these locations under a moratorium for changes such as an increase in beneficiary complaints to ensure that no access to care issues arise in the future.

III. Imposition of Ambulance Moratorium—Geographic Area

Under its authority at § 424.570(a)(2)(i) and (iv), CMS is implementing a temporary moratorium on the Medicare Part B enrollment of ambulance suppliers in the geographic area discussed in this section. The moratorium does not apply to provider-based ambulances, which are owned and/or operated by a Medicare provider (or furnished under arrangement with a provider) such as a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or hospice program,[33] and are not required to enroll separately as a supplier in Medicare Part B.[34]

Under regulations at §§ 455.470 and 457.990, this moratorium will also apply to the enrollment of ambulance service providers in Medicaid and CHIP. The moratorium does not apply to air ambulances attempting to enroll in Medicare, Medicaid or CHIP.

A. Moratorium on Enrollment of Ambulances in the Pennsylvania Counties of Philadelphia, Bucks, Delaware, and Montgomery, and the New Jersey Counties of Burlington, Camden, and Gloucester

CMS has determined that there are factors in place that warrant the imposition of a temporary enrollment moratorium for ambulance suppliers that enroll in Medicare Part B and ambulance providers in Medicaid and CHIP in Philadelphia County, PA (which contains the City of Philadelphia), as well as the six surrounding counties—the Pennsylvania counties of Bucks, Delaware, and Montgomery, and the New Jersey counties of Burlington, Camden, and Gloucester. CMS has determined that it is necessary to extend this moratorium to the surrounding counties to prevent potentially fraudulent ambulance suppliers from enrolling in a neighboring county to avoid the moratorium. CMS has consulted with the Pennsylvania and New Jersey State Medicaid Agencies and reviewed available data, and has determined that this moratorium will apply equally to enrollment of ambulance suppliers in Medicaid and CHIP.

Beginning on the effective date of this document, no new ambulance suppliers will be enrolled into Medicare, Medicaid or CHIP with a practice location in the Pennsylvania Counties of Philadelphia, Bucks, Delaware, and Montgomery, and the New Jersey Counties of Burlington, Camden, and Gloucester unless their enrollment application has already been approved but not yet entered into PECOS or the State Enrollment System at the time the moratorium is imposed. The moratorium does not apply to air ambulance suppliers or providers attempting to enroll in Medicare, Medicaid or CHIP.

1. Consultation With Law Enforcement

Consistent with § 424.570(a)(2)(iv), CMS has consulted with both the HHS–OIG and DOJ regarding the imposition of a moratorium on new ambulance suppliers in Philadelphia, PA and surrounding counties. Both the HHS–OIG and DOJ agree that a significant potential for fraud, waste and abuse exists with respect to ambulance suppliers in the affected geographic locations. The HHS–OIG previously found that the Medicare ambulance transport benefit may be highly vulnerable to abuse in locations with high utilization, such as Philadelphia, PA and surrounding locations DOJ prosecuted an operator of an ambulance service company, indicted in June 2012, for submitting more than $5.4 million in false claims to Medicare for medically unnecessary transportation of patients by ambulance.[35] Additionally, in April 2013, the owner of a Philadelphia ambulance supplier pled guilty to a health care fraud scheme that involved billing Medicare for ambulance services that were not medically necessary, that were not actually provided, or that were induced by illegal kickbacks.[36] Also in April 2013, seven people were charged in a $3.6 million health care scheme for unnecessary ambulance rides in Philadelphia.[37]

2. Data Analysis

a. Medicare Data Analysis

CMS' data show that in 2012, there were 31 U.S. counties nationally, including Philadelphia, PA, with at least 200,000 Medicare beneficiaries. CMS excluded Philadelphia County, PA, New York County, NY and Harris County, TX and used the remaining 28 counties as ''comparison counties.'' [38] In 2012, there was an average of 1.4 ambulance suppliers per 10,000 Medicare FFS beneficiaries in the comparison counties. In Philadelphia County, PA there were 4.8 ambulance suppliers per 10,000 Medicare FFS beneficiaries. This means that the ratio of ambulance suppliers to FFS beneficiaries was 243 percent greater in Philadelphia County, PA than in the comparison counties, the third highest ratio compared to comparison counties.

CMS' data show that the compounded average annual growth rate of ambulance suppliers in Philadelphia County, PA, is 15 times higher compared to the comparison counties'

[33] Medicare Claims Processing Manual, CMS Pub. No. 100–04, Chapter 15, ''Ambulance.'' See *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/clm104c15.pdf.*

[34] Medicare Program Integrity Manual, Chapter 15, Medicare Enrollment. See *http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/pim83c15.pdf.*

[35] HHS and DOJ, ''Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2012.'' See *http://oig.hhs.gov/publications/docs/hcfac/hcfacreport2012.pdf.*

[36] DOJ, ''Owner of Brotherly Love Ambulance Pleads Guilty to $2 million Health Care Fraud Scheme.'' See *http://www.justice.gov/usao/pae/News/2013/Apr/kuranplea_release.htm.*

[37] DOJ, ''Seven Charged in Health Care Fraud Scheme.'' See *http://www.justice.gov/usao/pae/News/2013/Apr/pennchoice_release.htm.*

[38] CMS' data shows that there are 31 counties that have at least 200,000 Medicare beneficiaries. Besides Philadelphia, for the ambulance analysis, 2 additional locations were excluded leaving 28 ''comparison counties''. New York County is excluded due to unique local conditions, such as New York's high density, its compact geography, and its high real estate costs. We believe that this outlier would have biased the average by making it artificially low, and could potentially over-represent the difference in ratios between the target county and the comparison counties. Harris County, Texas is also excluded because CMS already determined that the data and other factors indicated a risk of ambulance fraud in that county, and imposed a moratorium on July 30, 2013, which is being extended in this document.

annual growth rate of 1 percent, the second highest growth rate compared to comparison counties.

CMS' data show that in 2012, ambulance suppliers in Philadelphia County, PA were receiving payments of $1,314 per average ambulance user per year, compared to ambulance suppliers in comparison counties, which received payments of $803. Payments to ambulance suppliers were 64 percent higher than the average for comparison counties, and the third highest compared to comparison counties.

b. Medicaid Data Analysis

As discussed previously in section I.B.1. of this document, CMS believes that generally, a category of providers or suppliers that poses a risk to the Medicare program also poses a similar risk to Medicaid and CHIP. In addition, the data also show a significantly higher annual utilization of Medicaid ambulance services in Philadelphia County, PA compared to the entire state. CMS compared Philadelphia County, PA against the rest of the state rather than to comparison counties nationally because Medicaid policies are not necessarily uniform across different states. In 2011 [39] in Philadelphia County, PA Medicaid paid ambulances an average of $18,254 per provider per year, or 130 percent more than the average of $7,922 that Medicaid paid ambulances in the rest of the state.

3. Beneficiary Access

After consulting with the Pennsylvania and New Jersey State Medicaid agencies and the Pennsylvania and New Jersey State Departments of Health Emergency Medical Services, and reviewing available data, CMS has concluded that imposing this temporary moratorium will not create an access to care issue for Medicaid or CHIP beneficiaries in Philadelphia County, PA or the surrounding counties at this time. Accordingly, under §§ 455.470 and 457.990, this moratorium will apply to the enrollment of ambulance providers in Medicaid and CHIP, unless either or both states later determine(s) that imposition of the moratorium will adversely impact beneficiary access to care and so notify(ies) CMS under § 455.470(a)(3).

CMS reviewed Medicare data for the target and surrounding counties, and found that there are no problems with access to ambulance suppliers in Philadelphia County, PA or surrounding counties. Additionally, as described in section I.B.4. of this document, MedPAC has not reported any problems with Medicare beneficiary access to ambulance services. While CMS has determined that this temporary moratorium will not create an access to care issue for Medicare beneficiaries in Philadelphia County, PA or the surrounding counties at this time, nevertheless, the agency will continuously monitor these locations under a moratorium for changes, such as any increase in beneficiary complaints, to ensure that no access to care issues arise in the future.

IV. Extension of Home Health Moratoria—Geographic Locations

In accordance with § 424.570(b), CMS may deem it necessary to extend the moratoria in 6-month increments. Under its authority at § 424.570(b), CMS is extending the temporary moratoria on the Medicare enrollment of HHAs in the geographic locations discussed in this section. Under regulations at §§ 455.470 and 457.990, this moratorium also applies to the enrollment of HHAs in Medicaid and CHIP. At § 424.570(b), CMS stated it would publish a **Federal Register** document announcing any extension, and this document fulfills that requirement.

A. Moratorium on Enrollment of HHAs in the Florida Counties of Miami-Dade and Monroe

In the July 31, 2013 **Federal Register** (78 FR 46340), CMS published a document announcing the imposition of a temporary moratorium on the enrollment of new HHAs in the Florida counties of Miami-Dade and Monroe, as well as the qualitative and quantitative factors that supported CMS' determination of a need for the moratorium. CMS consulted with both the HHS–OIG and DOJ regarding the extension of the moratorium on new HHAs in Miami-Dade and Monroe counties, and both HHS–OIG and DOJ agree that a significant potential for fraud, waste and abuse continues to exist in this geographic area. Law enforcement agencies continue to investigate and prosecute significant fraudulent activity relating to home health services in these counties. For example, five Miami residents were arrested for their roles in a $48 million home health scheme on September 25, 2013,[40] and three home health recruiters pled guilty for their role in the same $48 million scheme [41] on September 4 and 26, 2013.[42] Additionally, two Miami-Dade County, FL health care clinic owners pled guilty in connection with an $8 million health care fraud scheme involving a now-defunct home health care company on August 13, 2013.[43]

As stated in the July 31, 2013 **Federal Register** document, CMS' data showed that Miami-Dade County had the highest ratio of HHAs to Medicare FFS beneficiaries compared to comparison counties, as well as the highest payments to HHAs compared to comparison counties. During the first 60 days of the moratorium, CMS revoked the billing privileges of 14 HHAs, and deactivated the billing privileges of 7 HHAs in Miami-Dade, FL. CMS has also performed other actions, such as payment suspensions and revocation of provider/supplier numbers for HHAs in this target area.

As provided in § 424.570(d), CMS may lift a moratorium at any time if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if circumstances warranting the imposition of a moratorium have abated, if the Secretary has declared a public health emergency or, if in the judgment of the Secretary, the moratorium is no longer needed. Neither Miami-Dade County nor Monroe County has been the site of a recent disaster or public health emergency. Additionally, the circumstances warranting the imposition of the moratorium have not yet abated, and CMS has determined that the moratorium is still needed as we monitor the indicators described and continue with administrative actions such as payment suspensions and revocation of provider/supplier numbers.

Based upon CMS' consultation with the State Medicaid Agency, CMS has concluded that extending this moratorium will not create an access to care issue for Medicaid or CHIP beneficiaries in Miami-Dade, FL or the surrounding county at this time. CMS also reviewed Medicare data for the target and surrounding county and found there are no problems with access to HHAs. Additionally, as described in section I.B.4. of this document, MedPAC has not reported any problems with Medicare beneficiary access to home health care. While CMS has determined there are no access to care issues for Medicare beneficiaries, nevertheless, the

[39] CMS used 2011 data from the Medicaid Statistical Information System (MSIS) because it was the most recent data available for all three states in this document.

[40] *http://www.justice.gov/opa/pr/2013/September/13-crm-1071.html.*

[41] *http://www.justice.gov/opa/pr/2013/September/13-crm-985.html.*

[42] *http://www.justice.gov/opa/pr/2013/September/13-crm-1077.html.*

[43] *http://www.fbi.gov/miami/press-releases/2013/health-care-clinic-owners-plead-guilty-in-miami-for-roles-in-8-million-health-care-fraud-scheme.*

agency will continue to monitor these locations.

As a result of the law enforcement consultation and consideration of the factors and activities described, CMS has determined that the temporary enrollment moratorium will be extended for 6 months to combat fraud in this area.

B. Moratorium on Enrollment of HHAs in the Illinois Counties of Cook, DuPage, Kane, Lake, McHenry and Will

In the July 31, 2013 **Federal Register** (78 FR 46340), CMS published a document announcing the imposition of a temporary moratorium on the enrollment of new HHAs in the Illinois Counties of Cook, DuPage, Kane, Lake, McHenry and Will, as well as the qualitative and quantitative factors that supported CMS' determination of a need of the moratorium.

CMS consulted with both the HHS–OIG and DOJ regarding the extension of the moratorium on new HHAs in Cook and surrounding counties, and both HHS–OIG and DOJ agree that a significant potential for fraud, waste and abuse continues to exist in this geographic area. We have found that law enforcement activities continue. For example, a Chicago resident was arrested in connection with an indictment in an alleged $12 million home health fraud scheme on October 29, 2013.[44] In another example, nine defendants were indicted in a Chicago home health kickback scheme on September 26, 2013.[45] The CEO of a Chicago home health company was arrested and $2.6 million in alleged fraud proceeds from various bank accounts were seized on August 27, 2013. A physician who was also involved in this same scheme was arrested.[46]

As stated in the July 31, 2013 **Federal Register** document, CMS' data showed that the growth rate in Cook County was double the national average of comparison counties, and that payments to HHAs were some of the highest nationally compared to the comparison counties. CMS has performed administrative actions, including investigations, referrals to law enforcement and payment suspensions on HHAs in this target area.

As provided in § 424.570(d), CMS may lift a moratorium at any time if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if circumstances warranting the imposition of a moratorium have abated, if the Secretary has declared a public health emergency, or if in the judgment of the Secretary, the moratorium is no longer needed. Cook and the surrounding counties have not been the site of a recent disaster or public health emergency. Additionally, the circumstances warranting the imposition of the moratorium have not yet abated, and CMS has determined that the moratorium is still needed as we monitor the indicators described and continue with administrative actions such as payment suspensions and revocations of provider/supplier numbers.

Based upon CMS' consultation with the State Medicaid Agency, CMS concluded that extending this moratorium will not create an access to care issue for Medicaid or CHIP beneficiaries in Cook or the surrounding counties at this time. CMS also reviewed Medicare data for the target and surrounding counties and found there are no problems with access to HHAs. Additionally, as described in section I.B.4. of this document, MedPAC has not reported any problems with Medicare beneficiary access to home health care. While CMS has determined there are no access to care issues for Medicare beneficiaries, nevertheless, the agency will continue to monitor these locations.

As a result of the law enforcement consultation and consideration of the factors and activities described, CMS has determined that this temporary enrollment moratorium will be extended for 6 months to combat fraud in this area.

V. Extension of Ambulance Moratoria—Geographic Area

A. Moratorium on the Enrollment of Ambulance Suppliers and Providers in the Texas Counties of Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller

In the July 31, 2013 **Federal Register** (78 FR 46340), CMS published a document announcing the imposition of this temporary moratorium on the enrollment of new ambulance suppliers and providers in the Texas Counties of Harris, Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery and Waller, as well as the qualitative and quantitative factors that supported CMS' determination of a need of the moratorium.

CMS consulted with both the HHS–OIG and DOJ regarding the extension of the moratorium on new ambulances in Harris County, TX and surrounding counties, and both HHS–OIG and DOJ agree that a significant potential for fraud, waste and abuse continues to exist in this geographic area. For example, the owner of a Houston-based ambulance company was convicted of multiple counts of health care fraud on October 30, 2013.[47]

As stated in the July 31, 2013 **Federal Register** document, CMS' data showed that Harris County, TX had the highest ratio of ambulance suppliers to Medicare beneficiaries compared to the comparison counties, as well as having the highest number of providers not continuously billing since 2008—a strong indicator of churn (churn is a term used to describe the switching between provider numbers when a provider number is identified as being involved in fraud and abuse)—compared to the comparison counties. In the first 60 days of the moratorium, CMS has revoked the billing privileges of 15 ambulance suppliers.

As provided in § 424.570(d), CMS may lift a moratorium at any time if the President declares an area a disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, if circumstances warranting the imposition of a moratorium have abated, if the Secretary has declared a public health emergency, or if in the judgment of the Secretary, the moratorium is no longer needed. Harris County, TX and the surrounding counties have not been the site of a recent disaster or public health emergency. Additionally, the circumstances warranting the imposition of a moratorium have not yet abated, and CMS has determined that the moratorium is still needed as we monitor the indicators described and continue with administrative actions such as payment suspensions and revocations of provider/supplier numbers.

Based upon CMS' consultation with the State Medicaid Agency, CMS concluded that extending this moratorium will not create an access to care issue for Medicaid or CHIP beneficiaries in Harris County, TX or the surrounding counties at this time. CMS also reviewed Medicare data for the target and surrounding counties and found there are no problems with access to ambulance services. Additionally, as described in section I.B.4. of this document, MedPAC has not reported any problems with Medicare beneficiary

[44] *https://oig.hhs.gov/fraud/enforcement/criminal/.*

[45] *http://www.justice.gov/usao/iln/pr/chicago/2012/pr0925_01.pdf.*

[46] *http://www.fbi.gov/chicago/press-releases/2013/mobile-doctors-chicago-ceo-and-doctor-arrested-on-federal-health-care-fraud-charges.*

[47] *http://www.yourhoustonnews.com/deer_park/news/owner-of-texas-based-ambulance-service-convicted-of-health-care/article_49a3ed6e-355e-5478-aa99-8d383071d1dc.html.*

access to ambulance services. While CMS has determined there are no access to care issues for Medicare beneficiaries, nevertheless, the agency will continue to monitor these locations.

As a result of the law enforcement consultation and consideration of the factors and activities described, CMS has determined that the temporary enrollment moratorium will be extended for 6 months to combat fraud in these areas.

VI. Summary of the Moratoria Locations

CMS is executing its authority under sections 1866(j)(7), 1902(kk)(4), and 2107(e)(1)(D) of the Act to implement a moratorium in the following counties for these providers and suppliers:

TABLE 1—NEW HOME HEALTH AGENCY MORATORIA

City and State	Counties	Law enforcement activity	Medicare data (2012)	Medicaid data (2011)
Fort Lauderdale, FL	Broward	Adjacent to HEAT Miami-Dade Strike Force Location.	Ratio of HHAs to Medicare FFS Beneficiaries was 92 percent higher than Comparison Counties.	HHAs were paid 95 percent more per year compared to the rest of the state.
Detroit, MI	Macomb Monroe Oakland Washtenaw Wayne	HEAT Strike Force Location.	Compounded annual growth was almost double the national average.	HHAs were paid 24 percent more per year compared to the rest of the state.
Dallas, TX	Collin Dallas Denton Ellis Kaufman Rockwall Tarrant	HEAT Strike Force Location.	Ratio of HHAs to Medicare FFS Beneficiaries was 365 percent higher than Comparison Counties.	Spent 35 percent more per home health user compared to the rest of the state.
Houston, TX	Brazoria Chambers Fort Bend Galveston Harris Liberty Montgomery Waller	HEAT Strike Force Location.	Ratio of HHAs to Medicare FFS Beneficiaries was 276 percent higher than Comparison Counties.	Spent 83 percent more per home health user compared to the rest of the state.

TABLE 2—NEW AMBULANCE MORATORIUM

City and State	Counties	Law enforcement activity	Medicare data (2012)	Medicaid data (2011)
Philadelphia, PA	Bucks (PA) Delaware (PA) Montgomery (PA) Philadelphia (PA) Burlington (NJ) Camden (NJ) Gloucester (NJ)		Ratio of Ambulance Suppliers to Medicare FFS Beneficiaries was 232 percent higher than Comparison Counties.	Ambulances paid 130 percent more per year compared to the rest of the state.

VII. Regulatory Impact Statement

CMS has examined the impact of this document as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

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). A regulatory impact analysis (RIA) must be prepared for major regulatory actions with economically significant effects ($100 million or more in any 1 year). This document will prevent the enrollment of new home health providers and ambulance suppliers in Medicare, and ambulance providers in Medicaid and CHIP. Though savings may accrue by denying enrollments, the monetary amount cannot be quantified. After the imposition of the moratoria on July 30, 2013, 231 HHAs and 7 ambulance companies in all geographic areas affected by the moratoria had their applications denied. We have found the number of applications that are denied after 60 days declines dramatically, as most providers and suppliers will not submit applications during the moratoria period. Therefore, this document does not reach the economic threshold and thus is not considered a major action.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $35.5 million in any one year. Individuals and states are not included in the definition of a small entity. CMS is not preparing an analysis for the RFA because it has determined, and the Secretary certifies, that this

document will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if an action may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, CMS defines a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. CMS is not preparing an analysis for section 1102(b) of the Act because it has determined, and the Secretary certifies, that this document will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any regulatory action whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $141 million. This document will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed regulatory action (and subsequent final action) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this document does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget reviewed this document.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35; Sec. 1103 of the Social Security Act (42 U.S.C. 1302).

Dated: January 27, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–02166 Filed 1–30–14; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 130717633–4069–02]

RIN 0648–XC772

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the annual catch limit (ACL), acceptable biological catch (ABC), annual catch target (ACT) and associated annual reference points for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the Pacific coast for the fishing season of July 1, 2013, through June 30, 2014. This final rule is implemented according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The 2013/2014 ACL for Pacific mackerel is 52,358 metric tons (mt). The ACT, which will be the directed fishing harvest target, is 39,268 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the ACL and ACT (which is 13,089 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. This final rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Effective March 6, 2014, through June 30, 2014.

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), where the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), acceptable biological catch (ABC), annual catch limit (ACL) and annual catch target (ACT) recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS.

The final rule will implement the 2013/2014 ACL, ACT and other annual catch reference points, including OFL and an ABC that takes into consideration uncertainty surrounding the current estimate of biomass, for Pacific mackerel in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework in the FMP. For the 2013/2014 fishing season the ACL is set equal to the result of the ABC calculation. This formula is:

ABC = Biomass * Buffer * F_{MSY} * Distribution with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel for the 2013/2014 management season is 272,932 mt.

2. *Buffer.* Used to addresses uncertainty in the OFL. For the 2013/2014 fishing season the buffer value is 0.913496. This is based on the Council's recommendation of a P* of 0.45 and the SSC recommended sigma of 0.72. The sigma for this year is double that used for previous years due to a higher level of uncertainty in the biomass estimate.

3. F_{MSY}. The fishing mortality rate at maximum sustainable yield (MSY) is set to 0.30.

4. *Distribution.* The average portion (currently 70%) of the total Pacific mackerel biomass that is estimated to be in the U.S. EEZ off the Pacific coast.

At the June 2013 Council meeting, the Council recommended management measures for the Pacific mackerel fishery. These management measures and catch specifications are based on the control rules established in the CPS FMP and a biomass estimate of 272,932 mt (the result of a full stock assessment that was completed in 2011 and updated based on a projection estimate for 2013). This biomass estimate was reviewed and approved by the SSC as the best available science for use in management.

In this final rule, based on recommendations from the Council's SSC and other advisory bodies, the Council recommended and NOAA Fisheries (NMFS) is implementing, an OFL of 57,316 mt, an ABC of 52,358 mt, an ACL 52,358 and an ACT of 39,268 mt for the 2013/2014 Pacific mackerel fishing season. The Pacific mackerel fishing season runs from July 1 to June 30 of the following year.

Amendment 13 (''ACL'' amendment) to the CPS FMP established a framework

that sets the ACL equal to the calculated ABC (reduced from OFL for scientific uncertainty) or the result of the harvest guideline (HG) equation (maximum quota prior to Amendment 13), whichever value is less. This is the first time in the two years since implementation of Amendment 13 that the ACL (maximum directed fishing quota) is based on the ABC as opposed to the HG; which for 2013 was calculated to be 53,494 mt.

If the ACT is attained, the directed fishery will close, and the difference between the ACL and ACT (13,089 mt) will be reserved as a set aside for incidental landings in other CPS fisheries and other sources of mortality. In that event, incidental harvest measures will be in place for the remainder of the fishing year, including a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS. In other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel, except that up to 1 mt of Pacific mackerel could be landed without landing any other CPS. Upon the fishery attaining the ACL/ABC (52,358 mt), no vessels in CPS fisheries may retain Pacific mackerel. The purpose of the incidental set-aside and allowance of an incidental fishery is to allow for the restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

On September 18, 2013, a proposed rule was published for this action and public comments solicited (78 FR 57348). No comments were received. For further background information on this action please refer to the preamble of the proposed.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: January 29, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–02285 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 79, No. 23

Tuesday, February 4, 2014

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[FNS–2011–0030]

7 CFR Parts 210 and 235

RIN 0584–AE19

Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish minimum professional standards for school nutrition personnel who manage and operate the National School Lunch and School Breakfast Programs. The proposed rule would also institute hiring standards for the selection of State and local school nutrition program directors; and require all personnel in these programs to complete annual continuing education/training. These proposed changes respond to amendments made by section 306 of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), which require USDA to establish professional standards for school nutrition personnel. The HHFKA also requires each State to provide at least annual training to local educational agency and school nutrition personnel. This proposed rule is expected to provide consistent, national standards for school nutrition professionals and staff. The principal benefit of this proposed rule is to ensure that key school nutrition personnel are meeting minimum professional standards in order to adequately perform the duties and responsibilities of their positions.

DATES: To be assured of consideration, written comments on this proposed rule must be received by the Food and Nutrition Service on or before April 7, 2014.

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

- *Preferred method:* Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, P.O. Box 66874, Saint Louis, MO, 63166.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Duplicate comments are not considered. Therefore, we request that commenters submit comments through only one of the methods listed above. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sara Olson, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306 of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296 (HHFKA) amended section 7 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1776) by adding paragraph (g), ''Professional Standards for School Food Service.'' This rule proposes to amend 7 CFR part 210, the regulations governing the National School Lunch Program, and 7 CFR part 235, the regulations governing State Administrative Expense Funds, consistent with amendments made to the CNA by the HHFKA.

Section 306 directs the Secretary to:

- Establish a program of mandatory education, training, and certification for all school nutrition directors responsible for the management of a school food authority. The program must include minimum educational and periodic training requirements necessary to successfully manage the school meals programs.
- Require that each local educational agency or school food authority ensure that local nutrition personnel complete annual training and receive annual certification (as specified by the Secretary) to demonstrate competence in the areas covered by the training, including ensuring individuals conducting or overseeing administrative procedures receive training at intervals defined by the Secretary.
- Establish criteria and standards for States to use in the selection of State agency directors with responsibility for the National School Lunch Program (NSLP) and the School Breakfast Program (SBP).
- Require each State to provide at least annual training in administrative practices to local educational agency and school nutrition personnel.

In developing this proposal, USDA considered input from a variety of sources. First, in November 2011, FNS conducted a session at the State Agency Meeting for State Child Nutrition Directors and their staff members. FNS explained the requirements of the HHFKA and solicited feedback from the audience. The participants brought up a number of general issues for USDA to consider, including grandfathering (the practice of exempting existing personnel from the new requirements), monitoring by State agencies, and how the new requirements would relate to existing State and local standards.

On March 13–14, 2012, in an effort to obtain additional information from those who would be directly impacted by the HHFKA amendments, FNS held a two-day listening session attended by approximately 60 invited stakeholders, representing a variety of State agencies, local educational agencies (both large and small), professional associations and other constituencies concerned with child nutrition. Through small group activities, breakout sessions and full group discussions, stakeholders provided suggestions for USDA to consider when proposing standards for required and preferred professional standards. Participants also offered input on use of resources to successfully implement national standards, as well as how to overcome potential barriers/challenges in implementation.

As follow-up to the March session, interested participants volunteered to continue to provide input via conference calls. Participants on the calls continued to include State and district directors, professional

organizations, and USDA staff. Calls focused on three topics: criteria and standards for hiring State agency directors; minimum education and training requirements for school nutrition directors; and training requirements for school nutrition managers and other staff. FNS conducted the conference calls in the five months following the listening session.

FNS also offered sessions describing Section 306 of HHFKA at the School Nutrition Association's Annual National Conference in July 2012 and July 2013, and received comments and feedback from attendees. The audience,—which consisted of State agency directors and staff, school nutrition directors, managers and other personnel,—provided significant input on proposed school nutrition program professional standards.

II. Overview of the Proposed Rule

This rule proposes to establish the criteria and procedures for implementing the provisions in section 7(g) of the CNA (42 U.S.C. 1776 (g)). The proposed rule would amend 7 CFR part 210 by redesignating §§ 210.30 and 210.31 as §§ 210.31 and 210.32, respectively. A new § 210.30, School nutrition program professional standards, would be added, as would new definitions in § 210.2. The proposed rule would also amend 7 CFR part 210 by revising §§ 210.15, 210.18, 210.20, and 210.32 (as redesignated). The proposed rule would amend 7 CFR part 235 by revising §§ 235.4, 235.6, 235.11, and 235.12. No administrative reporting burden is associated with this proposed rule.

Use of Terms

To ensure a consistent understanding of this rulemaking, the use of terms is discussed below.

The HHFKA uses the term ''local educational agency'' when describing the local entity responsible for compliance with school nutrition program professional standards. The local educational agency, as the authority responsible for the administrative control of public or private nonprofit educational institutions within a defined area of the state, has responsibilities beyond school nutrition programs. Accordingly, for purposes of this proposed regulation, the requirements will refer to and apply to the school food authority (SFA), which is the governing body that has the legal authority to operate the school meal programs. The term ''local educational agency'' will be used to define requirements that vary by size of student enrollment.

State directors of school nutrition programs include those individuals at the State agency level with responsibility for oversight of the NSLP and SBP. State directors of distributing agencies include those individuals at the State agency level with responsibility for the distribution of USDA Foods in schools under 7 CFR part 250. The Department recognizes that these roles may rest with one individual in some states.

School nutrition program directors are those local individuals directly responsible for the management of the day-to-day operations of school nutrition programs for all participating schools under the jurisdiction of the school food authority. School nutrition program managers are those individuals directly responsible for the management of the day-to-day operations of school nutrition programs for a participating school(s). School nutrition program staff are those individuals without managerial responsibilities who are involved in routine operations of school nutrition programs for a participating school(s). This may include, for example, those individuals who prepare and serve meals, process transactions at the point of service, and review free/reduced price applications. These definitions as described above are applicable whether or not an SFA is operated by a food service management company. The proposed rule would define the terms school nutrition directors, managers and staff in proposed § 210.2. If an individual possesses responsibilities for more than one of these positions, the higher level position requirements will apply. For instance, an individual fulfilling the roles of both director and manager would be required to meet the proposed requirements for school nutrition directors.

Minimum Standards

The professional standards proposed in this rulemaking represent minimum standards that State agencies, school food authorities and local school nutrition personnel would be required to meet. For example, if the proposed minimum requirement is a bachelors degree in specific fields, a candidate with a master's degree or higher in those fields would meet and exceed the minimum proposed requirement. Therefore, the candidate would be eligible for hire. State agencies and/or school food authorities would have the discretion to establish their own professional standards should they wish to do so, as long as such standards are not inconsistent with the minimum standards established by FNS. For instance, a State may choose to consider additional factors, such as State certificates, as an aspect of the required professional standards criteria.

School Nutrition Program Professional Standards for School Nutrition Program Directors, School Nutrition Program Managers and Staff

School Nutrition Program Directors Hiring Standards

Section 7(g)(1)(A) of the CNA, now requires the Secretary to establish a program of required education, training and certification for directors, including the minimum educational requirements necessary to successfully manage the NSLP and SBP.

Proposed § 210.30(b)(1) would require that beginning July 1, 2015, all school nutrition program directors hired must meet minimum educational requirements. FNS has categorized the minimum educational requirements into four distinct local educational agency (LEA) sizes, based on student enrollment (LEAs with 2,499 students or less, between 2,500 and 9,999 students, between 10,000 and 24,999 students, and LEAs with 25,000 or more students). This is in recognition of the fact that as LEA size increases, the level of responsibility and complexity of the food service system also increases and necessitates a higher minimum educational level. Some level of prior relevant school nutrition program experience is also proposed to be required in conjunction with the educational requirements for the two smaller LEA sizes.

At all LEA sizes, if a new director has attained a bachelor's degree or higher (in an academic major or area of concentration as described further below), no prior experience would be required. This is in consideration of the possibility that some well-qualified directors may accept a director position shortly following college graduation. However, the proposed rule strongly encourages school food authorities to seek individuals with at least one year of management experience, preferably in school nutrition programs, at all LEA sizes.

While the intent of this proposed regulation is to set a minimum level of expertise in key school nutrition program positions, we recognize that expectations must be reasonable and achievable, particularly in rural or small LEAs. This concern was expressed repeatedly by stakeholders who provided input at the public forums described earlier in this preamble.

Accordingly, this rule proposes several different pathways for a candidate to meet the educational requirement for all LEAs and seeks comments on these proposed approaches as well as appropriate alternatives.

Additionally, current directors indicated that some directors may have responsibility for more than one small school food authority. One potential solution for ensuring that school food authorities with director position openings meet the proposed hiring standards is to select an individual that will oversee more than one school food authority. However, if a director is responsible for multiple school food authorities, he/she would be required to comply with the educational standards for the total enrollment of the LEAs he or she oversees (e.g., for three LEAs with 4,000 students each, for a total enrollment of 12,000, the school nutrition program director must meet the proposed educational criteria for the 10,000–24,999 student category). In this proposed rule, ''hire date'' is defined as the official date listed on hiring paperwork. It may or may not be equivalent to an employee's start date.

School Nutrition Program Directors With LEA Enrollment of 2,499 Students or Fewer

The proposed standards for this LEA size are based on information from the public forums, as well as by the most recent results from the fourth School Nutrition Dietary Assessment Study (SNDA–IV), conducted during School Year 2011–12. According to this survey, 34 percent of current directors in LEAs of this size possess an associate's degree or higher. An additional 27 percent have completed some college without a degree; however 27 percent only possess a high school diploma. As noted above, this helped inform the decisions to both apply the educational standards to new directors only, as well as propose alternate pathways for hiring of directors in LEAs of this size. This is intended to assist LEAs of very small size in achieving compliance with the proposed standards.

Under proposed § 210.30(b)(1)(i), school nutrition program directors with an LEA enrollment of 2,499 students or fewer would be required to possess one of the following at the time of hiring:

- A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
- A bachelor's degree, or equivalent educational experience, in any academic major or area of concentration *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business (additional information on this educational attainment option will be further clarified in guidance);
- An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least one year of relevant school nutrition program experience; or
- A high school diploma or equivalency (such as the general educational development diploma), and at least five years of relevant school nutrition program experience.

For this LEA size, and particularly in rural areas, it is suggested and encouraged that if directors are hired without an associate's degree, that the school food authority and/or the State agency train these directors and encourage them to attain this degree within five years—even if the manager has five or more years of experience. This is intended to bolster the credential levels of school nutrition program directors and enhance their practical experience with training and formal academic instruction.

School Nutrition Program Directors With LEA Enrollment of 2,500 to 9,999 Students

According to SNDA–IV data on educational attainment for directors in LEAs with an enrollment of 2,500 to 9,999 students, nearly 70 percent of current directors have an associate's, bachelor's or graduate degree, and another 22 percent have some college. Therefore, only 8 percent of current directors possess only a high school diploma.

Proposed § 210.30(b)(1)(ii) would require that new directors in this LEA size possess one of the following at the time of hiring:

- A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
- A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business (additional information on this educational attainment option will be further clarified in guidance);
- An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least one year of relevant school nutrition program experience.

School food authorities would be strongly encouraged to seek out individuals who possess a bachelor's degree or higher in the fields described above or individuals who are interested in pursuing a bachelor's degree post-hire, in addition to at least one year of relevant school nutrition program experience.

School Nutrition Program Directors With LEA Enrollment of 10,000 to 24,999 Students

According to SNDA–IV data on educational attainment for directors in LEAs with an enrollment of 10,000 to 24,999 students, nearly 85 percent of current directors have a bachelor's or graduate degree.

Due to the increasing demands of a position in a LEA of this size, yet in recognition of the diversity of backgrounds that provide sufficient expertise for the director position, proposed § 210.30(b)(1)(iii) would require that new directors possess one of the following at the time of hiring:

- A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; or
- A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business. Additional information on this educational attainment option will be further clarified in guidance.

School food authorities would be strongly encouraged to seek out individuals who possess or are willing to work toward a master's degree with an academic major or area of concentration in fields noted previously. Additionally, at least one year of management experience, preferably in school nutrition, would be strongly recommended.

In order to better ensure that directors at this level, regardless of which academic degree they have attained, are adequately educated in the key areas of food service management and nutrition, school food authorities would also be encouraged to seek individuals possessing at least three credit hours at the university level in food service management and at least three credit hours in nutritional sciences at the time of hire.

School Nutrition Program Directors With LEA Enrollment of 25,000 or More Students

According to SNDA–IV data on educational attainment for directors in LEAs with an enrollment of 25,000 or more students, nearly 80 percent of current directors possess either a bachelor's or graduate degree.

USDA considered several combinations of academic degrees, credentialing and work experience for directors in LEAs with an enrollment of 25,000 or more students. Ultimately, USDA determined that for a director with the level of financial responsibility required for a LEA of this size, the director must have a strong educational background. Thus, the proposed rule at § 210.30(b)(1)(iv) would require that new directors possess one of the following:

- A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;
- A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business (additional information on this educational attainment option will be further clarified in guidance); or
- A master's degree, or willingness to work towards a master's degree (in an academic major or area of concentration as described above), would be strongly preferred. While no prior level of experience would be required, the proposed rule strongly encourages school food authorities to seek individuals with at least one year of management experience, preferably in school nutrition programs.

As with the criteria for directors in LEAs with enrollments of 10,000 to 24,999 students, school food authorities would also be encouraged to seek individuals possessing at least three credit hours at the university level in food service management and at least three credit hours in nutritional sciences.

School Nutrition Program Directors of All LEA Sizes

Given the vulnerable population served by the school nutrition programs, USDA believes knowledge of food safety is essential to providing healthful and safe school meals. The proposed rule at § 210.30(b)(1)(v) would require all new directors, regardless of LEA size, to possess at least eight hours of food safety training within three years prior to their starting date or complete such training within 30 calendar days of the employee's starting date. A new director may satisfy this training requirement by providing documentation of training that was completed either during a past position or through a food safety course or certificate program. Since the requirements set forth in this proposed rule are minimum standards, acceptable time frames for prior training may vary dependent upon State and/or local health department rules and regulations. New hires must provide sufficient documentation of any prior training.

The following chart summarizes the written requirements stated above for school nutrition program directors, broken down by each of the four LEA sizes:

SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROPOSED PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000–24,999	Student enrollment 25,000 or more
Minimum Education Standards (required) *(new directors only)*.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. OR. Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business; OR.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR. Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business; OR.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR. Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business.	Same requirements as for 10,000–24,999.

SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROPOSED PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE—Continued

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000–24,999	Student enrollment 25,000 or more
	Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least one year of relevant school nutrition programs experience; OR High school diploma (or GED) *and* 5 years of relevant experience in school nutrition programs.	Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least one year of relevant school nutrition programs experience.		
Minimum Education Standards (preferred) *(new directors only)*.	Directors hired without an associate's degree are strongly encouraged to work toward attaining associate's degree upon hiring.	Directors hired without a bachelor's degree strongly encouraged to work toward attaining bachelor's degree upon hiring.	Master's degree, or willingness to work toward master's degree, preferred. At least one year of management experience, preferably in school nutrition, strongly recommended.	Master's degree, or willingness to work toward master's degree, preferred. At least one year of management experience, preferably in school nutrition, strongly recommended.
			At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring strongly preferred. At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring strongly preferred.	
Minimum Prior Training Standards (required) *(new directors only)*.	At least 8 hours of food safety training is required either 3 years prior to their starting date or completed within 30 days of employee's starting date.			

General Training/Education Requirements for Directors, Managers and Staff

Section 7(g)(2) of the CNA, now requires the establishment of training and certification for school food service personnel. Stakeholders provided input on criteria for continuing education/training, as well as related issues such as funding, ensuring access for all employees to training opportunities, and supervisor tracking and verifying that such training was completed by staff. Primary themes were the importance of providing multiple paths, methods, and technologies for meeting training requirements; the importance of validating the existing training programs for this purpose; and ensuring that cost, distance, and limited computer access do not present significant barriers to those needing training.

Stakeholders also expressed concerns that FNS would be establishing a certification or credentialing system, which is a more structured program that typically requires a credentialing exam and leads to an official credential. FNS has no intention of creating any type of *credentialing* system. While currently in the early stages of planning and development, FNS intends to instead create a *certificate* program to acknowledge varying levels of training completed that will align with the minimum required annual continuing education/training requirements proposed in this regulation. This type of program would be more loosely structured, and instead would only consist of recognition for various levels of training. Some certificate levels would therefore be readily obtained by meeting the minimum annual training requirements for school nutrition

program staff, managers, and directors (e.g.. one level of recognition once 15 cumulative training hours have been completed, potentially over several years; and a second level of recognition after at least 30 hours of cumulative training completed).

Such a tiered approach would acknowledge those employees who meet annual minimum training as well as more formally recognize those employees who choose to increase their knowledge and expertise beyond what is required for their positions. This could provide an opportunity for school nutrition program staff, at all levels, to work toward and achieve increased professional competency without enrollment in a formal degree program.

FNS recognizes that some States have already developed their own State certificate programs, as well. While a State certificate alone would not replace the planned FNS certificate program discussed above, annual continuing education/training hours obtained for the purposes of a State certificate would be allowed to count toward training required for the FNS certificate program.

The FNS certificate program would consist of four core areas: Nutrition, operations, administration, and communications/marketing. These core areas would include specific topics as required by Section 7(g)(1)(A) of the CNA. Additional training topics would be contingent upon position title and/or job function. For instance, those in a director position may need to receive additional training in: Menu planning; standard operating procedures for ordering; receiving and storage; purchasing procedures; compliance with accommodating children with special dietary needs; communications with State agencies and district authorities; the efficient and effective use of USDA foods; and emergency management. Similarly, individuals who work as cooks/servers in a food service area may need to receive training specifically in receiving and storage, point of service cashiering, food production, and serving food. It is anticipated that all school nutrition programs staff positions that involve the handling of food would receive food safety training.

Section 7(g)(1)(C) of the CNA, authorizes USDA to provide financial and other assistance to one or more professional food service management organizations to assist with the development and management of training and certification. FNS is currently exploring additional and ongoing collaboration with partners such as the National Food Service Management Institute (NFSMI) to offer nationwide training opportunities. It is FNS' intent that continuing education/training would be undertaken in a variety of formats, including both virtual/web-based and in-person sessions. Further, such training shall include free or low-cost options for States and school food authorities.

Training would also be accepted from a wide variety of other sources. Training provided by FNS, NFSMI, commercial vendors, academic institutions, professional associations, or provided in-house by the State or LEA are examples of some potentially acceptable sources. As noted above, training could be conducted both online (webinars, interactive online sessions, etc) and in-person (public speakers, in-service trainings, attendance at a class or seminar). Additionally, training conducted by a director or manager for his/her staff would be creditable toward part of his/her own annual education/training requirement. The flexibility offered to directors at the local level to count training conducted toward their annual training requirement is in recognition of limited resources and time at the local level, as well as overlapping training needs for directors, managers and staff. Therefore, School Nutrition Program directors would gain knowledge and insight necessary for their positions as they prepare for and conduct trainings for staff.

Minimum Required Annual Continuing Education/Training for School Nutrition Program Directors

Section 7(g)(1)(A) of the CNA requires training and certification for all school nutrition program directors. Stakeholders participating as noted above, universally agreed that it is critical for school nutrition program directors to continue to engage in education and training beyond their first year of employment, in order to be informed of the most current practices and regulations, enhance skills, and refresh an existing knowledge base.

The proposed § 210.30(b)(3) would require that each school year beginning with the first year of hire or July 1, 2015, whichever is later, each school nutrition program director complete at least 15 hours of annual continuing education/training in topics including administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) and any other topics determined by FNS. This required continuing education/training is in addition to the food safety training, required in the first year of employment only, described above.

Proposed Continuing Education/Training Standards for School Nutrition Program Managers

Section 7(g)(2)(A) of the CNA, as amended, requires that each school food authority must ensure that an individual conducting or overseeing administrative procedures receives training annually, unless determined otherwise by the Secretary. School nutrition program managers include those individuals directly responsible for the management of the day-to-day operations of school food service for a participating school(s). This same definition is applicable whether or not an SFA is operated by a food service management company.

Therefore, proposed § 210.30(c) would require that each school year beginning with the first year of hire, each school nutrition program manager complete at least 12 hours of annual continuing education/training, or as otherwise specified by FNS. Continuing education would include topics such as: Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures); the identification of reimbursable meals at the point of service, nutrition, health and safety standards; and other topics, as specified by FNS.

Proposed Continuing Education/Training Standards for School Nutrition Program Staff

Section 7(g)(2)(B) of the CNA imposes requirements for local nutrition personnel to complete annual training/certification to demonstrate competence in the areas covered by the training.

Proposed § 210.30(d) would require that, for each school year, school nutrition program staff (other than the director and managers) who work an average of at least 20 hours per week, complete at least eight hours of continuing education/training applicable to their job. Continuing education would include topics such as: Free and reduced price eligibility; application, certification, and verification procedures; the identification of reimbursable meals at the point of service; nutrition, health and safety standards; and other topics, as specified by FNS.

FNS recognizes that many school nutrition programs staff may work part-time. Staff that work an average of 20 hours or more per week are involved in food service area activities at a substantial enough level to require a minimum of 8 hours of annual education/training. However, we recognize that this much training may

be burdensome for staff working fewer than 20 hours, on average, per week. While we strongly encourage all staff, whether part-time or full time, to receive a minimum of 8 hours of annual continuing education/training, the required training hours for staff working an average of less than 20 hours per week should be proportional to the number of hours worked. FNS seeks comments that specifically pertain to requirements for part time staff.

SUMMARY OF PROPOSED REQUIRED MINIMUM TRAINING/EDUCATION STANDARDS, FOR ALL LEA SIZES

New and Current Directors	Each year, at least 15 hours of annual continuing education/training. Includes topics such as: • administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • any other appropriate topics as determined by FNS. This required continuing education/training is in addition to the food safety training required in the first year of employment.
New and Current Managers	Each year, at least 12 hours of annual continuing education/training. Includes topics such as: • administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • the identification of reimbursable meals at the point of service. • nutrition, health and safety standards • other topics, as specified by FNS
New and Current Staff (other than the director and managers) that work an average of at least 20 hours per week.	Each year, at least 8 hours of annual continuing education/training. Includes topics such as: • free and reduced price eligibility. • application, certification, and verification procedures. • the identification of reimbursable meals at the point of service. • nutrition, health and safety standards. • other topics, as specified by FNS.

Use of School Nutrition Program Funds for Training Costs

Providing training to school nutrition program staff is an allowable use of the nonprofit school food service account. Proposed § 210.30(f) would require that any costs associated with training be reasonable, allocable, and necessary in accordance with the cost principles set forth in 2 CFR part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87). However, the proposed rule would specifically exclude as an allowable cost, any costs incurred by an individual to meet the educational criteria necessary to be hired as a new school nutrition program director, as proposed in § 210.30(b)(1). For example, the school food authority cannot use nonprofit school food service account funds to pay the costs of an existing employee to take college-level classes.

Proposed § 210.30(f) would also exclude as an allowable cost any cost associated with obtaining college credits. This does not preclude obtaining training hours through a college or university; however, the earning of college credits is not considered a reasonable and necessary expense for these proposed professional standards and thus cannot be funded with nonprofit school food service account dollars.

FNS, in cooperation with other organizations and entities, intends to provide education/training to meet the needs of most of the proposed training requirements. We are confident that State agencies and school food authorities will also be offering training opportunities; therefore, there will be a limited need to seek additional outside sources for education/training.

School Food Authority Oversight

Proposed § 210.30(g) would require each school food authority to maintain a recordkeeping system that annually documents compliance with the professional standard requirements for all school nutrition program employees. Documentation must be adequate to support to the State's satisfaction during administrative reviews, that employees are meeting the minimum professional standards. At a minimum, the school food authority would review employee education/training progress periodically throughout the year and certify employee compliance no later than the end of each school year. FNS encourages school food authorities to review and certify employee education/training on a more frequent basis. FNS expects to provide prototype tools that will assist school food authorities in maintaining this recordkeeping system.

Current regulations at § 210.15, *Reporting and recordkeeping,* summarize school food authority reporting and recordkeeping requirements. In order to participate in the NSLP and SBP, a school food authority must maintain records to demonstrate compliance with Program requirements. This proposed rule would add professional standards recordkeeping requirements to the recordkeeping summary set forth in paragraph (b) of this section.

Program regulations at § 210.18, *Administrative review,* requires State agencies to conduct administrative reviews of school food authorities once every three years. The administrative review covers critical and general areas of review. This proposed rule would amend § 210.18(h) to add professional standards to the general areas scope of review. Specifically, the State agency would be required to ensure that the school food authority complies with the professional standards for school nutrition program directors, managers and personnel established in § 210.30.

School Nutrition Program Professional Standards (State Directors)

Section 7(g)(1)(b) of the CNA, now requires the Secretary to establish criteria and standards for States to use in the selection of State agency directors with responsibility for the NSLP and the SBP. Therefore, this proposed rule would amend 7 CFR part 235, *State administrative expense funds.*

Proposed § 235.11(b)(2)(vi) would require that State agencies meet the professional standards and criteria described below under *Hiring Standards for State Directors of School Nutrition.* This proposed rule would establish criteria and standards for the hiring of individuals as State agency directors and would therefore apply only to those State agency directors hired after July 1, 2015. Incumbents would not be affected. However, annual continuing education/

training is proposed to apply to all current and new State directors of school nutrition, as well as State directors of distributing agencies.

Hiring Standards for State Directors of School Nutrition

Proposed § 235.11(g)(1) would require that beginning July 1, 2015, all new State directors of school nutrition (commonly referred to as State Child Nutrition Directors) with responsibility for the administration of the NSLP and SBP must meet minimum hiring standards.

Under proposed § 235.11(g)(1)(i), new hires would be required to possess a bachelor's degree with an academic major in areas including food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field.

Proposed § 235.11(g)(1)(ii) would require new directors to possess extensive relevant knowledge and experience in areas such as institutional food service operations, management, business, and/or nutrition education. FNS highly recommends that State directors of school nutrition programs have experience in three or more of these four areas. FNS anticipates offering additional guidance to assist hiring authorities in ensuring that candidates possess an adequate level of expertise in these areas.

Proposed § 235.11(g)(1)(iii) would require new directors to possess additional abilities and skills needed to lead, manage and supervise people to support the mission of school nutrition programs. More specifically, directors should be able to: work with team members to set, prioritize, and achieve objectives; guide the resolution of problems; make decisions analytically and strategically; speak and write clearly, concisely, and persuasively; communicate effectively with individuals and groups; analyze complex data and situations; interpret Federal and State regulations and establish policies and procedures to effectively implement them statewide; manage child nutrition administrative budget and plans; develop and make presentations; plan and organize work assignments for oneself and others including program compliance requirements; practice efficient self-management techniques; work effectively in a team environment and with all levels of employees in an organization; build positive internal and external working relationships; and use word processing, power point and similar software.

Proposed § 235.11(g)(1)(iv) identifies several criteria that are strongly preferred, but not required. This is in recognition of the fact that USDA is setting only minimum professional standards; however additional requirements are desirable and are suggested for consideration. For example, this proposed regulation recommends that new hires possess a master's degree with an academic major in the areas discussed above; at least five years of experience leading people in successfully accomplishing major multi-faceted projects related to child nutrition and/or institutional foodservice management; and professional certification (such as SNS, RD, etc.) in food and nutrition, food service management, school business management, or a related field as determined by FNS.

Hiring Standards for State Directors of Distributing Agencies

USDA has discretion under section 7(g) of the CNA as amended, to apply professional standards requirements to State directors of distributing agencies responsible for overseeing State food distribution activities authorized under 7 CFR part 250. The application of such standards is intended to ensure that State directors maintain a minimum required skill level to effectively distribute and utilize USDA food products in school nutrition programs. Such skills are necessary in order to manage and integrate this significant portion of Child Nutrition assistance. Recent changes to the school meal nutrition standards require support and expertise from State directors to ensure that food provided to SFAs complements the more in-depth meal pattern requirements (e.g. whole grain-rich products, vegetable subgroups, etc.).

Therefore, proposed § 235.11(g)(2) would require that beginning July 1, 2015, all new State agency directors with responsibility for the distribution of USDA donated foods in 7 CFR part 250 must meet minimum hiring standards. This would apply to all new State directors of distributing agencies, regardless of whether or not the director also has responsibility for the State school nutrition programs.

Under proposed § 235.11(g)(2)(i), new State agency directors would be required to possess a bachelor's degree with an academic major in any area. Recognizing that the responsibilities of State directors of distributing agencies are more variable than those of directors responsible for school nutrition programs, specific academic majors are not required, therefore, education attained in a variety of fields is acceptable for this position.

Proposed § 235.11(g)(2)(ii) would require new directors to possess extensive relevant knowledge and experience in areas such as institutional food service operations, management, business, and/or nutrition education. However, unlike the standards for directors of school nutrition, FNS is not recommending that directors of distributing agencies have experience in a specific number of these areas.

Proposed § 235.11(g)(2)(iii) would require new directors to possess additional abilities and skills needed to lead, manage and supervise people to support the mission of school nutrition programs. More specifically, directors should be able to: work with team members to set, prioritize and achieve objectives; guide the resolution of problems; make decisions analytically and strategically; speak and write clearly, concisely and persuasively; communicate effectively with individuals and groups; analyze complex data and situations; interpret Federal and State regulations and establish policies and procedures to effectively implement them statewide; manage administrative budget and plans; develop and make presentations; plan and organize work assignments for oneself and others including program compliance requirements; practice efficient self-management techniques; work effectively in a team environment and with all levels of employees in an organization; build positive internal and external working relationships; and use word processing, spreadsheet, and presentation creations or similar software.

Proposed § 235.11(g)(2)(iv) identifies an additional criterion that is strongly preferred, but not required. This proposed regulation recommends that new hires possess at least five years of experience in institutional food service operations.

Minimum Annual Continuing Education/Training Standards

Proposed § 235.11(g)(3) would require that each school year, all State agency directors with responsibility for the NSLP and SBP, as well as those responsible for the distribution of USDA donated foods in schools under part 250 of this chapter, must complete a minimum of 15 hours of continuing education/training in core areas appropriate to the areas of responsibility and may include: nutrition, operations, administration, and communications/marketing. Any additional hours and topics would be specified by FNS on an annual basis, as necessary.

During discussions with existing directors of both school nutrition and distributing agencies, annual continuing education/training was universally supported.

Similar to the required annual education/training for school nutrition program directors, managers and staff, training taken by State directors will also be accepted from a wide variety of other sources. Training provided by FNS, NFSMI, commercial vendors, academic institutions, or professional associations are examples of some acceptable sources. As noted above, training can be conducted online (webinars, interactive online sessions, etc.) and/or in-person (public speakers, in-services, attendance of a class or seminar). Additionally, training required under the proposed Child Nutrition integrity rule, which would require annual training hours in procurement, would also count toward the proposed annual requirement discussed here. However, training that is conducted by a State director may *not* be credited toward part of his/her own annual education/training requirement. This is to ensure that State directors are being trained in areas they may not yet already be proficient in, and to recognize that they have training needs that are unique from the needs of School Food Authority-level staff. For instance, much of State director training would relate to requirements from USDA. The flexibility offered to directors at the local level to count training conducted toward their annual training requirement is in recognition of limited resources and time at the local level, as well as overlapping training needs for directors, managers and staff. Therefore, school nutrition program directors will gain knowledge and insight necessary for their positions as they prepare for and conduct trainings for staff.

Use of Funds for Training

Proposed § 235.6(a–1) would be amended to allow State agencies to utilize State administrative expense funds specifically for the purposes of their own State director annual continuing education/training, but *not* to obtain college credits.

Provision of Annual Training

Proposed § 235.11(g)(4)(i) would require each State agency with responsibility for the NSLP and SBP to annually provide a minimum of 18 hours of training to school food authorities (applicable to any or all staff) and local educational agencies, as applicable. Training topics would include, but not be limited to: administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures); the accuracy of approvals for free and reduced price meals; the identification of reimbursable meals at the point of service; nutrition; health and food safety standards; the efficient and effective use of USDA donated foods; and any other appropriate topics, as determined by FNS, to ensure program compliance and integrity.

Proposed § 235.11(g)(4)(ii) would require each State agency with responsibility for the distribution of USDA donated foods under part 250 of this chapter to provide or ensure receipt of continuing education/training to State distributing agency staff on an annual basis. Topics may include the efficient and effective use of USDA donated foods; inventory rotation and control; health and food safety standards; and any other appropriate topics, as determined by FNS, to ensure program compliance and integrity.

Because State agencies already conduct training and attend trainings, there is no additional administrative burden associated with this proposed rule. FNS anticipates there being a high level of flexibility for States in meeting this proposed requirement. State-provided training is an approved use of State administrative expense funds, and a variety of formats, including print, web-based, and in-person, could be used. States are encouraged to collaborate with each other, or with their State distributing agencies, to share potential training resources and best practices. States may also use contractors or partner with other organizations such as the School Nutrition Association or the National Food Service Management Institute to develop and/or provide training to the school food authorities and State distributing agencies.

Records and Recordkeeping

This proposed rule would also require each State agency to maintain a recordkeeping system that annually documents compliance with the professional standards requirements for all State Directors of school nutrition and State Directors of distributing agencies. Documentation must be adequate to support to FNS that directors are meeting the minimum professional standards. Proposed § 235.11(g)(5) would require that States annually maintain records to adequately demonstrate compliance with the professional standards for State directors of school nutrition programs established in § 235.11(g). Proposed § 210.20(b)(15) would add professional standards to the requirements for States for reporting and recordkeeping purposes.

Failure To Comply

Proposed § 235.11(g)(6) would require that the failure of State agencies to comply with the proposed standards for State directors, as discussed above, may result in recovery, withholding, or cancellation of payment of State administrative expense funds, as specified under existing § 235.11(b). USDA will work with State agencies and school food authorities that do not fully meet the requirements and provide ongoing technical assistance and guidance in order to bring States into compliance. Actions resulting from failure to comply are anticipated to occur only in the most serious instances of noncompliance.

Oversight

Each State will be responsible for ensuring that each school food authority is monitoring the credentials and requirements for all school nutrition program employees. States will also ensure that school food authorities are maintaining a recordkeeping system of such credentials. As mentioned, this proposed rule would amend existing § 210.18, *Administrative review,* to require State agencies to assess compliance with professional standards under the administrative review's general area areas.

Management evaluations of the State agency would include an FNS assessment of State agency compliance with professional standards. This assessment would include a review of whether the state directors of both school nutrition and distributing agencies are meeting the professional standards in this proposed regulation.

III. Procedural Matters

Executive Order 12866 and Executive Order 13563

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be not significant. Accordingly, the rule will not be reviewed by the Office of Management and Budget.

Regulatory Impact Analysis

This rule has been determined to be not significant by the Office of Management and Budget; therefore a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule will not have a significant impact on a substantial number of small entities. The administrative and operational requirements of the Program are simple. Therefore, FNS does not expect that the proposed rule will have a significant economic impact on small entities.

Unfunded Mandates Reform Act

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

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP and State Administrative Expense Funds are listed in the Catalog of Federal Domestic Assistance Programs under 10.555 and 10.560, respectively. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

Prior Consultation With State Officials

FNS headquarters and regional offices have formal and informal discussions with State agency officials on an ongoing basis regarding the Child Nutrition Programs and policy issues. Prior to drafting this proposed rule and as noted above, FNS held several conference calls and meetings with the State agencies to discuss the statutory requirements addressed in this proposed rule. FNS also discussed the professional standards statutory requirements with program operators at their State conferences and received input which has been considered in drafting this proposed rule.

Nature of Concerns and the Need To Issue This Rule

State agencies requested clarification on application of proposed standards to current State and local directors, flexibility of acceptable formats for obtaining training, implementation dates, and oversight. These are discussed in the preamble.

Extent to Which We Meet Those Concerns

FNS has considered the impact of this proposed rule on State and local operators and has developed a rule that would implement the professional standards requirement in the most effective and least burdensome manner.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or distribution of power and responsibilities between the Federal government and Indian tribes.

FNS provides regularly scheduled quarterly consultation sessions as a venue for collaborative conversations with Tribal officials or their designees. The most recent quarterly consultation sessions were coordinated by FNS and held on November 2, 2011; February 29, 2012; May 2, 2012; August 29, 2012; and February 13, 2013.

There were no comments about this regulation received during any of the aforementioned Tribal Consultation sessions. Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'', and 1512–1, ''Regulatory Decision Making Requirements,'' to identify and address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. After a careful review of the proposed rule's intent and provisions, FNS has determined that this proposed rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability, nor is it intended to have a differential impact on minority owned or operated business establishments, and women-owned or operated business establishments that participate in the Child Nutrition Programs. The proposed rule is technical in nature, and it affects only the State agencies and the local educational agencies operations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), requires that the Office of

Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a new collection. The proposed provisions in this rule create new burden which will be merged into a currently approved information collection titled ''National School Lunch Program'' (NSLP), OMB Number 0584–0006, which expires on February 29, 2016. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by April 7, 2014. Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Title: Professional Standards for State and Local School Nutrition Programs Personnel as Required by the Healthy, Hunger-Free Kids Acts of 2010.

OMB Number: 0584—NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: Section 306 of the Healthy, Hunger-Free Kids Act (HHFKA) (P.L. 111–296) amends section 7 of the Child Nutrition Act (CNA) (42 U.S.C. 1776) by adding paragraph (g), ''Professional Standards for School Food Service.'' This rule proposes to amend the 7 CFR part 210, the regulations governing the National School Lunch Program (NSLP) and 7 CFR part 235, the regulations governing State Administrative Expense Funds, consistent with amendments made by the HHFKA.

The NSLP is authorized under section 13 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1761). This rule proposes to establish the criteria and procedures for implementing the provisions in section 7(g) of the CNA, as amended (42 U.S.C. 1776). To effect these provisions, the proposed rule would amend 7 CFR part 210 by redesignating §§ 210.30 and 210.31 as §§ 210.31 and 210.32, respectively. A new § 210.30, *School nutrition program professional standards,* would be added. The proposed rule would also amend 7 CFR part 210 by revising §§ 210.2, 210.15, 210.18, 210.20, and 210.31. The proposed rule would amend 7 CFR part 235 by revising §§ 235.4, 235.11, and 235.12, and making other conforming changes. The professional standards proposed in this rule represent minimum standards that State agencies, school food authorities, and schools would be required to meet. State agencies and/or local educational agencies would have the discretion to establish their own professional standards should they wish to do so, as long as such standards are not inconsistent with the minimum standards established by FNS through the rulemaking process. For instance, State may choose to consider additional factors such as State certificates as an aspect of their professional standards criteria.

This proposed rule is intended to provide consistent, national standards for school nutrition professionals and staff. The principal benefit of this proposed rule is to ensure that key school nutrition personnel are meeting minimum professional standards in order to adequately perform the duties and responsibilities of their positions. This rule does not carry any reporting burden. Recordkeeping burden details are provided below.

Affected Public: State Agencies, Local Educational Agencies and School Food Authorities, and Schools operating the NSLP.

Estimated Number of Respondents: 122,661.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 122,717.

Estimate Time per Response: 0.25.

Estimated Total Annual Burden with proposed rule: 30,680.

Current OMB Inventory for Part 210: 10,223,035.

Total burden hours for Part 210 with proposed rule: 10,253,715.

Difference (new burden requested with proposed rule): 30,680.

Refer to the table below for estimated total annual burden.

Affected public	Section	Estimated number of recordkeepers	Records per recordkeeper	Average annual records	Average burden per record	Annual burden hours
Reporting (There is no reporting burden.)						
Recordkeeping						
State to annually maintain a recordkeeping system that documents compliance with the professional standards for State directors of school nutrition programs and distributing agencies to include credentials and continuing education/training standards.	7 CFR 210.20(b)(15); 235.11(g)(3); 235.11(g)(4).	56	2	112	0.25	28
LEA and SFA to annually maintain a recordkeeping system that documents the compliance with the professional standards for all school nutrition program employees.	7 CFR 210.15(b)(8); 210.30(b)(2); 210.30(c); 210.30(d).	20,858	1	20,858	.25	5,215
Schools to annually maintain a recordkeeping system that documents the compliance with the professional standards for all school nutrition program employees.	7 CFR 210.15(b)(8); 210.30(b)(2); 210.30(c); 210.30(d).	101,747	1	101,747	.25	25,437
Total Estimated Recordkeeping Burden.	.....	122,661	.....	122,717	.....	30,680
Total of Reporting and Recordkeeping						
Reporting	.....	.....	.....	.....	.....	.....
Recordkeeping	.....	122,661	.....	122,717	.25	30,680
Total	.....	122,661	.....	122,717	.25	30,680

E-Government Act Compliance

The Food and Nutrition Service is committed to complying with the E-Government Act, 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

7 CFR Part 235

Administrative practice and procedure, Food assistance programs, Grant programs—health, Grant programs—education, School breakfast and lunch programs, Nutrition, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210 and 235 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.2 by adding the definitions of *School nutrition program directors, School nutrition program managers,* and *School nutrition program staff to read as follows:*

§ 210.2 Definitions.

* * * * *

School nutrition program directors are those individuals directly responsible for the management of the day-to-day operations of school food service for all participating schools under the jurisdiction of the school food authority.

School nutrition program managers are those individuals directly responsible for the management of the day-to-day operations of school food service for a participating school(s).

School nutrition program staff are those individuals, without managerial responsibilities, involved in day-to-day operations of school food service for a participating school(s).

* * * * *

■ 3. Amend § 210.15 as follows:

■ (a) In paragraph (b)(6), by removing the word ''and'' at the end;

■ (b) In paragraph (b)(7), by removing the period and adding ''; and'' in its place; and

■ (c) By adding paragraph (b)(8).

The addition reads as follows:

§ 210.15 Recordkeeping summary.

* * * * *

(b) * * *

(8) Records to demonstrate the school food authority's compliance with the professional standards for school nutrition program directors, managers and personnel established in § 210.30.

■ 4. Amend § 210.18 by adding paragraph (h)(6) to read as follows:

§ 210.18 Administrative reviews.

* * * * *

(h) * * *

(6) Professional standards. The State agency shall ensure the school food authority complies with the professional standards for school nutrition program directors, managers and personnel established in § 210.30.

■ 5. Amend § 210.20 as follows:

■ a. In paragraph (b)(13), by removing the word ''and'' at the end;

■ b. In paragraph (b)(14), by removing the period and adding ''; and'' in its place; and

■ c. By adding paragraph (b)(15).

The addition reads as follows:

§ 210.20 Reporting and Recordkeeping.

* * * * *

(b) * * *

(15) Records to demonstrate compliance with the professional standards for State directors of school nutrition programs established in § 235.11(g).

§§ 210.30 and 210.31 [Redesignated as §§ 210.31 and 210.32].

■ 6. Redesignate §§ 210.30 and 210.31 as §§ 210.31 and 210.32, respectively, and add new § 210.30 to read as follows:

§ 210.30 School nutrition program professional standards.

(a) *General.* School food authorities must establish and implement professional standards for school nutrition program directors, managers and staff, as defined in § 210.2.

(b) *Minimum standards for all school nutrition program directors.* Each school food authority must ensure that all newly hired school nutrition program directors meet minimum hiring standards and ensure that all new and existing directors have completed the minimum annual training/education requirements for school nutrition program directors, as set forth below:

(1) *Hiring standards.* All school nutrition program directors hired on or after July 1, 2015, must meet the following minimum educational requirements, as applicable:

(i) *School nutrition program directors with local educational agency enrollment of 2,499 students or fewer.* Directors must meet the requirements in either paragraph (b)(1)(i)(A), (b)(1)(i)(B), (b)(1)(i)(C), *or* (b)(1)(i)(D) of this section.

(A) A bachelor's degree, or equivalent educational experience, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business;

(C) An associate's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field and at least one year of relevant school nutrition program experience; or

(D) A high school diploma or equivalency (such as the general educational development diploma), and at least five years of relevant school nutrition program experience. Directors hired under such criteria are strongly encouraged to work toward attaining an associate's degree in an academic major in the fields listed in paragraph (b)(1)(i)(C) of this section upon hiring.

(ii) *School nutrition program directors with local educational agency enrollment of 2,500 to 9,999 students.* Directors must meet the requirements in either paragraph (b)(1)(ii)(A), (b)(1)(ii)(B), *or* (b)(1)(ii)(C) of this section.

(A) A bachelor's degree, or equivalent educational experience, with an academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, and a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business; or

(C) An associate's degree, or equivalent educational experience (bachelor's degree preferred), with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field *and* at least one year of relevant school nutrition program experience. Directors hired with an associate's degree are strongly encouraged to work toward attaining a bachelor's degree in an academic major in the fields listed in this paragraph.

(iii) *School nutrition program directors with local educational agency enrollment of 10,000 to 24,999 students.* Directors must meet the requirements in either paragraph (b)(1)(iii)(A), *or* (b)(1)(iii)(B) of this section.

(A) A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; or

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business.

(C) School food authorities are strongly encouraged to seek out individuals who possess a master's degree or are willing to work toward a master's degree in the fields listed in this paragraph. At least one year of management experience, preferably in school nutrition, is strongly recommended. It is also strongly recommended that directors have at least three credit hours at the university level in food service management and at least three credit hours in nutritional sciences at the time of hire.

(iv) *School nutrition program directors with local educational agency enrollment of 25,000 or more students.* Directors must meet the requirements in either paragraph (b)(1)(iv)(A), *or* (b)(1)(iv)(B) of this section.

(A) A bachelor's degree, or equivalent educational experience, with an academic major or area of concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; or

(B) A bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business.

(C) School food authorities are strongly encouraged to seek out individuals who possess a master's degree or are willing to work toward a master's degree, in the fields listed in this paragraph. At least one year of management experience, preferably in school nutrition, is strongly recommended. It is also strongly recommended that directors have at least three credit hours at the university level in food service management and at least three credit hours in nutritional sciences at the time of hire.

(v) *School nutrition program directors for all local educational agency sizes.* All school nutrition program directors,

of all *local educational agency* sizes, must have completed at least eight hours of food safety training within three years prior to their starting date or complete eight hours of food safety training within 30 days of the starting date.

(2) *Summary of school nutrition program director education/prior training standards.* The following chart summarizes the written requirements stated above:

SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROPOSED PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000–24,999	Student enrollment 25,000 or more
Minimum Education Standards (required) *(new directors only)*.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field. OR. Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business; OR. Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least one year of relevant school nutrition programs experience; OR. High school diploma (or GED) *and* 5 years of relevant experience in school nutrition programs.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR. Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business; OR. Associate's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; *and* at least one year of relevant school nutrition programs experience.	Bachelor's degree, or equivalent educational experience, with academic major or concentration in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field; OR. Bachelor's degree, or equivalent educational experience, with any academic major or area of concentration, *and* a State-recognized certificate in food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, or business.	Same requirements as for 10,000–24,999.
Minimum Education Standards (preferred). *(new directors only)*	Directors hired without an associate's degree are strongly encouraged to work toward attaining associate's degree upon hiring..	Directors hired without a bachelor's degree strongly encouraged to work toward attaining bachelor's degree upon hiring.	Master's degree, or willingness to work toward master's degree, preferred. At least one year of management experience, preferably in school nutrition, strongly recommended. At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring strongly preferred.	Master's degree, or willingness to work toward master's degree, preferred At least one year of management experience, preferably in school nutrition, strongly recommended. At least 3 credit hours at the university level in food service management plus at least 3 credit hours in nutritional sciences at time of hiring strongly preferred.

SUMMARY OF SCHOOL NUTRITION PROGRAM DIRECTOR PROPOSED PROFESSIONAL STANDARDS BY LOCAL EDUCATIONAL AGENCY SIZE—Continued

Minimum requirements for directors	Student enrollment 2,499 or less	Student enrollment 2,500–9,999	Student enrollment 10,000–24,999	Student enrollment 25,000 or more
Minimum Prior Training Standards. (required) ..... *(new directors only)*	At least 8 hours of food safety training is required either 3 years prior to their starting date or completed within 30 days of employee's starting date			

(3) *Minimum required annual continuing education/training.* Each school year, beginning with the first year of hire or July 1, 2015, whichever is later, the school food authority must ensure that all school nutrition program directors have completed at least fifteen hours of annual continuing education/training in the following topics: Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures) and any other topics, as determined by FNS. Continuing education/training required under this paragraph is in addition to the food safety training required in the first year of employment under paragraph (b)(1)(v) of this section.

(c) *Continuing education/training standards for all school nutrition program managers.* Each school year, the school food authority must ensure that all school nutrition program managers have completed at least 12 hours of annual continuing education/training, or as otherwise specified by FNS. Continuing education/training will include the following topics:

(1) Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures);

(2) The identification of reimbursable meals at the point of service;

(3) Nutrition;

(4) Health and safety standards; and

(5) Any other appropriate topics, as determined by FNS.

(d) *Continuing education/training standards for all staff with responsibility for school nutrition programs.* Each school year, the school food authority must ensure that all staff with responsibility for school nutrition programs that work an average of at least 20 hours per week, other than school nutrition program directors and managers, complete at least eight hours of annual continuing education/training in areas applicable to their job, or as otherwise specified by FNS. The required number of training hours for staff working an average of less than 20 hours per week must be proportional to the number of hours worked. Continuing education/training will include the following topics:

(1) Free and reduced price eligibility;

(2) Application, certification, and verification procedures;

(3) The identification of reimbursable meals at the point of service;

(4) Nutrition;

(5) Health and safety standards; and

(6) Any other appropriate topics, as determined by FNS.

(e) *Summary of required minimum continued education/training standards.*

SUMMARY OF PROPOSED REQUIRED MINIMUM CONTINUING EDUCATION/TRAINING STANDARDS, FOR ALL LOCAL EDUCATIONAL AGENCY SIZES

New and Current Directors	Each year, at least 15 hours of annual continuing education/training. Includes topics such as: • Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • any other appropriate topics as determined by FNS. This required continuing education/training is in addition to the food safety training required in the first year of employment.
New and Current Managers	Each year, at least 12 hours of annual continuing education/training. Includes topics such as: • Administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures). • the identification of reimbursable meals at the point of service. • nutrition, health and safety standards. • other topics, as specified by FNS.
New and Current Staff (other than the director and managers) that work an average of at least 20 hours per week.	Each year, at least 8 hours of annual continuing education/training. Includes topics such as: • Free and reduced price eligibility. • application, certification, and verification procedures. • the identification of reimbursable meals at the point of service. • nutrition, health and safety standards. • other topics, as specified by FNS.

(f) *Use of food service funds for training costs.* Costs associated with annual continuing education/training required under subsections (b)(3), (c) and (d) of this section must be reasonable, allocable and necessary in accordance with the cost principles set forth in 2 CFR part 225, Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A–87). Such costs may not include:

(1) Costs associated with paragraphs (b)(1)(i) through (iv) of this section.

(2) Costs associated with obtaining college credits to meet the requirements of paragraph (b)(2) of this section.

(g) *School food authority oversight.* Each school year, the school food authority shall document compliance with the requirements of this section for all staff with responsibility for school nutrition programs, including directors, managers, and staff. Documentation must be adequate to establish, to the

State's satisfaction during administrative reviews, that employees are meeting the minimum professional standards. The school food authority must certify that:

(1) The school nutrition programs director meets the hiring standards and training requirements set forth in paragraph (b) of this section; and

(2) Each employee has completed the applicable education/training required in paragraphs (c) and (d) of this section no later than the end of each school year.

■ 7. Revise § 210.32 to read as follows:

§ 210.32 OMB control numbers.

The following control numbers have been assigned to the information collection requirements in 7 CFR part 210 by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511.

7 CFR section where requirements are described	Current OMB control No.
210.3(b)	0584–0067.
210.4(b)	0584–0002.
210.5(d)	0584–0006; 0584–0002; 0584–0067; 0584–0567 (to be merged with 0584–0006).
210.7	0584–0567 (to be merged with 0584–0006).
210.8	0584–0284; 0584–0006.
210.9	0584–0006.
210.10	0584–0006; 0584–0494.
210.11	0584–0576 (to be merged with 0584–0006).
210.13	0584–0006.
210.14	0584–0006.
210.15	0584–0006.
210.17	0584–0075.
210.18	0584–0006.
210.19	0584–0006.
210.20	0584–0006; 0584–0002; 0584–0067.
210.23	0584–0006.

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

■ 8. The authority citation for part 235 continues to read as follows:

Authority: Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

■ 9. Amend § 235.4 by revising paragraph (b)(2) to read as follows:

§ 235.4 Allocation of funds to States.

* * * * *

(b) * * *

(2) $30,000 to each State which administers the Food Distribution Program (part 250 of this chapter) in schools and/or institutions which participate in programs under parts 210, 220, 226 of this chapter; provided that the State meets the training requirements set forth in § 235.11(g).

* * * * *

■ 10. Amend § 235.6 by adding a sentence at the end of paragraph (a–1) to read as follows:

§ 235.6 Use of funds.

* * * * *

(a) * * *

(a–1) * * * State agencies may also use these funds for the purposes of State director annual continuing education/training as described in § 235.11(g)(3), however costs associated with obtaining college credits are not allowable.

* * * * *

■ 11. Amend § 235.11 as follows:

■ a. In paragraph (b)(2)(iv), by removing the word ''and'' at the end;

■ b. In paragraph (b)(2)(v), by removing the period and adding ''; and'' in its place;

■ c. By adding paragraph (b)(2)(vi); and

■ d. By adding paragraph (g).

The additions read as follows:

§ 235.11 Other provisions.

* * * * *

(b) * * *

(2) * * *

(vi) Meeting the professional standards required in paragraph (g) of this section.

* * * * *

(g) *Professional standards.* State agencies must meet the hiring and training standards established by FNS.

(1) *Hiring standards for State directors of school nutrition programs.* Beginning July 1, 2015, the required minimum standards and criteria in the selection of newly hired State agency directors with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter must include:

(i) Bachelor's degree with an academic major in areas including food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(ii) Extensive relevant knowledge and experience in areas such as institutional food service operations, management, business, and/or nutrition education (experience in three or more of these areas highly recommended); and

(iii) Additional abilities and skills needed to lead, manage and supervise people to support the mission of Child Nutrition programs.

(iv) It is also strongly preferred that new hires possess:

(A) Master's degree with an academic major in areas including food and nutrition, food service management, dietetics, family and consumer sciences, nutrition education, culinary arts, business, or a related field;

(B) At least five years of experience leading people in successfully accomplishing major multi-faceted projects related to child nutrition and/or institutional foodservice management; and

(C) Professional certification in food and nutrition, food service management, school business management or a related field as determined by FNS.

(2) *Hiring standards for State directors of distributing agencies.* Beginning July 1, 2015, the required minimum standards and criteria in the selection of newly hired State agency directors with responsibility for the distribution of USDA donated foods under part 250 of this chapter must include:

(i) Bachelor's degree in any academic major;

(ii) Extensive relevant knowledge and experience in areas such as institutional food service operations, management, business, and/or nutrition education; and

(iii) Additional abilities and skills needed to lead, manage and supervise

people to support the mission of Child Nutrition programs.

(iv) It is also strongly preferred that new hires possess at least five years of experience in institutional food service operations.

(3) *Minimum required annual continuing education/training standards for State directors of school nutrition programs and distributing agencies.* Each school year, all State agency directors with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter, as well as those responsible for the distribution of USDA donated foods under part 250 of this chapter, must complete a minimum of 15 hours of training in core areas, that may include nutrition, operations, administration, communications and marketing. Additional hours and topics may be specified by FNS on an annual basis, as necessary.

(4) *Provision of annual training.* At least annually, State agencies with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter, as well as State agencies with responsibility for the distribution of USDA donated foods under part 250 of this chapter, must provide or ensure that staff receive annual continuing education/training.

(i) Each State agency with responsibility for the National School Lunch Program under part 210 of this chapter and the School Breakfast Program under part 220 of this chapter must provide a minimum of 18 hours of continuing education/training to school food authorities. Topics include administrative practices (including training in application, certification, verification, meal counting, and meal claiming procedures); the accuracy of approvals for free and reduced price meals; the identification of reimbursable meals at the point of service; nutrition; health and food safety standards; the efficient and effective use of USDA donated foods; and any other appropriate topics, as determined by FNS, to ensure program compliance and integrity.

(ii) Each State agency with responsibility for the distribution of USDA donated foods under part 250 of this chapter must provide or ensure receipt of continuing education/training to State distribution agency staff on an annual basis. Topics may include the efficient and effective use of USDA donated foods; inventory rotation and control; health and food safety standards; and any other appropriate topics, as determined by FNS, to ensure program compliance and integrity.

(5) *Records and Recordkeeping.* State agencies must annually retain records to adequately demonstrate compliance with the professional standards for State directors of school nutrition programs established in § 235.11(g).

(6) *Failure to comply.* Failure to comply with the standards in this paragraph may result in sanctions as specified in paragraph (b) of this section.

■ 12. Revise § 235.12 to read as follows:

§ 235.12 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control No.
235.3(b)	0584–0067
235.4	0584–0067
235.5(b),(d)	0584–0067
235.7(a),(b)	0584–0067
235.9(c),(d)	0584–0067
235.11	0584–0067
210.7	0584–0067

Dated: January 9, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–02278 Filed 2–3–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2013–1063; Airspace Docket No. 13–ASO–25]

RIN 2120–AA66

Proposed Amendment of Restricted Areas R–3008A, B, C, and D; Grand Bay Weapons Range, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the time of designation for restricted areas R–3008A, B, C, and D, Grand Bay Weapons Range, GA, by expanding the timeframe during which the areas may be activated without prior issuance of a Notice to Airmen (NOTAM). This change would better inform the flying public of routine use periods for the airspace as well as reduce the need to issue NOTAMs when necessary to activate the restricted areas outside the published ''core hours.''

DATES: Comments must be received on or before March 21, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–1063 and Airspace Docket No. 13–ASO–25, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. Comments on environmental and land use aspects to should be directed to:

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–1063 and Airspace Docket No. 13–ASO–25) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–1063 and Airspace Docket No. 13–ASO–25.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report

summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Restricted areas R–3008A, B, and C, Grand Bay Weapons Range, GA, were established in July 1987 (52 FR 18552). R–3008D was added in April 1994 (59 FR 10748). Originally, the time of designation for all areas was 0700–1900 Monday–Friday; other times by NOTAM 6 hours in advance. The time of designation for R–3008A, B, C and D was expanded to 0700–2200 local time Monday–Friday; other times by NOTAM 6 hours in advance to accommodate increased night flying training requirements (62 FR 67268, February 26, 1998). The restricted areas may also be activated outside the above ''core hours,'' including on weekends, provided a NOTAM is issued 6 hours in advance.

For several years, use of the restricted areas by the 23rd Wing at Moody Air Force Base, GA, has routinely extended past the charted 2200 local time on Monday through Thursday (routine use on Fridays has remained 0700–2200 local time). This requires the using agency to issue NOTAMs daily from Monday to Thursday in order to activate the airspace between 2200 and 0130 local time. In addition, current usage has shown that operations during the Monday to Thursday period normally begin at 0800 local time instead of 0700.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to change the time of designation for restricted areas R–3008A, B, C, and D, Grand Bay Weapons Range, GA, from ''0700–2200 local time, Monday–Friday; other times by NOTAM 6 hours in advance,'' to ''0800–0130 local time Monday–Thursday; 0700–2200 hours local time Friday; other times by NOTAM 6 hours in advance.'' The change would expand the time frame during which the restricted areas could be activated without prior issuance of a NOTAM.

The proposed times would capture the vast majority of the day-to-day operations currently occurring in R–3008, provide more accurate notice to the flying public of expected routine use of the airspace and reduce the time and workload needed to issue daily NOTAMs. A NOTAM would still be required to activate the airspace outside the proposed amended times, to include any weekend operations.

As with the current practice, the restricted areas would be returned to the controlling agency and made available for access by nonparticipating aircraft during periods when the airspace is not needed by the using agency.

The FAA would also make a minor editorial change to the R–3008C description by moving the wording that excludes the airspace around the city of Lakeland, GA from the ''designated altitudes'' section to the ''boundaries'' section. This change would retain the exclusion requirement, but would simply move the text to a different place in the description of R–3008C.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would amend the time of designation for restricted area R–3008 to accommodate essential military training and better inform the flying public of expected usage of the airspace.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.30 (Amended)

■ 2. § 73.30 is amended as follows:

* * * * *

1. R–3008A Grand Bay Weapons Range, GA [Amended]

By removing ''Time of designation. 0700–2200 local time, Monday-Friday; other times by NOTAM 6 hours in advance,'' and adding in its place ''Time of designation. 0800–0130 local time, Monday-Thursday; 0700–2200 local time Friday; other times by NOTAM 6 hours in advance.

2. R–3008B Grand Bay Weapons Range, GA [Amended]

By removing ''Time of designation. 0700–2200 local time, Monday-Friday; other times by NOTAM 6 hours in advance,'' and adding in its place ''Time of designation. 0800–0130 local time, Monday-Thursday; 0700–2200 local time Friday; other times by NOTAM 6 hours in advance.

3. R–3008C Grand Bay Weapons Range, GA [Amended]

By removing the current Boundaries, Designated altitudes and Time of designation, and adding in their place:

Boundaries. Beginning at lat. 31°04′01″ N., long. 83°01′00″ W.; to lat. 31°04′01″ N., long. 83°08′00″ W.; to lat. 31°02′01″ N., long. 83°09′00″ W.; to lat. 31°01′31″ N., long. 83°06′00″ W.; to lat. 30°54′31″ N., long. 83°06′00″ W.; to lat. 30°53′31″ N., long. 83°09′00″ W.; to lat. 30°51′01″ N., long. 83°08′00″ W.; to lat. 30°51′01″ N., long. 83°01′00″ W.; to the point of beginning; excluding the airspace below 1,500 feet AGL within a one nautical mile radius of lat. 31°02′31″ N., long. 83°04′15″ W (Lakeland, GA).

Designated altitudes. 500 feet AGL to 10,000 feet MSL.

Time of designation. 0800–0130 local time, Monday–Thursday; 0700–2200 local time Friday; other times by NOTAM 6 hours in advance.

4. R–3008D Grand Bay Weapons Range, GA [Amended]

By removing ''Time of designation. 0700–2200 local time, Monday-Friday; other times by NOTAM 6 hours in advance,'' and adding in its place ''Time of designation. 0800–0130 local time, Monday–Thursday; 0700–2200 local time Friday; other times by NOTAM 6 hours in advance.

Issued in Washington, DC, on January 29, 2014.

Gary A. Norek,

Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–02330 Filed 2–3–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2013–1059]

RIN 1625–AA08

Special Local Regulations for Marine Events, Tred Avon River; Between Bellevue, MD and Oxford, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the ''Oxford-Bellevue Sharkfest Swim'', a marine event to be held on the waters of the Tred Avon River on May 10, 2014. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Tred Avon River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before March 6, 2014. The Coast Guard anticipates that this proposed rule will be effective on May 10, 2014.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, email Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2013–1059] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–1059) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets

in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The current regulations under 33 CFR 100 address safety for reoccurring marine events. This marine event does not appear in the current regulations; however, as it is a regulation to provide effective control over regattas and marine parades on the navigable waters of the United States so as to insure safety of life in the regatta or marine parade area, this marine event therefore needs to be temporarily added.

C. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on navigable waters of the United States during the Oxford-Bellevue Sharkfest Swim event.

D. Discussion of Proposed Rule

On May 10, 2014, Enviro-Sports Productions, Inc. of Stinson Beach, California, is sponsoring the ''Oxford-Bellevue Sharkfest Swim'' between Bellevue, MD and Oxford, MD. The event will occur from 10 a.m. to 11 a.m. Approximately 200 amateur swimmers will compete on 1,500-meter designated course located in the Tred Avon River between Bellevue, MD and Oxford, MD. Participants will be supported by sponsor-provided watercraft. The swim course will impede the federal navigation channel.

The Coast Guard proposes to establish special local regulations on specified waters of the Tred Avon River. The regulations will be enforced from 9 a.m. to 11:59 a.m. on May 10, 2014. The regulated area includes all waters of Tred Avon River, from shoreline to shoreline, within and area bounded on the east by a line drawn from latitude 38°42′25″ N, longitude 076°10′45″ W, thence south to latitude 38°41′37″ N, longitude 076°10′26″ W, and bounded on the west by a line drawn from latitude 38°41′58″ N, longitude 076°11′04″ W, thence south to latitude 38°41′25″ N, longitude 076°10′49″ W, thence east to latitude 38°41′25″ N, longitude 076°10′30″ W, located at Oxford, MD.

The effect of this proposed rule will be to restrict general navigation in the regulated area during the event. Vessels intending to transit the Tred Avon River through the regulated area will be allowed to safely transit the regulated area only when the Coast Guard Patrol Commander has deemed it safe to do so. The Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and the official patrol on scene.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The special local regulations will be enforced for only 3 hours; (2) the regulated area has been narrowly tailored to impose the least impact on general navigation, yet provide the level of safety deemed necessary; (3) although the regulated area applies to the entire width of the Tred Avon River, persons and vessels will be able to transit safely through a portion of the regulated area once the last participant has cleared that portion of the regulated area and when the Coast Guard Patrol Commander deems it safe to do so; and (4) the Coast Guard will provide advance notification of the special local regulations to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Tred Avon River encompassed within the special local regulations from 9 a.m. to 11:59 a.m. on May 10, 2014. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

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

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children from Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary section, § 100.35–T05–1059 to read as follows:

§ 100.35–T05–1059 Special Local Regulations for Marine Events, Tred Avon River; Between Bellevue, MD and Oxford, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Tred Avon River, from shoreline to shoreline, within and area bounded on the east by a line drawn from latitude 38°42′25″ N, longitude 076°10′45″ W, thence south to latitude 38°41′37″ N, longitude 076°10′26″ W, and bounded on the west by a line drawn from latitude 38°41′58″ N, longitude 076°11′04″ W, thence south to latitude 38°41′25″ N, longitude 076°10′49″ W, thence east to latitude 38°41′25″ N, longitude 076°10′30″ W, located at Oxford, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U. S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* means all persons and vessels participating in the Oxford-Bellevue Sharkfest Swim event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) With the exception of participants, all persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard Patrol Commander may terminate the event, or the operation of any participant in the event, at any time it is deemed necessary for the protection of life or property.

(4) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) Enforcement period: This section will be enforced from 9 a.m. to 11:59 a.m. on May 10, 2014.

Dated: January 23, 2014.

Kevin C. Kiefer,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2014–02292 Filed 2–3–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 190

[EPA–HQ–OAR–2013–0689; FRL–9902–20–OAR]

RIN 2060–AR12

Environmental Radiation Protection Standards for Nuclear Power Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking (ANPR) requests public comment and information on potential approaches to updating the Environmental Protection Agency's ''Environmental Radiation Protection Standards for Nuclear Power Operations'' (40 CFR part 190). These standards, originally issued in 1977, limit radiation releases and doses to the public from normal operation of nuclear power plants and other uranium fuel cycle facilities—that is, facilities involved in the milling, conversion, fabrication, use and reprocessing of uranium fuel for generating commercial electrical power. These standards were the earliest radiation rules developed by EPA and are based on nuclear power technology and the understanding of radiation biology current at that time. The Nuclear Regulatory Commission (NRC) is responsible for implementing and enforcing these standards.

DATES: Comments must be received on or before June 4, 2014.

Additional Public Input. In addition to this ANPR, the Agency anticipates providing additional opportunities for public input. Please see the Web site for more information at: *www.epa.gov/radiation/laws/190*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0689, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center, Environmental Radiation Protection Standards for Nuclear Power Operations—Advance Notice of Proposed Rulemaking Docket, Docket ID No. EPA–HQ–OAR–2013–0689, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center, Environmental Radiation Protection Standards for Nuclear Power Operations—Advance Notice of Proposed Rulemaking Docket, Docket ID No. EPA–HQ–OAR–2013–0689, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0689. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm*.

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

FOR FURTHER INFORMATION CONTACT: Brian Littleton, EPA Office of Radiation and Indoor Air, (202) 343–9216, *littleton.brian@epa.gov*.

SUPPLEMENTARY INFORMATION:

Fact Sheets

The Agency is making several fact sheets available to assist the public in understanding the issues related to the effort to update this rule. These fact sheets are as follows:

1. ANPR Fact Sheet
2. Radiation Regulations Fact Sheet
3. Uranium Fuel Cycle Fact Sheet

These fact sheets are available on the Agency's Web site associated with this effort at: *www.epa.gov/radiation/laws/190*.

Glossary of Terms

What are the important radiation-related concepts and terms we use in this ANPR? Radiation-related terms used in this ANPR are defined below.

Absorbed dose—The amount of energy absorbed by an object or person per unit mass. This reflects the amount of energy that ionizing radiation sources deposit in materials through which they pass.

Advanced Boiling Water Reactor (ABWR)—New design of boiling water nuclear reactor which uses steam and high-pressure water to transfer energy to turbines. The NRC has detailed criteria for meeting this design in its design certification rule published in the **Federal Register** on May 12, 1997 (62 FR 25800).

Advanced Passive Reactor 1000 (AP1000)—New design of pressurized water nuclear reactor with passive safety features incorporated. It uses high-pressure water to transfer energy to a second low-pressure water loop. This secondary water is converted to steam which then drives the turbines. The NRC has detailed criteria for meeting

this design in its design certification rule published in the **Federal Register** on January 27, 2006 (71 FR 4464).

Advanced Pressurized Water Reactor (APWR)—New design of pressurized water nuclear reactor which uses high-pressure water to transfer energy to a second low-pressure water loop. This secondary water is converted to steam, which then drives the turbines. The NRC has received the U.S. APWR design certification application and is reviewing the application for compliance with NRC's regulations. The NRC has not yet certified the design under its regulations at 10 CFR part 52. However, if the NRC determines that the U.S. APWR design meets all applicable regulations, it will proceed to certify the design through the NRC's rulemaking process.

Blue Ribbon Commission (BRC)—The President's Blue Ribbon Commission on America's Nuclear Future was established as directed by the President's Memorandum for the Secretary of Energy dated January 29, 2010. The purpose of the 15-member BRC was to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle and recommend a new plan.

Boiling Water Reactor (BWR)—A type of light-water nuclear reactor design which uses steam and high pressure water to transfer energy to turbines.

Committed equivalent dose—The equivalent dose (see definition below) to a tissue or organ that will be received for a specified period of time following intake of radioactive material. The committed dose allows an accounting of the total dose from radioactive materials taken into (and held in) the body, for which the dose will be spread out in time, being gradually delivered as the radionuclide decays.

Committed effective dose (CED)—The effective dose received over a period of time by an individual from radionuclides internal to the individual following a one-year intake of those radionuclides. CED is expressed in units of sievert (SI units) or rem.

Collective dose—The sum of individual radiation doses to a specified group or population.

Curie—A unit of radioactivity, corresponding to 3.7×10^{10} disintegrations per second.

Deterministic effects—A health effect that has a clinical threshold (i.e., exposures below the threshold do not result in the effect of concern), beyond which the severity increases with the dose. Deterministic effects generally result from the receipt of a relatively high dose over a short time period. Radiation-induced cataract formation (clouding of the lens of the eye) is an example of a deterministic effect. These are also termed ''non-stochastic'' effects.

Dose, or radiation dose—A general term for absorbed dose, equivalent dose, effective dose, committed effective dose, committed equivalent dose or total effective dose as defined in this document. A measure of the energy deposited in tissue by ionizing radiation.

Dosimetry—The method used to calculate dose or other related measures of the impacts of exposure to radiation, taking into account the type of radiation and the duration and mode of exposure.

Economic Simplified Boiling Water Reactor (ESBWR)—New design of boiling water nuclear reactor which uses high-pressure steam to transfer energy to turbines. It takes advantage of natural circulation for normal operation and has passive safety features.

Effective dose (E)—This quantity, previously called the effective dose equivalent (EDE), is the weighted sum of the equivalent doses to individual organs of the body. The dose to each tissue or organ is weighted according to the risk that dose represents. These organ doses are then added together, and that total is the effective dose. The relevant units are rem or sieverts (SI units).

Equivalent dose—The product of absorbed dose (grays or rads), averaged over a tissue or organ, multiplied by a radiation weighting factor. The radiation weighting factor relates to the degree to which a type of ionizing radiation will produce biological damage. It is used because some types of radiation, such as alpha particles, are more biologically damaging to live tissue than other types of radiation when the absorbed dose from both is equal. Equivalent dose expresses, on a common scale for all ionizing radiation, the biological damage to the exposed tissue. It is expressed numerically in rems (traditional units) or sieverts (SI units). This quantity was also known as the ''dose equivalent'' until the change in terminology was adopted by the International Commission on Radiological Protection (ICRP).

Evolutionary Power Reactor (EPR)—New design of pressurized water nuclear reactor which uses high-pressure water to transfer energy to a second low-pressure water loop. This secondary water is converted to high-pressure steam which then drives the turbines.

External dose—That portion of the dose equivalent received from radiation sources outside the body.

High-level radioactive waste—The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and other highly radioactive material that the NRC, consistent with existing law, determines by rule requires permanent isolation.

Internal dose—That portion of the dose equivalent received from radioactive material taken into the body.

International Commission on Radiological Protection (ICRP)—The independent, international advisory body that develops the international system of radiological protection as a common basis for standards, legislation, guidelines, programs and practices. Recommendations of the ICRP are not legally binding but are typically given strong consideration by individual countries as representing the state-of-the-art in radiation protection.

Maximum Contaminant Level (MCL)—The highest level of a contaminant that EPA allows in drinking water.

Mixed Oxide (MOX) Fuel—Fuel fabricated from mixed uranium and plutonium oxide, which may be used in reactors.

Non-stochastic effects—Health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Non-stochastic effects generally result from the receipt of a relatively high dose over a short time period. Also called deterministic effects.

Oxidation, REduction of enriched OXide (OREOX) process—Fuel reprocessing technology which generates a mixed oxide fuel from spent nuclear fuel assemblies.

Pressurized Water Reactor (PWR)—A type of light-water reactor which uses high pressure water to transfer energy to a second low pressure water loop. This secondary water is converted to high-pressure steam which then drives the turbines.

Radionuclide Release Limits—In the context of this ANPR, the specific radionuclide release limits established under 40 CFR 190.10(b). These are the legally permissible maximum amounts of krypton-85, iodine-129, as well as plutonium-239 and other alpha emitters that can enter the environment from the processes of nuclear power operations in any given year, on an energy production basis.

Radiation effects—Health consequences from exposure to radiation. The effects may be either deterministic or stochastic.

Radiation risk—The probability or chance that a particular health effect will occur per unit dose of radiation.

Rem—The traditional unit of effective dose. It is the product of the tissue-weighted absorbed dose in rads and a radiation weighting factor, W_R, which accounts for the effectiveness of the radiation to cause biological damage; 1 rem = 0.01 Sv.

Sievert (Sv)—The sievert is the International System of Units (SI) term for the unit of effective dose and equivalent dose; 1 Sv = 1 joule/kilogram.

Spent nuclear fuel reprocessing—The initial separation of spent nuclear fuel into its constituent parts.

Spent nuclear fuel reprocessing facility—A building or complex of buildings where spent nuclear fuel reprocessing and other processes take place.

Spent nuclear fuel storage—The storage of spent nuclear fuel from nuclear fuel cycle and power operations. Storage can include the temporary holding of spent nuclear fuel after it has been removed from the nuclear reactor, up to and including any storage of spent nuclear fuel prior to final disposal. On-site storage at a nuclear power plant may include the spent nuclear fuel pools, where the spent nuclear fuel is held immediately after removal from the reactor for several years of initial cooling, as well as subsequent storage, for example, in large concrete and metal dry storage casks and vaults. This term would also apply to storage at any potential facility designed for the storage of spent nuclear fuel prior to its final disposition.

Stochastic effect (of radiation)—Malignant disease and heritable effects for which the probability of an effect occurring, but not its severity, is assumed to be a function of dose without threshold as a conservative planning base.

TED (total effective dose)—The sum of the effective dose (for external exposures) and the committed effective dose (for internal exposures).

Underground Source of Drinking Water (USDW)—An aquifer or part of an aquifer which (a) supplies any public water system or contains a sufficient quantity of ground water to supply a public water system and currently supplies drinking water for human consumption or contains fewer than 10,000 milligrams/liter of Total Dissolved Solids (TDS); and (b) is not an exempted aquifer (see 40 CFR 144.3 for a complete definition).

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I. Background

A. What is the basis for the existing standards? How do the standards apply and what do they require?

1. Statutory Authority

Section 161(b) of the Atomic Energy Act of 1954 (AEA) authorized the Atomic Energy Commission (AEC) to ''establish by rule, regulation, or order, such standards and instructions to govern the possession and use of special nuclear material, source material, and byproduct material as the Commission may deem necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property[.]'' 42 U.S.C. 2201(b) (1958). In Reorganization Plan No. 3 of 1970, President Nixon transferred to EPA ''[t]he functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, . . . to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material.'' § 2(a)(6), 35 FR 15623, 15624 (Oct. 6, 1970) (''Reorganization Plan''). The Reorganization Plan defined ''standards'' to mean ''limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.'' *Id.* This transferred to EPA the portion of the AEC's authority under AEA section 161(b) that ''consist[ed] of establishing generally applicable environmental standards for the protection of the general environment from radioactive material.'' Reorganization Plan § 2(a)(6); *Quivira Mining* v. *U.S. Envt'l Prot. Agency,* 728 F.2d 477, 480 (10th Cir. 1984) (recognizing that the Reorganization Plan transferred to EPA certain AEA functions under AEA § 161(b)). Relying on this authority, EPA promulgated standards in 1977 to protect the public from exposure to radiation from the uranium fuel cycle at 40 CFR part 190, ''Environmental Radiation Protection Standards for Nuclear Power Operations.''

2. History of the Standards

On May 10, 1974, the Agency published an advance notice of its intent to propose standards under this authority for the uranium fuel cycle and invited public participation in the formulation of this proposed rule (39 FR 16906). On May 29, 1975, EPA proposed regulations setting forth such standards (40 FR 23420). The Agency promulgated the environmental radiation standards in final form in 1977 (42 FR 2860, January 13, 1977). The standards specify the levels of public exposure and environmental releases below which normal operations of the uranium fuel cycle are determined to be environmentally acceptable. These standards have not been revised since their initial publication.

3. Scope and Content of the Standards

The existing standards apply to nuclear power operations, which are those operations defined to be associated with the normal production of electrical power for public use by any nuclear fuel cycle through utilization of nuclear energy. In 1977, the only nuclear fuel cycle in production within the U.S. was the uranium fuel cycle;

thus, EPA developed specific standards for this industry. The uranium fuel cycle is defined as the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these directly support the production of electrical power for public use utilizing nuclear energy, but excludes mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations, and the reuse of recovered non-uranium special nuclear and by-product materials from the cycle. (Commercial reprocessing has not occurred within the U.S. since the publication of the existing standards.) The Agency has developed some supporting information to help the public further understand the uranium fuel cycle which is located on the Agency's Web site for this rulemaking at *www.epa.gov/radiation/laws/190*. The existing standards do not address two other aspects of nuclear power production: The disposal of radioactive waste and the decommissioning of facilities.

The regulation contains two main provisions: A dose limit to members of the public, and a radionuclide release limit to the environment. The provision specified in 40 CFR 190.10(a) limits the annual dose to any member of the public from exposures to planned releases from uranium fuel cycle facilities to 25 millirem (mrem) to the whole body, 75 mrem to the thyroid, and 25 mrem to any other organ. Additionally, the provision specified in 40 CFR 190.10(b) limits the total quantity of radioactive material releases for the entire uranium fuel cycle, per gigawatt-year of electrical energy produced, to less than 50,000 curies of krypton-85, 5 millicuries of iodine-129 and 0.5 millicuries combined of plutonium-239 and other alpha-emitting transuranic radionuclides with half-lives greater than one year.

4. Technical Basis for the Standards

The document *Environmental Radiation Protection Requirements for Normal Operations of Activities in the Uranium Fuel Cycle: Final Environmental Statement* (FES) (EPA Publication no. 520/4–76–016, 1976) provided the basis for developing 40 CFR part 190. This document states that at that time there were three fuels available for commercial nuclear power: Uranium-235, uranium-233 and plutonium-239. The first of these materials occurs naturally and the last two occur as products and/or by-products in uranium-fueled reactors (uranium-233 is the product of neutron irradiation of thorium-232). In the United States, the early development of technology for the nuclear generation of electric power focused around the light-water-cooled nuclear reactor (LWR), which utilizes uranium-235 fuel. For this reason, the standards considered only the use of enriched uranium-235 as fuel for the generation of electricity.

Additionally, the EPA projected that well over 300,000 megawatts (300 gigawatts) of nuclear electric generating capacity would exist within the next twenty years.[1] The part of the standards that pertain to the end of the fuel cycle relied on two assumptions: The availability of commercial nuclear reprocessing and the existence of a repository for final disposition for spent nuclear fuel and high-level radioactive wastes. The FES and supporting technical studies, which form the basis for the 40 CFR part 190 standards, include calculations of projected releases into the environment based on estimates of the growth of the nuclear industry. None of these assumptions has materialized.

B. Why is the Agency considering updating/revising the standards?

1. What has changed and why could these changes be important?

The standards developed under 40 CFR part 190 were never intended to be static. The 1975 proposal (40 FR 23420, May 29, 1975) stated: ''it is the intent of the Agency to maintain a continuing review of the appropriateness of these environmental radiation standards and to formally review them at least every five years and to revise them, if necessary, on the basis of information that develops in the interval.'' However, given the relatively limited change in the nuclear power industry in the intervening decades, we continued to believe that these standards remained protective of public health and the environment so we did not consider it necessary to update the standards. Nonetheless, we recognize that they do not reflect the most recent scientific information, and that this may be an opportune time to conduct a thorough review of their continued applicability. Therefore, the EPA is issuing this ANPR at this time for a number of reasons, including:

- *Projected Growth of Nuclear Power.* Growing concern about greenhouse gas emissions from fossil fuels has led to renewed interest in nuclear power. Nuclear energy emits very low levels of greenhouse gases, and unlike solar and wind power, provides a proven source of electricity capable of supplying a base-load that is not subject to varying weather conditions. The nuclear industry anticipates a demand for construction of several new nuclear power plants in the next 10 years. Increased demand would likely result in the construction and start-up of any additional facilities to support the fuel cycle for LWRs. Other parts of the fuel cycle are experiencing growth as well. For example, new uranium enrichment facilities are coming on line, such as the facility in Eunice, New Mexico by Louisiana Enrichment Services (Urenco USA). The facility was licensed by the NRC in 2006, began operations in 2010, and is an indication of the industry's improved outlook. The licensing and operation of spent nuclear fuel reprocessing facilities are not expected in the near future.
- *Advances in Radiation Protection and Dosimetry Science.* National and international guidance on radiation protection have had three significant revisions since 40 CFR part 190 was issued. In the 1980s, the organ dose-based system used in 40 CFR part 190 was replaced with a system that integrated organ doses into a single expression of dose, which employed mortality risk-based weighting factors such that the dose term was a surrogate for risk *(International Commission on Radiological Protection (ICRP) Publications 26 and 30).* This new approach allowed the use of one dose limit for all radionuclides taken into the body, as well as for external exposures. Individual dose factors were established for all radionuclides and weighting factors for various organs were risk-based. Numerous regulations used this methodology, including NRC's 10 CFR part 20, and EPA's 40 CFR part 61 radionuclide emission standards. In addition, this methodology was used in EPA's internal and external dose factors in *Federal Guidance Report Nos. 11 and 12*. In the 1990s, ICRP improved the dosimetry models for ingestion and inhalation, expanded the number of organ-specific weighting factors and revised them to be based on new mortality and morbidity data. The risk factors in EPA *Federal Guidance Report No. 13* were based on this new dosimetry. In 2007, ICRP 103 was issued and the associated dosimetry is under development. In addition to improved

[1] The total current U.S. generating capacity is approximately 101 gigawatts for 2010 based on data provided by U.S. Energy Information Administration: *www.eia.gov/cneaf/nuclear/page/nuc_generation/gensum.html.*

intake data and models, ICRP also addressed age- and gender-specific elements in the models. This information will be the basis for revising existing *Federal Guidance Reports,* which include radionuclide specific dose and risk factors.

• *Advances in Radiation Risk Science.* Advances in radiation risk science since 1977 have led to a better understanding of the health risks from ionizing radiation in general, as well as from specific radionuclides. Improved tools and methods for calculating radiation exposure have also become available. These advancements make more sophisticated radiological risk assessments possible. The Agency intends to review this standard to ensure its continued protectiveness in light of these advances. The Agency believes that the science used for the regulation is out of date and should be updated.

• *On-site Storage of Spent Nuclear Fuel.* The 1977 standards were based on the assumption that most spent nuclear fuel would be reprocessed following short-term storage on-site and that the U.S. would have a national repository for permanent disposal of high-level radioactive wastes and any remaining spent nuclear fuel in a time frame that would eliminate the need for longer-term storage. However, spent nuclear fuel currently is held at nuclear power plants in spent nuclear fuel storage casks or in storage pools as the U.S. determines a long-term disposal solution. Increased interest in nuclear power has also raised the prospect of commercial reprocessing of spent nuclear fuel. Nevertheless, near-term projections indicate that spent nuclear fuel could remain on site at the power plants during the operational life of existing nuclear power plants and into (or beyond) the decommissioning phase. The President's Blue Ribbon Commission on America's Nuclear Future has also identified this as an issue, especially for decommissioned facilities.

• *Extension of Nuclear Reactor Licenses.* Many of the nuclear reactors in the U.S. were built in the 1960s and 1970s. These reactors either are approaching their initial 40-year operational license limit, or they have exceeded this time period and continue to operate under license renewals. Regardless of the age of the reactor (or other facility), any U.S. reactor would still need to meet the EPA standards.

• *Ground Water.* Ground water contamination has been identified at a number of nuclear power plants and nuclear fuel cycle facilities. The existing standard contains release limits that were intended to address the issue of long-lived radionuclides in the environment. However, the rule was developed under the assumption that air was the primary exposure pathway, and in contrast to more recent EPA radiation standards, it does not include a separate provision for protecting ground water outside facility boundaries that could be a current or future source of drinking water. The Agency is considering whether, and if so, how to develop a ground water provision.

2. Guiding Principles for Review of the Existing Standards

This review of the existing standards has two key principles. The first is that a thorough assessment of the potential impact on public health should be based on an up-to-date consensus of currently available scientific knowledge. The second is that careful consideration should be given to the cost and effectiveness of measures available to reduce or eliminate radioactive releases to the environment. In the development of the existing standards, the Agency found it necessary to ''balance the health risks associated with any level of exposure against the costs of achieving that level'' (39 FR 16906, May 10, 1974). The standard-setting method conducted in the current standards has been ''best characterized as cost-effective health risk minimization'' (*Final Environmental Statement,* 1976, Vol. 1, p. 28). As the Agency considers these principles, we are committed to ensuring that any revision is based on current science to the extent practicable and remains protective of public health and the environment while seeking alternative ways (methodologies), within the Agency's authorities, to limit public exposure. The Agency may revise several of the technical criteria used as a basis for the existing regulation or add new criteria to the regulation.

C. What is the purpose of this ANPR and how will the Agency use the information?

This Advance Notice of Proposed Rulemaking is being published to inform stakeholders, including federal and state entities, the nuclear industry, the public and any interested groups, that the Agency is reviewing the existing standards to determine how the standards should be updated. As noted earlier, EPA believes the existing standards remain protective of public health and the environment; however, the Agency also believes that the changes mentioned above are sufficient to warrant a review of the standards and solicit public input on possible updates. EPA has identified six broad topics that it believes capture the issues of most importance for a review of the existing standards. The Agency is requesting public comment on these specific topics; however, members of the public are welcome to comment on other aspects related to the nuclear fuel cycle that they believe EPA should consider.

If the Agency decides to revise the existing standards, then the Agency would follow the procedures outlined in the AEA and the Administrative Procedure Act (APA) and publish a proposed rule in the **Federal Register**. Comments received on the ANPR will inform the development of a proposed rule and be used by the Agency to provide a clearer understanding of science, technology and other concerns and perspectives of stakeholders. The Agency will not respond directly to comments submitted on this ANPR. However, the public would have the opportunity to submit written comments on any proposed rule that might be developed.

D. How can the public comment on the ANPR and get additional information?

The Agency welcomes comments on this ANPR as it reviews the existing standards. EPA has set up a Web site for the public to access the most up-to-date information regarding our review of these standards. This site contains detailed information related to this rule and any potential revision, including: a copy of the existing standards, copies of the *Final Environmental Statements* and the *Supplemental Environmental Statement* on which the existing standards are based, as well as related fact sheets.

EPA plans to conduct public webinars to discuss specific issues on which the Agency is seeking comment. Dates, times and presentation materials for the webinars will be available on the Web site at: *www.epa.gov/radiation/laws/190*.

II. Issues for Public Comment

A. Issue 1—Consideration of a Risk Limit To Protect Individuals. Should the Agency express its limits for the purpose of this regulation in terms of radiation risk or radiation dose?

1. Why is this issue important?

The purpose of the 40 CFR part 190 environmental standards is to protect human health and the environment. Although the current compliance metric for worldwide radiation standards is, and traditionally has been, either radiation dose or some measurable concentration or activity level, the Agency desires feedback to determine the feasibility of expressing its limits for

the purpose of this regulation in terms of radiation risk.

Conformance with regulatory public dose limits has traditionally been demonstrated through modeling calculations and subsequent personal, environmental or emissions monitoring. Compliance with a risk-based standard would be accomplished in a similar manner and the limits would be expressed as the maximum risk that could be allowed to the receptor from radiation exposures at any given facility under regulatory control.

2. What concepts are important to understanding this issue?

The primary concern from radiation exposure at the levels relevant for non-emergency situations is the increased risk of cancer. Two forms of radiation exposure, internal and external exposure, can occur depending upon the location of the source relative to the receptor. Internal exposures occur when a person inhales or ingests contaminated air, food, water or soil. External exposures occur because a person is near sources of radioactivity which are emitting penetrating radiation, such as x-rays, gamma rays, beta particles or neutrons. It should be noted that since the rule limits itself to the uranium fuel cycle, sources of radiation from machines, such as x-ray units and particle accelerators, are not covered by EPA standards. The term ''radiation dose,'' as used in dose standards, is a risk-weighted measure derived from the physical quantity of absorbed dose to an organ or tissue. As defined in this ANPR, ''radiation risk'' is the probability of an individual incurring a particular health effect per dose of radiation. Both dose and risk are commonly expressed over a lifetime or annualized depending on regulatory implementation.

3. What does 40 CFR part 190 say and what is basis of the existing standards?

The existing standards have two components limiting exposures to the public. The first is a dose limit to members of the public, while the second is a limit on the quantity released of certain radionuclides or forms of radioactivity into the environment. The provision specified in 40 CFR 190.10(a) limits the annual dose to any member of the public from exposures to planned releases from uranium fuel cycle facilities to 25 mrem to the whole body, 75 mrem to the thyroid and 25 mrem to any other organ. The provision specified in 40 CFR 190.10(b) limits the total quantity of radioactive material releases for the entire uranium fuel cycle, per gigawatt-year of electrical energy produced, to less than 50,000 curies of krypton-85, 5 millicuries of iodine-129 and 0.5 millicuries combined of plutonium-239 and other alpha-emitting transuranic radionuclides with half-lives greater than one year. Though views of risks have changed since 1977, the limits in 40 CFR 190.10(a) and (b) have as a basis a consideration of acceptable risk which served as a guide in developing the limits.

4. What Agency and national policies and approaches could be relevant?

EPA considers risk in establishing standards and requirements across programs and environmental media. Consistent with this practice, the Agency has stated radiation-specific standards for protection of individuals in terms of dose, based on the underlying risk level.

If the Agency should decide to retain a dose standard in 40 CFR part 190, that standard would be related to a level of health risk. In some cases, standards are expressed in terms of environmental flux (release rate) or concentration of radionuclides in the environment, but are also related to health impacts.

EPA has heard from some stakeholders that a standard expressed as a level of risk could be more understandable for those less familiar with radiation science, as it would more clearly state the health outcome that the Agency views as acceptable. EPA believes it would also assist commenters in evaluating the merits of a risk standard if the Agency referred to the reasoning employed by the National Research Council/National Academy of Sciences (the NAS committee) in its 1995 report, *Technical Bases for Yucca Mountain Standards*. The NAS committee recommended that EPA adopt a standard expressed as risk for two reasons. First, a risk standard is advantageous relative to a dose-based standard because it represents a societal judgment regarding health impacts and therefore ''would not have to be revised in subsequent rulemakings if advances in scientific knowledge reveal that the dose-response relationship is different from that envisaged today.'' Second, a standard in the form of risk more readily enables the public to comprehend and compare the standard with human-health risks from other sources (*Technical Bases for Yucca Mountain Standards,* 1995, 64–65).[2]

5. How would a risk standard compare to a dose standard?

Planned or routine releases of radionuclides from nuclear fuel cycle facilities represent low-level ionizing radiation exposures to the public. As such, these non-emergency releases represent a potential increased risk of cancer to the public. Once an acceptable level of protection is identified, it may be translated to a release rate, as radionuclide concentrations in specific media, or another measurable unit, which can then serve as a regulatory limit expressed over time. Alternatively, site-specific modeling may be employed, based on measured releases, to calculate a dose or risk for comparison to the regulatory standard. This general approach to implementation would be used whether the standard is expressed in terms of risk or dose. As noted earlier, the compliance metric for radiation standards has more traditionally been either radiation dose or some measurable concentration or activity level.

Both calculated doses and risks from radiation exposure differ depending on the specific radionuclides involved, as well as the pathways of exposure. The same activity level received by an exposed individual from different radionuclides or through different pathways leads to a different dose and carries different risks. If someone is exposed to multiple radionuclides, the risk of adverse health effects is determined by summing the risks from each radionuclide involved in the exposure. The primary technical difference between a risk standard and a dose standard is that the relationship between risk and dose has varied over time.[3] Should this trend continue, there is the potential for a dose standard to diverge over time from its original underlying risk level. In contrast, a risk standard represents a constant level of risk, regardless of the type of facility, mix of radionuclides or changes in the underlying science involved in estimating the risk. Because it directly states the expectation for health outcome rather than relying on an overall correlation, it would typically not require an update, unless there are changes in what society deems an acceptable risk. If the standard were implemented by rule using measurable quantities such as effluent limits, however, these criteria would need to be updated, as they would be if a dose

[2] A different NAS committee expressed similar views in a 2002 report, *The Disposition Dilemma,* pp. 33–34.

[3] For example, the estimated risk of fatal cancer per rem of exposure increased in each of our three rulemakings for high-level radioactive waste (1985, 1993, 2001).

standard changes. We are interested in stakeholder views on how this updating process might differ for a risk or dose standard.

Although our experience is that the risk per unit dose has generally increased over the years, the possibility also exists that further research may show that cancer risks are overestimated for a given dose or for certain radionuclides or exposure pathways. Another aspect to consider when assessing whether a risk standard would be appropriate is whether cancer morbidity (incidence) or cancer mortality (fatality) should be used as the basis for establishing any risk standard. While EPA often relies upon morbidity information for chemical carcinogens, the Agency has used mortality data as the basis of both its standards for disposal of transuranic and high-level radioactive wastes (40 CFR part 191) and the Yucca Mountain standards (40 CFR part 197). One factor to consider is that there appears to be increasing divergence between morbidity and mortality; in other words, estimates of cancer incidence from exposure to radiation continue to increase, but cancer fatality has grown at a slower rate or been reduced (*EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population,* 2011). As a result, the Agency will take comment on whether morbidity data or mortality data, or a combination, would be more appropriate for the establishment of a potential risk standard.

Although a risk standard, like a dose standard, would generally be implemented through modeling and the derivation of measurable quantities, the Agency is also aware that there may be some challenges specific to a risk standard, especially given that the regulatory system is based on dose, which is far more familiar to the radiation protection community and industry practice. If a standard were developed in the form of a risk level that was not to be exceeded, then any meaningful discussion on implementation would need to address how the risk would be translated into measurable quantities such as an effluent release rate into the environment, a concentration in environmental media, an intake by an individual or external radiation exposure at specific locations or to specific persons. As is the case with the current dose standard, proof of compliance would most likely rely heavily on the use of modeling results coupled with effluent data. Any accepted modeling use would need to be either detailed within the standard, or detailed by the implementing federal agency, possibly through development of subsequent regulations.

As discussed earlier, the Agency recognizes that different radionuclides contribute to potential exposures. EPA further recognizes that different radionuclides are predominant at the different types of facilities within the nuclear fuel cycle. If the Agency were to move toward a risk standard, the Agency would conduct an analysis of the dose-risk relationship at the different types of facilities. What issues would the Agency need to consider with the implementation of a risk standard at the different facilities? For example, would the radionuclides of most concern for a given fuel cycle facility have different risk implications for different fuel cycle facilities? Could NRC implement a risk standard by establishing a corresponding dose limit that it determines would keep risks under the risk standard?

While the Agency has not determined whether the technical merits or costs associated with developing a risk standard warrant a change from the traditional dose limits, the Agency believes it is reasonable to take comment at this time on how a potential risk limit may be implemented. Such a discussion could also inform the consideration of costs of implementing a risk standard.

EPA also notes that both national and international radiation protection guidelines developed by bodies of non-governmental radiation experts, such as the ICRP and the National Council on Radiation Protection and Measurements (NCRP), generally recommend that radiation standards be established in terms of dose. National and international radiation standards, including the individual protection requirements in 40 CFR part 191, ''Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Waste'', are established almost solely in terms of dose or concentration, not risk. Therefore, a risk standard would not allow a convenient comparison with the numerous existing dose guidelines and standards, nor with other sources of radiation exposure, but it would more readily allow comparisons to other EPA risk management decisions for chemicals.

Lastly, it is important to note the potential costs that could be associated with moving from a dose standard to a risk standard. At the time of publication of this ANPR, the Agency has no information regarding potential costs to the regulated community. The Agency is seeking any data that are available on these potential costs.

6. Questions for Public Comment

As the Agency considers the issue of establishing a standard expressed in terms of risk, we believe it to be appropriate to better understand the merits of this approach. The industry currently uses a dose limit, and the Agency is seeking information on how the industry would be affected by this change.

Consequently, the Agency is seeking input on the following questions:

a. *Should the Agency express its limit for the purpose of this regulation in terms of radiation risk or radiation dose?*

b. *Should the Agency base any risk standard on cancer morbidity or cancer mortality? What would be the advantages or disadvantages of each?*

c. *How might implementation of a risk limit be carried out? How might a risk standard affect other federal regulations and guidance?*

B. Issue 2—Updated Dose Methodology (Dosimetry). How should the Agency update the radiation dosimetry methodology incorporated in the standard?

1. Why is this issue important?

The dosimetry used for the existing standards is outdated. Since the development of the existing dose standard, the methodology to calculate radiation exposure has changed with scientific progress. The existing standard has separate limits for exposure of the whole body and exposure of specific organs. More recent dosimetry accounts for both types of exposures in a single numerical value that provides more consistency and allows easier comparison of radiation exposures, regardless of whether they are internal or external, or whether they are likely to affect single or multiple organs. Newer dosimetry approaches also reflect a better understanding of the different sensitivity of various organs and allow more sophisticated calculations of the impacts to individuals and even to specialized groups (i.e., children, sensitive subpopulations).

2. What does the existing standard say? What is the technical basis?

The standard in 40 CFR 190.10(a) states: ''The annual dose equivalent [must] not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as the result of exposures to planned discharges of

radioactive materials, radon and its daughters excepted, to the general environment from uranium fuel cycle operations and to radiation from these operations.'' These limits were based on the *Federal Radiation Protection Guidance* in existence at that time (26 FR 4402, May 18, 1960 and 26 FR 9057, September 26, 1961).

The federal guidance documents, in turn, were based on recommendations of the ICRP, which provides expert guidance on dose limits in view of the current understanding of dose-response relationships for exposure to ionizing radiation. Many international standards and national regulations addressing radiological protection are based on or take into account the ICRP's recommendations. The guidance in effect during the development of the proposed [4] standards—ICRP Publication 2 (1959)—recommended dose limits aimed at avoiding deterministic effects and limiting stochastic effects, including leukemia and other cancers, as well as genetic effects. The dose limitation system at that time was based on the concept of the critical organ, defined as the organ or tissue most susceptible to damage from radiation. Separate dose limits were set for different groups of tissues, taking into account the potential for different types of radiation to cause greater damage depending on the mode of exposure. For example, alpha radiation poses less risk for external—or whole body—exposure because it is easily shielded even by the skin, but can cause greater damage to critical organs than other types of radiation when inhaled or ingested. These concepts, underlying the ICRP recommendations at the time, served as the basis of the existing dose limits to members of the public in 40 CFR part 190.

3. What has changed and how are those changes important?

Since the publication of the existing regulation, advancements have been made in understanding radiation dosimetry. The ICRP updated its recommendations to reflect a better understanding of the different sensitivity of various organs and of the risks from different types of radiation. Of primary importance is that the critical organ concept was abandoned in favor of a new concept referred to as the effective dose equivalent (ICRP Publication 26, 1977). This new concept, later renamed effective dose (ICRP Publication 60, 1991), provides a single dose indicator that accommodates different types of radiation as well as different modes of exposure. The use of a unified dose facilitates understanding and comparison of the radiation exposures, regardless of whether they are internal or external, or whether they are likely to affect single or multiple organs. Further studies since the 1977 rule have also reinforced that some populations, such as pregnant women and children, are more sensitive to radiation and have allowed more specific calculations of risks to such groups. Such information is not reflected in the dose limits—or their form—in the existing uranium fuel cycle standards, which are based on the older ''critical organ'' system. Beyond the fact that the existing standards do not reflect the most recent scientific understanding, the use of an outmoded system also poses some compliance challenges. The models and methods to predict the dispersion of radionuclides, the modes of exposure, and the movement of radionuclides through the body (biokinetics) are more advanced today than in the past. However, the most sophisticated models are tailored to work with the more recent dosimetry systems and are not always compatible to assess compliance with limits expressed in the older systems. At the same time, the older models are less and less supported. This means that compliance assessments for the existing dose limit cannot take advantage of the best implementation tools. Thus, for reasons both scientific and practical, we believe it is worthwhile to consider how to update the dose methodology if the rule is revised.

4. What policies and approaches are relevant?

As noted above, EPA's dose limits take into account recommendations of the ICRP, which has updated its guidance documents several times since 40 CFR part 190 was issued. ICRP Publication 26 (1977) abandoned the critical organ concept of ICRP Publication 2 in favor of a new concept referred to as the effective dose equivalent (now called effective dose). The effective dose is a weighted sum of tissue doses intended to represent the same cancer risk from a non-uniform irradiation of the body as that from uniform whole body irradiation.[5] The effective dose concept has been used in all subsequent ICRP publications to date.

The ICRP guidance was updated beyond ICRP 26 and expanded with ICRP Publication 60 (1991), based on additional information on the sensitivity of different tissues and organs in the body. ICRP 60 also made it possible to develop age- and gender-specific dose estimates. ICRP 60 has been widely implemented worldwide and serves as the basis for EPA radiation dose standards, notably the amended Yucca Mountain standards issued in 2008.

The Agency has explained its adoption of the effective dose concept in previous rulemakings. In the Agency's 1989 Clean Air Act (CAA) rulemaking establishing National Emissions Standards for Hazardous Air Pollutants (NESHAPs) in 40 CFR part 61, Subpart I,[6] EPA said the following about effective dose equivalent (54 FR 51662, December 15, 1989):

> Since 1985, when EPA proposed dose standards regulating NRC licensees and DOE facilities, a different methodology for calculating dose has come into widespread use, the effective dose equivalent (EDE). In 1987, EPA, in recommending to the President new guidance for workers occupationally exposed to radiation, accepted this methodology for the regulation of risks from radiation. This method, which was originally developed by the International Commission on Radiological Protection, will be used by EPA in all the dose standards promulgated in this ANPR. In the past, EPA dose standards were specified in terms of limits for specific organ doses and the 'whole body dose', a methodology which is no longer consistent with current practices of radiation protection.
>
> The EDE is simple, is more closely related to risk, and is recommended by the leading national and international advisory bodies. By changing to this new methodology, EPA will be converting to the commonly accepted international method for calculating dose. This will make it easier for the regulated community to understand and comply with our standards.
>
> The EDE is the weighted sum of the doses to individual organs of the body. The dose to each organ is weighted according to the risk that dose represents. These organ doses are then added together, and that total is the effective dose equivalent. In this manner, the risk from different sources of radiation can be controlled by a single standard.

[4] In the interim between publication of the proposed rule and publication of the final 40 CFR part 190 standards, ICRP 26 was finalized (adopted Jan 17, 1977). However sufficient time was not available to incorporate the ICRP 26 findings, and the Agency went forth with finalization of the proposed rule which was based on ICRP 2.

[5] In actuality, the weighting factors used to calculate effective dose equivalent are not sufficiently precise to equate risks for a given dose. The ''true'' risk is best calculated using radionuclide-specific, pathway-specific analyses and absorbed dose to an organ or whole body.

[6] Subpart I established standards for air emissions from NRC licensees, including uranium fuel cycle facilities, and non-DOE federal facilities not licensed by NRC. Subpart I was later rescinded based on the Administrator's conclusion that NRC's regulatory implementation protected public health with ''an ample margin of safety'' (60 FR 46206, September 5, 1995, and 61 FR 68972, December 30, 1996). Subpart I established standards for the air pathway of 10 mrem/year EDE, with no more than 3 mrem/year EDE from radioiodine.

This rulemaking (54 FR 51662) also noted that the EPA Science Advisory Board (SAB) commented that ''EPA should use the effective dose equivalent concept for regulations protecting people from exposure to radiation.''

The latest update, in ICRP Publication 103 (2007), provided updated radiation protection guidance, including new tissue weighting (i.e., sensitivity) factors, but left the primary radiation protection guidance from 1991 virtually unchanged. ICRP 103 is the most recent guidance but, as discussed in more detail below, has not been applied in EPA regulations to date.

Other EPA policies are also relevant because, while the Agency takes into account ICRP guidance, regulatory limits must reflect additional factors. The ICRP recommended—in both Publication 60 and Publication 103—that public exposures be limited to 100 mrem (0.001 Sv) per year. However, this applies in principle to *all* man-made sources of radiation. In setting regulatory limits, we allow only a fraction of 100 mrem from a single source, such as a uranium fuel cycle facility. As discussed further in section II.A of this ANPR (''Consideration of a Risk Limit to Protect Individuals''), the dose limits used in our radiation regulations are based on an assessment of the associated risks. In the past, based on ICRP 26, EPA radiation policies and regulations have used 15 mrem/year as a dose limit that aligns with the Agency's goals and corresponds to a limit of 25 mrem to the whole body and 75 mrem to any organ under the obsolete dose methodology for certain regulatory applications.[7] The corresponding dose under ICRP 103 has not been established. EPA is reviewing the implications of ICRP 103 for our revised dose and risk estimates. EPA will address the issue in a rulemaking if one is pursued.

It should be noted that the Agency does not have established policies or guidance on the application of age- and gender-specific dose calculations to determine compliance with a dose standard.[8] However, we are considering the application of age- and gender-specific dose calculations to determine compliance with the dose standard. Whether expressed in terms of risk or dose, the standard must identify the person(s) against whom compliance will be assessed. The standards at 40 CFR part 190 currently specify that the dose standard applies to ''any member of the public.'' We have several other ''any member of the public'' standards that specify the use of ICRP 26 dosimetry and an associated concept, the ''reference man.'' Concerns have been raised that the ''reference man'' concept, combined with the fact that neither the ICRP 26 dosimetry nor the ICRP 2 methodology can provide age- and gender-specific calculations, does not assure that children or other vulnerable population segments are protected or adequately considered. The models beginning with ICRP 60 are able to address different age and gender cohorts, which allows the differing impact of radiation exposures to be evaluated. More specifically, ICRP Publication 89 (2002) provides anatomical and physiological data for males and females at ages newborn, 1 year, 5 years, 10 years, 15 years and adult that allow for age- and gender-specific estimates of dose to be calculated for these reference individuals. We note that, while the current standard is presented as an annual dose, it is established at a level that provides protection for an individual over a lifetime (i.e., at all ages). Nevertheless, we are examining the issue to confirm the protectiveness of our standards as written for all segments of the population. Specifically, we are modifying the computer model CAP–88 PC, which is used to determine compliance with Clean Air Act radionuclide emission standards, to evaluate the relationship between radionuclide intake and dose for different age groups. This technical study will inform our review of our radiation protection policies, and we will make our findings available to the public. We anticipate that this question will be addressed broadly within the Agency to identify the most appropriate approach to resolving the issue as a whole, rather than for each individual rule. However, comments on the use of reference man or the appropriateness of specifying age- and gender-specific dose calculations are welcome. Such comments will be considered both in the context of this rule and as part of the overall Agency discussion on the topic.

5. What aspects of this issue are most important and what options might be considered to address this issue in any revised standards?

The Agency intends to review this portion of the regulation to ensure its continued protectiveness in light of these technological advances. We acknowledge that the dose methodology on which the existing standard is based is now outmoded, and compliance with the existing standard poses some implementation challenges. These challenges are proving compliance with an organ-specific dose limit and with the current suite of compliance models using an effective dose methodology. As an example, most health physicists conducting compliance at nuclear power plant facilities are trained in the calculation and use of effective dose. Requiring compliance with an organ-specific dose necessitates the use of a different calculating technique, and potentially requires additional training. If the rule is revised, there would be little justification for retaining outdated science as the basis for dose limits. Therefore, the primary question is how the Agency would reflect more recent dose methodology. There are arguments to be made for using either ICRP 60 or ICRP 103, or for providing flexibility without specifying the ICRP basis.

As noted earlier, there is considerable experience worldwide in implementing the recommendations of ICRP 60. The EPA has issued guidance documents to allow detailed dose calculations for specific exposure situations, such as would be needed to determine compliance at a nuclear fuel cycle facility. A basis for calculating risks to more sensitive populations has also been developed, though (as noted earlier) there is not clear guidance on how, if at all, such information should be used in regulations.

The nuclear industry is familiar with the guidance and has experience in using compliance and assessment tools that are compatible with the ICRP 60 risk basis. Relying on ICRP 60 as the basis for a revised rule would eliminate any reference to an outdated individual organ calculation. The methodology is biologically and physically robust in its approach and has been properly peer-reviewed, implemented and supported by the publication of important federal guidance. This approach would provide a well-established methodology and compliance tools using science that is considerably more advanced than that used currently in 40 CFR part 190—but not the absolute most recent science.

Using the most recent science—which, in principle, is the preferred approach—would imply that ICRP 103 should be adopted as the basis for any revised rule. Unfortunately, ICRP 103 has not been widely utilized because the ICRP has yet to provide the detailed information needed for full implementation of the most recent dose coefficients for specific radionuclides

[7] See OSWER Directive 9200.4–18, EPA's Yucca Mountain standards at 40 CFR part 197, and the preamble to the 1993 revision of the 40 CFR part 191 standards [58 FR 66411, December 20, 1993].

[8] The Agency's ''Guidelines for Carcinogen Risk Assessment'' (2005) provide age-specific adjustments for carcinogens with a mutagenic mode of action for chemical carcinogens. Regulatory applications for radioactive compounds have not been determined.

and organs. Factors and biokinetic models to support such calculations are anticipated in future ICRP publications but have not yet been released, so there is a lack of appropriate modeling and compliance tools now available. Furthermore, in order to provide the complete set of tools for calculating dose to different population age groups under ICRP 103, the Agency would need to update *Federal Guidance Report No. 13, Cancer Risk Coefficients for Environmental Exposure to Radionuclides.* However, the Federal Guidance Technical Report Working Group under the Interagency Steering Committee on Radiation Standards has convened to update these reports and the first draft could be available by the end of 2014. As such, these data could be available prior to any proposal of a revised standard. Thus, the analysis that relies on the most recent science (ICRP 103) could be conducted in a timely manner consistent with the time necessary for a rulemaking.

A third option would be to establish a dose limit but not to specify the ICRP basis for implementation. Under this approach, the details of implementation would be left to the NRC. NRC is beginning a comprehensive review of its regulations with the long-term view of adopting ICRP 103, which is likely to take a number of years. During this transition period, it may be appropriate to allow NRC to determine which method of calculation should be used, taking into account the views of the public. This could also anticipate the use of future ICRP recommendations beyond ICRP 103. An example of this approach is EPA's standards for the proposed Yucca Mountain disposal facility.[9] The advantage of this approach is that it allows the flexibility to use updated ICRP information as soon as (but not before) it can reasonably be implemented on a large-scale. A drawback of this approach is that it leaves some uncertainty as to what risk level is represented by the dose limit. That is, a dose of 15 mrem can represent a slightly different level of risk depending on the specific radionuclides, exposure situation and dose-risk factors. Therefore, a dose of 15 mrem could, in the future, represent a different level of risk than originally expected. The difference would likely be small unless there are major changes in our understanding of radiation risks. Recent scientific advances have primarily influenced the understanding of risks from specific radionuclides to specific organs and to sensitive subpopulations—but have reinforced the overall dose-risk factors that serve as the major basis for most of EPA's radiation regulations and policies.

Finally, it is important that the economic impacts of any change in the dose methodology be carefully considered and acknowledged. The NRC staff has considered cost-benefit considerations in providing its recommendation to the NRC Commissioners for *Options to Revise Radiation Protection Regulations and Guidance with Respect to the 2007 Recommendations of the ICRP* (Dec 18, 2008). This paper identifies the inefficiencies with industry meeting the requirements using two different methods (40 CFR part 190 requirements are incorporated into 10 CFR part 50 Appendix I design objectives). This being the case, any change from the ICRP 2 approach to more contemporary dosimetry methodologies could yield a cost savings for the industry. The Agency is interested in receiving any data that are available on these potential cost savings.

In summary, the Agency is seeking input from the public on options that should be considered to update the radiation dosimetry for the standard. The range of options identified for consideration are: (1) Revise the dose limits to an ''effective dose'' standard using ICRP 60 methodology; (2) Revise the dose limits to an ''effective dose'' standard using ICRP 103 methodology; and (3) Specify a dose limit and leave the decision regarding methodology to NRC. We welcome comments on these options, on additional options that we have not identified, and on factors that should be considered in selecting and implementing a dose methodology.

6. Questions for Public Comment

With the aforementioned as background, the Agency is seeking input on the following questions:

a. *If a dose standard is desired, how should the Agency take account of updated scientific information and methods related to radiation dose—such as the concept of committed effective dose?*

b. In updating the dose standard, should the methodology in ICRP 60 or ICRP 103 be adopted, or should implementation allow some flexibility? What are the relative advantages or disadvantages of not specifying which ICRP method be used for the dose assessment?

C. Issue 3—Radionuclide Release Limits. The Agency has established individual limits for release of specific radionuclides of concern. Based on a concept known as collective dose, these standards limit the total discharge of these radionuclides to the environment. The Agency is seeking input on: Should the Agency retain the radionuclide release limits in an updated rule and, if so, what should the Agency use as the basis for any release limits?

1. Why is this issue important?

The radionuclide specific release standards established in 40 CFR 190.10(b) set a limit on the total discharge of long-lived radionuclides released to the environment. These limits ensure that the environmental impacts of these radionuclides on the human population have a limited effect throughout the duration of their existence in the biosphere.

2. What do the existing standards say on this issue?

The standards at 40 CFR 190.10(b) specify: ''The total quantity of radioactive materials entering the general environment from the entire uranium fuel cycle, per gigawatt-year of electrical energy produced by the fuel cycle, contains less than 50,000 curies of krypton-85, 5 millicuries of iodine-129, and 0.5 millicuries combined of plutonium-239 and other alpha-emitting transuranic radionuclides with half-lives greater than one year.''

Excerpts from the 1976 FES (*Final Environmental Statement,* 1976, Vol. 1, p. 5), indicate the Agency's rationale and the regulatory facilities of concern in mandating this second set of environmental standards: ''Finally, although fuel reprocessing plants are few in number, they represent the largest single potential source of environmental contamination in the fuel cycle, since it is at this point that the fuel cladding is broken up and all remaining fission and activation products become available for potential release to the environment.'' Other parts of the nuclear fuel cycle emit much less of the radionuclides subject to 40 CFR 190.10(b) because the releases to the environment come after the fission process. Thus reprocessing facilities and, to a lesser extent, nuclear power plants are the focus of 40 CFR 190.10(b). The Agency developed this portion of the standard specifically to address the potential environmental burden associated with the resulting long-lived

[9] We provided similar discretion to NRC in our amendments to the Yucca Mountain standards. While we specified that the Department of Energy (DOE) must use ICRP 60 methodologies to project doses in its long-term performance assessment, we stated that NRC could permit the use of future dosimetric systems, as long as they were issued by consensus organizations, adopted by EPA into Federal Guidance, and consistent with the effective dose equivalent methodology first established in ICRP 26 and continued in ICRP 60. See 40 CFR part 197, Appendix A.

radionuclides and to ensure that the risk associated with any long-term environmental burden is incurred only in return for a beneficial product: electrical power. Furthermore, the Agency stated that ''attention to individual exposure alone can result in inadequate control of releases of long-lived radionuclides, which may give rise to substantial long-term impacts over the lifetime of the radionuclide.''

The Agency based the limits for plutonium-239 and other alpha-emitters on emissions levels that could be achieved with best available control technologies. The limits for krypton-85 and iodine-129 relied on control technologies demonstrated on a laboratory scale, but not yet in actual use by 1975. Other long-lived radionuclides considered for regulation under this portion of the standard (i.e., tritium and carbon-14) ultimately were not included because appropriate control technologies were either not feasible or unavailable.

3. What has changed and how are those changes relevant?

The Agency developed the existing standard under the assumption that U.S. commercial reprocessing would be available. However, for policy and economic reasons, reprocessing never achieved the expected scale, and no commercial reprocessing plants are currently operating in the U.S. As of the drafting of this ANPR, however, there is renewed interest in Congress and the industry regarding the possibility of reprocessing as evidenced by testimony during hearings of the President's Blue Ribbon Commission on America's Nuclear Future. The broader nuclear industry is anticipating growth, with applications for new nuclear power plants submitted to the NRC and the start of construction at two power plant sites. Additionally, if the nation chooses to control carbon emissions from power generators, the number of nuclear power plants operating in the U.S. may increase further.

4. What policies and approaches are relevant?

The release limits were defined to limit exposures to populations wider than those in the immediate vicinity of a facility. Over the intervening decades, protection standards for individuals have become preferred, with collective dose considered less useful for assessing the risks of a given activity. Particularly in cases where extremely small doses combine with extremely large populations, collective dose can give a misleading view of the overall impact of an activity (and impact on individuals), based on statistical estimates of the number of future health effects. Collective dose should thus be used with caution. For example, it can be used to provide meaningful comparisons of alternatives for a proposed action (e.g., in facility design).

Since the development of the release limits was motivated largely by concerns about emissions from reprocessing facilities, prospects of spent nuclear fuel reprocessing conducted both nationally and internationally may have a bearing on reconsideration of this issue.

There have been active reprocessing facilities in 15 countries, including the U.S., although some of these facilities were more research-oriented as opposed to commercial reprocessing facilities. Of the current operating facilities, the most widely known are the facilities at Sellafield (United Kingdom) and La Hague (France), which constitute the first and second leading producers globally for krypton-85. Both facilities discharge krypton-85 directly to the environment. Efforts at these plants are made to control the releases of iodine-129, and tracking the levels of this radionuclide over the years has shown decreasing emissions relative to reprocessing production quantities.

It is also useful to examine the experience of implementing the release limits in practice. While EPA sets the part 190 standards, the NRC has the responsibility to implement and enforce them for its licensees. Its requirements for licensees are found in 10 CFR part 20, ''Standards for Protection Against Radiation,'' specifically: 10 CFR 20.1301(e), which requires compliance with 40 CFR part 190, and 10 CFR 20.2203(a)(4), which further requires reporting of radiation levels or releases in excess of the standards in 40 CFR part 190. However, neither provision describes how to demonstrate compliance with 40 CFR part 190, although NRC has issued guidance to licensees for light water reactors in Generic Letters (GL) 79–041, GL79–070 and NUREG–0543 (ADAMS Accession No. ML081360410).

In anticipation that spent nuclear fuel reprocessing may again be pursued in the U.S., the NRC directed its former technical advisory committee, the Advisory Committee on Nuclear Waste and Materials (ACNW&M), to define the issues most important to the NRC concerning fuel reprocessing facilities. The ACNW&M published the results of their effort in NUREG–1909, ''Background, Status, and Issues Related to the Regulation of Advanced Spent Nuclear Fuel Recycle Facilities.'' The following excerpt from NUREG–1909 summarizes the ACNW&M's finding regarding 40 CFR part 190: ''Of particular relevance to fuel recycle is 40 CFR 190.10(b) which limits the release of krypton-85 and iodine-129 from normal operations of the uranium fuel cycle. Because fuel reprocessing is the only step of the nuclear fuel cycle that could release significant amounts of these radionuclides during normal operations, these limits are effectively release limits for the fuel reprocessing gaseous effluent.'' (NUREG–1909, p.134) Other issues identified by the ACNW were: (1) Meeting the standard with available technologies may not be feasible; (2) limits on releases of carbon-14 and tritium may need to be considered; (3) the cost-benefit analysis for collective dose in 40 CFR 190.10(b) should be reconsidered; and (4) their belief that the existing regulation does not include fabrication of fuels enriched with plutonium or actinides other than uranium.

5. What compliance history exists for the current standards?

The Agency has reviewed compliance issues for these standards and has found challenges with determining and enforcing compliance. Without the operation of a reprocessing plant(s), there is little likelihood of exceeding the existing standards for the fission products krypton-85 and iodine-129. The basis for this statement is that both of these radionuclides are fission products (the result of the fission reaction occurring in the nuclear reactor) contained within the fuel rods at the nuclear power plants, and the fission products cannot escape unless the metal cladding around the fuel pellets ruptures during use or storage after removal from the reactor. During normal operations, the failure rate of cladding is insignificantly small. Uranium mining and milling, uranium conversion, uranium enrichment and fuel fabrication facilities do not generate these radionuclides since no fission reaction occurs during these processes.[10] Thus, only nuclear power plants and potential reprocessing facilities need to be considered when determining compliance with krypton-85 and iodine-129 limits.

NRC implements 40 CFR 190.10(b) through its oversight and inspection authorities for its licensees found in both 10 CFR part 20 and 10 CFR part 50. Specifically, 10 CFR part 20 includes the requirement that licensees comply

[10] Fuel fabrication facilities for mixed uranium-plutonium fuel (MOX fuel) could have some plutonium releases, but these would not be anticipated to approach the current limit.

with 40 CFR part 190. Technical specifications for commercial nuclear power plants are found in Appendix I of 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities.'' These specifications provide annual dose objectives for nuclear power plants that are considered ''As Low As [is] Reasonably Achievable'' (ALARA). The ALARA objectives are 3 mrem/year for liquid effluents and 5 mrem/year for gaseous effluents. The NRC has stated that, ''. . . it was feasible for a licensee to inherently show compliance of 40 CFR part 190 limits by meeting the dose objectives in 10 CFR part 50 Appendix I.'' [11] The NRC staff has reviewed a sampling of effluent reports from 1981 to 2005, to assess the levels of krypton-85, iodine-129 and plutonium-239 and other transuranic alpha emitters released from operating nuclear power plants. Their findings were that these levels, on an annual unit of gigawatt-year of electrical energy produced, were significantly less than the limits in 40 CFR part 190. The standards apply to the industry's release of certain radionuclides proportional to the amount of electricity generated. Thus compliance relies on annual nationwide emissions for all applicable uranium fuel cycle facilities. If there were a case (such as multiple reprocessing plants) where the implementing agency considered that overall emissions were exceeding the standard, then the regulator may find it necessary to apportion or divide the standard to make it applicable to individual facilities. Further guidance may be necessary in order to detail a method for apportioning this standard. This uncertainty, and the difficulty in making and enforcing regulatory decisions about which facilities must undergo upgrades to meet the standards, makes implementing the standards extremely difficult at best if the situation arises where the entire uranium fuel cycle emissions are approaching the regulatory limit. EPA's goal in any revision of the standards is to ensure adequate public health protections, while providing appropriate flexibility to implementing agencies.

6. What aspects of the issue are most important and what options are available to address this issue in revised standards?

The Agency determined in the development of 40 CFR part 190 that these standards would be important in reducing the environmental dose commitments for persistent radiological contaminants, and still considers this a desirable goal. The radionuclides specified in these standards were identified as those that could potentially disperse and deliver doses to widespread populations as they migrate through the biosphere. However, the current form of the standards appears to be impractical to implement. Furthermore, few consider collective dose appropriate for risk calculations or for use as a regulatory basis because ''the summation of trivial average risks over very large populations or time periods . . . [produces] a distorted image of risk, completely out of perspective with risks accepted every day.'' (NCRP, 1995) In more recent radiation regulations, we have relied instead on individual dose limits to limit exposures to the public, combined with effluent or concentration limits to protect specific environmental resources (e.g., 40 CFR part 197).

There are several options under consideration for this portion of the regulation:

(a) Eliminate this portion of the regulation and rely on other limits to provide protection of public health and the environment.

(b) Use the concept from the existing standards of limiting the environmental burden of long-lived radionuclides in the biosphere as a guide, and calculate equivalent standards that could apply outside individual facilities (e.g., reprocessing plants).

(c) Use risk or dose to a designated receptor to develop radionuclide specific standards that would apply outside a given individual facility.

(d) Any additional options considered technically sound and developed by other stakeholders.

7. Questions for Public Comment

a. Should the Agency retain the concept of radionuclide-specific release limits to prevent the environmental build-up of long-lived radionuclides? What should be the basis of these limits?

b. Is it justifiable to apply limits on an industry-wide basis and, if so, can this be reasonably implemented? Would facility limits be more practicable?

c. *If release limits are used, are the radionuclides for which limits have been established in the existing standard still appropriate and, if not, which ones should be added or subtracted?*

D. Issue 4—Water Resource Protection. How should a revised rule protect water resources?

1. Why is this issue important?

Ground water and surface water are valuable resources necessary to maintain human life and healthy ecosystems now and in the future. Uranium fuel cycle facilities have the potential to release radioactive materials and contaminants that can get into surface water or ground water. EPA believes it better to take measures that prevent water contamination than to subsequently have to clean up the contamination.

2. What does 40 CFR part 190 say? What is the technical basis?

The existing standard for nuclear power operations does not include a separate provision for protection of water resources at or geographically near these facilities. The FES (*Final Environmental Statement,* 1976, Vol. 1, p. 66) cites the rationale for not including water-specific standards: ''. . . liquid pathway releases from these facilities result in much smaller potential doses than do noble gas releases [air releases]. Detailed studies of several specific facilities have revealed no actual dose to any individual from this pathway as great as 1 mrem per year.'' Thus, the Agency determined at that time that ground water contamination at these facilities was not likely to be a pervasive problem.

3. What has changed and how are those changes important?

Ground water contamination has occurred at a number of nuclear power plants [12] and other uranium fuel cycle facilities.[13] [14]. The primary radionuclide responsible for ground water contamination at power plants is tritium, for which the Agency has established a Maximum Contaminant Level (MCL) of 20,000 picocuries/liter (pCi/L) for drinking water. Tritium is a radioactive isotope of hydrogen that can replace one of the stable hydrogen atoms in the water molecule, thus

[11] NRC Letter from Margie Kotzalas, MOX Branch Chief to Ron Fowler; Subj: Response to Concerns Regarding Ensuring Compliance with 40 CFR part 190. Sept. 24, 2008.

[12] U.S. Nuclear Regulatory Commission (NRC). *Leaks and Spills of Tritium at U.S. Commercial Nuclear Power Plants, Revision 6* (Washington, DC: 2010).

[13] U.S. General Accounting Office (GAO). *Nuclear Waste Cleanup, DOE's Paducah Plan Faces Uncertainties and Excludes Costly Cleanup Activities.* GAO/RCED–00–96. (Washington, DC: 2010).

[14] U.S. Nuclear Regulatory Commission (NRC). *Environmental Assessment for the Renewal of U.S. Nuclear Regulatory Commission License No. SNM–1227 for AREVA NP, Inc. Richland Fuel Fabrication Facility.* (Washington, DC: 2009).

producing tritiated water. In the environment, tritiated water behaves very similarly to ordinary water. Tritium levels as high as 3.2 million pCi/L have been reported to the NRC in the ground water at some nuclear power plants. These elevated levels of tritium in ground water at these plants have prompted the NRC to create two specialized task forces to examine the issue. The task forces did not identify any instances where the public's health was impacted but did nevertheless recommend modifications to a number of regulatory documents.

Because of these releases to ground water at these sites, and related investigations, the Agency considers it prudent to re-examine its initial assumption in 1977 that the water pathway is not a pathway of concern. At this time the Agency has not developed formal options for this issue. Ground water monitoring is currently conducted at all facilities subject to NRC requirements established in 10 CFR parts 20 and 50, so the economic impact of potential provisions for ground water protection is largely undefined at this time, and the Agency is interested in estimates of potential costs. If the Agency proceeds with proposing options for either surface or ground water protection, then it would conduct a cost-benefit analysis for this issue.

4. What policies and approaches are relevant?

When considering water resources, the Agency must determine whether there is a need to protect the resource and what protection is appropriate. The Agency has numerous authorities to protect ground water and surface water from contamination, and an examination of the applicability of these authorities is appropriate.

Ground water. In the years after 1977 when 40 CFR part 190 was issued, EPA increased its efforts to address ground water contamination including implementing new statutory authorities such as Superfund, hazardous waste programs, protection of underground storage tanks and protection of sources of drinking water. In recognition of the growing importance of ground water and increasing threats of contamination, EPA first outlined a comprehensive approach to ground water protection in its 1984 *Ground Water Protection Strategy.* EPA, with review by many federal agencies through the Administration's review procedures, replaced that strategy in July 1991, with another one titled *Protecting the Nation's Ground Water: EPA's Strategy for the 1990s—The Final Report of the EPA Ground-Water Task Force.* That strategy is still in effect.

Consistent with part D of the July 1991 strategy, EPA implements a policy that ''the Agency will use maximum concentration limits (MCLs) under the Safe Drinking Water Act [15] as ''reference points'' for water resource protection efforts when the ground water in question is a potential source of drinking water. Water quality standards, under the Clean Water Act, will be used as reference points when ground water is hydrologically connected to surface water ecological systems. Where MCLs are not available, EPA Health Advisory numbers or other approved health-based levels are recommended as points of reference. If such numbers are not available, reference points may be derived from the health-effects literature where appropriate. The strategy also notes that ''[r]eaching the MCL or other appropriate reference point would be considered a failure of pollution prevention.''

Site clean-up and other remedial actions generally use the MCLs as a cleanup goal and also take other factors into account. In some cases, EPA institutes the level of protection by directly incorporating the numerical limits from the Safe Drinking Water Act (SDWA) MCLs into other regulations. The 1991 strategy states relative to cleanup that ''[r]emediation will generally attempt to achieve a total lifetime cancer risk level in the range of 10^{-4} to 10^{-6} and exposures to non-carcinogens below appropriate reference doses.''

EPA considered the issue of ground water standards for radionuclides most recently in the development of ''Environmental Protection Standards for Yucca Mountain'' (66 FR 32074, June 13, 2001). In this regulation the Agency states that ''Ground water is one of our nation's most precious resources because of its many potential uses . . . When that water is radioactively contaminated, each of those uses completes a radiation exposure pathway for people. Ground water contamination is also of concern to us because of potential adverse impacts upon ecosystems, particularly sensitive or endangered ecosystems. For these reasons, we believe it is a resource that needs protection.'' (66 FR 32106) In this regulation, consistent with the Agency's *Ground Water Protection Strategy,* EPA adopted levels consistent with the drinking water MCLs as a basis for protecting the ground water resource. It may be noted that the ground water protection standards were applied prospectively at Yucca Mountain, in the sense that potential contamination of ground water in the accessible environment would not be expected for many hundreds to thousands of years. As such, the radionuclides of most concern for geologic disposal would not necessarily be the same as for operating fuel cycle facilities.

EPA has the authority under the Atomic Energy Act to promulgate generally applicable environmental standards to limit radioactive materials in the general environment outside the facility. Thus, any ground water standard that would be promulgated as part of a revision of 40 CFR part 190 would be limited to application of these limits outside the facility boundary. The NRC's 2010 Groundwater Task Force identified contamination in the aquifers beneath several nuclear power plants, but found that most of the contamination had not left the boundaries of the facility. While the Agency would hope that no contamination is emitted from nuclear fuel cycle facilities, we realize that this statement is a goal and may not reflect actual operating facilities. However, the Agency believes that it would be prudent to include limits to protect against migration of the contamination outside the fence line. Including a ground water standard would also bring the regulation more in line with other Agency regulations and policy goals.

Surface water. Industrial wastewater discharges to surface waters are generally prohibited under Section 301 of the Federal Water Pollution Control Act (known as the ''Clean Water Act'' or ''CWA''). Under Section 402 of the Act, however, a point source may be authorized to discharge pollutants into waters of the United States by obtaining a permit. These permits, which are issued by the EPA or a state that has an EPA-approved permit program generally provide two types of controls: (1) Technology-based limitations (based on the technological and economic achievability); and (2) water quality-based limitations (to achieve compliance with water quality standards). For most major industries, including the Primary Industrial Categories listed in 40 CFR part 122, Appendix A, the Agency has developed Effluent Limitations Guidelines (ELGs), pursuant to sections 301(b) and 304 of the CWA, which set the technology-

[15] The EPA national primary drinking water standards under the Safe Drinking Water Act (SDWA) set limits on radionuclide concentrations—Maximum Contaminant Levels (MCLs)—in community drinking water systems (40 CFR 141.66). These SDWA regulations do not apply directly to ground water not used as drinking waters. MCLs generally only apply to finished drinking water after treatment.

based limits for discharges from such industrial categories. Any CWA Section 402 permit for a facility with applicable ELGs would be required to include limits prescribed by those regulations. With the exception of discharges from the ''Uranium, Radium and Vanadium Ores'' subcategory of the ''Ore Mining and Dressing Point Source'' category (40 CFR part 440, Subpart C), technology-based limitations for radionuclides associated with industrial discharges have not been established in the existing ELGs. The ''Steam Electric Power Generating ELGs'' (40 CFR part 423) apply to wastewater discharges from plants primarily engaged in the generation of electricity for distribution and sale which results primarily from the use of nuclear or fossil fuels in conjunction with a steam-water thermodynamic cycle. Those ELGs do not include limitations for radionuclides. However, where an ELG does not apply to certain waste streams or pollutants discharged by an industrial discharger, the permitting authority must establish technology-based effluent limits on a case-by-case, best professional judgment basis. (40 CFR 125.3 (c)(3)).

CWA Section 303 directs states to adopt standards for the protection of water quality, including human health and aquatic life uses. In most cases where states have adopted water quality criteria for radionuclides, those criteria are intended to protect human health uses such as drinking water. Several states have also adopted radionuclide standards for livestock watering and narrative radionuclide standards for protection of wildlife and aquatic life. When a discharge is found to have a reasonable potential to cause or contribute to an exceedance of a state water quality criterion established under their standards, CWA Section 402 permits must include limitations intended to protect that standard (see 40 CFR 122.44(d)(1)).

The NRC's regulations governing the design of effluent control systems at nuclear power plants are provided in General Design Criterion 60, ''Control of Releases of Radioactive Materials to the Environment'' of Appendix A, ''*General Design Criteria for Nuclear Power Plants*'' in 10 CFR part 50. The criterion is to provide a ''means to control suitably the release of radioactive materials'' to the environment. NRC regulations in 10 CFR part 50, Appendix I provide numerical guidance that limit releases of radioactive material to ''As Low As [is] Reasonably Achievable'' (ALARA) and meet the criteria to control releases suitably. These Appendix I guides become requirements that are incorporated in the nuclear power plant operating licenses, and are consistent with EPA standards at 40 CFR part 190.

During nuclear power plant operations, 10 CFR 20.1406, ''Minimization of Contamination'' requires that all licensees, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface. Also, 10 CFR 20.1501, ''general'' (radiological surveys) require licensees to perform subsurface surveys (i.e., soil and ground water surveys) to identify residual radioactivity. For decommissioning and license termination requirements, NRC establishes cleanup criteria in Subpart E of 10 CFR part 20, ''Radiological Criteria for License Termination'' that are consistent with EPA standards at 40 CFR part 190.

5. Questions for Public Comment

The Agency is seeking input on the following aspects of this issue:

a. If a ground water protection standard is established in the general environment outside the boundaries of nuclear fuel cycle facilities, what should the basis be and how should it be implemented?

b. Are additional standards aimed at limiting surface water contamination needed?

6. Technical support documents and background information

Several of the issues surrounding the establishment of ground water protection standards for radionuclides have been discussed and addressed by the Agency in previous rulemaking efforts, as well as in guidance documents published or available from the Agency. The notable citations have been included in the references for this document. See reference numbers 9, 10, 13,14,15,16, 29 and 30.

E. Issue 5: Spent Nuclear Fuel and High-Level Radioactive Waste Storage. How, if at all, should a revised rule explicitly address storage of spent nuclear fuel and high-level radioactive waste?

1. Why is this issue important?

When the existing rule was issued, storage of radioactive materials at nuclear fuel cycle facilities was not explicitly identified as an activity covered by the standards. Some storage was expected as part of operations, but the issue did not seem to merit particular attention. Greater attention has been given to storage in recent years, particularly for spent nuclear fuel at power plant sites. In the 1970s, extensive reprocessing of spent nuclear fuel was envisioned, and disposal capacity was expected to be available, precluding the need to store spent nuclear fuel or other wastes at power plant sites for extended periods of time. However, interim storage of spent nuclear fuel, especially on site at nuclear power plants, has become the norm and for longer time periods than originally expected. We are now considering whether the prospect of extended storage warrants additional provisions to clarify how the standards would be implemented over the extended storage period.

In addition, in reviewing the requirements in 40 CFR part 190 as they apply to spent nuclear fuel storage, we have realized that the applicability of the standards is not clear with respect to its relationship with 40 CFR part 191, which also contains provisions that address spent nuclear fuel storage. Given the greater interest in spent nuclear fuel storage, we are considering whether it is useful and appropriate to clarify, especially with respect to 40 CFR part 191, the applicability of 40 CFR part 190 to spent nuclear fuel storage operations at facilities in the uranium fuel cycle and to dedicated spent nuclear fuel storage facilities.

2. What does 40 CFR part 190 say? What was the technical basis?

The regulation at 40 CFR part 190 did not directly address storage activities at nuclear fuel cycle facilities. At that time, some storage of radioactive materials was occurring at various nuclear fuel cycle facilities as part of their normal operations. It was assumed that the spent nuclear fuel was to be stored in pools for cooling for about 18 months, following which it would be collected and transported to reprocessing plants to be recycled for additional energy generation (*Draft Environmental Statement,* 1975). A reprocessing facility would necessarily require some storage for both the input and output of its processes (e.g., spent nuclear fuel and high-level radioactive waste) to ensure efficient industrial operation. Given these conditions, and the fact that storage was *not excluded* from coverage in the current standard—whereas several other activities were exempted, including mining, transportation and disposal—we believe it is reasonable that any storage incidental to operations at a nuclear fuel cycle facility should be covered by 40 CFR part 190.

Similar ambiguity exists regarding whether dedicated storage facilities are covered by 40 CFR part 190. Whether or not such storage facilities fall within

this category is not addressed in the rule and long-term storage of spent nuclear fuel was not analyzed during the rule development.

3. What has changed and how are those changes important?

Some waste storage practices now in place were not anticipated when 40 CFR part 190 was first issued. The most significant of these involve spent nuclear fuel. With no nuclear fuel reprocessing occurring and no disposal facility opened, spent nuclear fuel is being kept at nuclear power plants—in steel-lined, concrete pools or basins filled with water (spent nuclear fuel pools) or in massive, airtight steel or concrete-and-steel canisters, casks and vaults (spent nuclear fuel storage casks or dry cask storage)—awaiting national policy decisions and programs on reprocessing and ultimate disposal.

The President's Blue Ribbon Commission on America's Nuclear Future summarizes the current storage situation succinctly: ''Storage [of spent nuclear fuel (SNF) at power plants] is not only playing a more prominent and protracted role in the nuclear fuel cycle than once expected, it is the *only* element of the back end of the fuel cycle that is currently being deployed on an operational scale in the United States. In fact, much larger quantities of spent nuclear fuel are being stored for much longer periods of time than policymakers envisioned. . . .'' (BRC *Final Report,* January 2012, p.33). The Commission's final report also recommends the development of one or more consolidated interim storage facilities for spent nuclear fuel (see BRC *Final Report,* January 2012, p. 32), which would join a number of existing independent spent nuclear fuel storage installations (ISFSIs) primarily at existing and decommissioned nuclear power plants. The *Administration's Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste* (January 2013) is for the Administration, with the appropriate authorizations from Congress and with enactment of required legislation, to implement a program over the next 10 years that:

- Sites, designs and licenses, constructs and begins operations of a pilot interim storage facility by 2021with an initial focus on accepting used nuclear fuel from shut-down reactor sites.
- Advances toward the siting and licensing of a larger interim storage facility to be available by 2025 that will have sufficient capacity to provide flexibility in the waste management system and allows for acceptance of enough used nuclear fuel to reduce expected government liabilities.

(Department of Energy ''Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Wastes'', 2013, p. 2). Thus, the foreseeable future holds the potential for storage of significant quantities of spent nuclear fuel—more than envisioned in 1977—at power plants and perhaps at consolidated facilities designed and devoted to that purpose.

Currently, the NRC is updating its ''Waste Confidence'' rule to address feasibility of continued storage until a repository is available. Since storage has become a more prominent part of nuclear power plant operations in recent years and a topic of greater concern to the public, the Agency believes it is worthwhile to consider whether a revised rule should address the topic more directly.

4. What policies and approaches are relevant?

Some storage activities—at a minimum, storage of spent nuclear fuel and high-level radioactive waste at *disposal* facilities—are quite clearly covered under EPA's requirements in 40 CFR part 191, ''Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes.'' However, the applicability is described quite broadly: Those standards address ''management . . . and storage of spent nuclear fuel . . . at any facility regulated by the Nuclear Regulatory Commission or by Agreement States, to the extent that such management and storage operations are not subject to the provisions of part 190 of title 40.'' (40 CFR 191.01) The statement could be construed to apply to facilities beyond disposal facilities, including at nuclear power plants.

In practice, therefore, the language ensures full coverage of spent nuclear fuel storage—regardless of which activities are deemed to fall under which rule—since any activity not covered under the uranium fuel cycle should be covered under 40 CFR part 191. Further, the dose limits in 40 CFR part 191 apply to *combined* doses from storage activities covered under both rules (40 CFR 191.03(a)). The applicable NRC regulations also take into account multiple co-located or nearby sources and activities, and apply dose limits for the public that are consistent with both 40 CFR part 190 and the storage provisions of 40 CFR part 191. NRC storage requirements apply to spent nuclear fuel, high-level radioactive waste and certain reactor-related low-level radioactive waste at stand-alone facilities as well as some on-site storage at power plants (10 CFR part 72).

5. What aspects of the issue are most important and what options might be considered to address this issue in revised standards?

The evaluation and licensing of spent nuclear fuel storage—on site at nuclear power plants and at other storage facilities—has been implemented by the NRC. The NRC has taken steps to improve the security and safety of storage in recent years and is further evaluating what improvements can be made in light of the events in Fukushima. (See BRC's *Final Report,* p. 46) However, we recognize that the volume of spent nuclear fuel now being stored—and expected to be stored in coming decades—is much greater than what was expected to be entailed in the operation of nuclear power plants and perhaps also at other facilities. If the Agency decides to revise 40 CFR part 190, it is reasonable to ask whether such storage operations should be considered part of the fuel cycle under these standards (instead of 40 CFR part 191), as well as whether additional technical provisions are needed to protect the public from potential exposures from such activities.

We believe that the simplest approach would be to clarify that the nuclear fuel cycle standards cover storage operations at nuclear fuel cycle facilities—likely including interim storage facilities—under 40 CFR part 190. In essence, it would specify that the ''fuel cycle'' ends only when the spent nuclear fuel reaches a permanent disposal facility. Clarifying coverage under 40 CFR part 190 would also ensure that updated dosimetry and science in any revised rule would be applied to storage operations not conducted at disposal facilities, especially if 40 CFR part 191 is not revised within a comparable time frame.

If a revised nuclear fuel cycle rule were to explicitly cover storage, an additional question is whether further requirements need to be instituted to address the long-term aspects of storage now envisioned. It is important to note that the existing EPA and NRC regulations discussed in this section are aimed at management and storage operations. With extended storage (60 years or more beyond the licensed operating period), there is the possibility that future degradation of dry casks or repackaging could result in additional exposures or even releases of radioactive material. A clarification regarding the coverage of EPA's nuclear

fuel cycle regulations would provide additional incentive to monitor storage operations to take the necessary measures to ensure continuing compliance. We believe that such a clarification would not require assessment of future storage performance, nor would it inform policy decisions on whether long-term storage should be pursued. We believe that any storage operation would need to meet the same regulatory requirements whether it be during licensing, or at the end of its post-closure life, so that additional technical requirements should not be necessary. In this case, actual changes to 40 CFR part 190 text could be limited to applicability and/or in the definitions.

6. Questions for Public Comment

a. How, if at all, should a revised rule explicitly address on-site storage operations for spent nuclear fuel?

b. Is it necessary to clarify the applicability of 40 CFR part 190 versus 40 CFR part 191 to storage operations? Should the Agency clarify the scope of 40 CFR part 190 to also cover operations at separate facilities (off-site) dedicated to storage of spent nuclear fuel (i.e., should we clarify the definition of the ''nuclear fuel cycle'' to include all management of spent nuclear fuel up until the point of transportation to a permanent disposal site)?

F. Issue 6: New Nuclear Technologies—What new technologies and practices have developed since 40 CFR part 190 was issued, and how should any revised rule address these advances and changes?

1. Why is this issue important?

The existing standard, as well as any potential revised standard, applies to nuclear power operations. Since the promulgation of the existing rule, new technologies and processes have been developed.

2. What does 40 CFR part 190 say? What was the technical basis?

The existing rule was developed based on aspects of the nuclear energy industry that were in existence in the early 1970s. The 1976 FES stated: ''In the United States the early development of technology for the nuclear generation of electric power has focused around the light-water-cooled nuclear reactor. For this reason the proposed standards and this statement will consider only the use of enriched uranium-235 as fuel for the generation of electricity.'' (*Final Environmental Statement,* 1976, Vol. 1, p. 3) Thus, the existing standards apply specifically to the uranium fuel cycle.

The 1976 FES stated: ''The final part (of the uranium fuel cycle) consists of fuel reprocessing plants, where the fuel elements are mechanically and chemically broken down to isolate the large quantities of high-level radioactive wastes produced during fission for permanent storage and to recover substantial quantities of unused uranium and reactor-produced plutonium.'' (*Final Environmental Statement,* 1976. Vol. 1, p. 4)

The technical basis for the existing standard anticipated increases in nuclear power generation. The 1975 *Draft Environmental Statement* stated on p. 4: ''. . . well over 300,000 megawatts of nuclear electric generating capacity based on the use of uranium fuel will exist within the next 20 years or by 1997. . . . This increase will require a parallel growth in a number of other activities that must exist in order to support uranium-fueled nuclear reactors.'' Furthermore, the DES (p. 5) stated: ''This technical analysis assessed the potential health effects associated with each of the various types of planned releases of radioactivity from each of the various operations of the fuel cycle and the effectiveness and costs of the controls available to reduce such effluents.''

3. What has changed and how are those changes important?

Although more than 30 years have passed since the 1976 FES first described the state of the industry for which 40 CFR part 190 applies, many of the concepts remain the same. However, the status of several of the nuclear technologies has changed if one considers the international experience. This section will briefly discuss the nuclear technologies currently under consideration in the context of whether the Agency considers the technology as pending, and whether it merits revising existing regulations.

The 1976 FES stated the following: ''There are, in all, three fuels available to commercial nuclear power. These are uranium-235, uranium-233 and plutonium-239.'' (*Final Environmental Statement,* 1976, Vol. 1, p.3) However, fuels produced from the naturally occurring thorium-232 isotope are possible and are currently being considered internationally for use in reactors. When used as a fuel for a nuclear reaction, thorium is transmuted to uranium-233; however, conventional nomenclature has termed this reaction as the thorium fuel cycle. Although thorium-232 based fuel would be part of the nuclear fuel cycle, some in the industry may argue that this reaction, and the processes considered part of this fuel cycle, would not technically be covered by the Subpart B provisions in 40 CFR part 190 for the ''Uranium Fuel Cycle,'' and thus there are no applicable limits for the thorium fuel cycle. Additionally, for plutonium based fuels and their inclusion under 40 CFR part 190, the FES only stated that some commercial use of recycled plutonium in light-water cooled reactors is proposed for the near future.

Several new nuclear power processing technologies have been licensed by the NRC and other technologies are being explored. The technologies analyzed by the Agency are included in the table below.

TABLE 1—SUMMARY OF NEW NUCLEAR TECHNOLOGIES

Advanced Light-water Reactor Designs [16]	AP1000; ABWR; ESBWR; US EPR; US APWR.
Fuel Reprocessing Designs [17]	Aqueous; Electrochemical; OREOX.
Advanced Reactor Concept [18]	MOX-PWR; MOX-BWR; Thorium-PWR; [19] Thorium-BWR; Heavy Water; Gas-Cooled; Sodium Fast.

In the above table, the MOX-PWR, MOX-BWR, Thorium-PWR and Thorium-BWR are light-water reactors

[16] Advanced Light-water Reactor Designs are light-water reactor concepts with formal designs either approved or under review by the Nuclear Regulatory Commission.

[17] Fuel Reprocessing Designs are designs for reprocessing spent nuclear fuel using various chemical and mechanical reduction techniques.

[18] In the context of this table, Advanced Reactor Concepts are designs where the concept is available, but no U.S. designs have been approved for commercialization purposes.

[19] Thorium fuels have been used in the past both in small scale reactors in the U.S. (Fort St. Vrain and Peach Bottom), and overseas. Several countries are renewing efforts to use thorium as the base fuel for new reactors with India making new thorium reactors a major goal of its nuclear program.

(LWRs) that would operate with either mixed oxide (i.e., plutonium as well as uranium) or thorium fuels. The heavy water, gas-cooled, and sodium fast reactor concepts do not use light water for their moderator and/or coolant: heavy-water reactors (HWRs) use deuterium oxide (D2O) as the neutron flux moderator and can use either heavy water or light water as coolant (the Canada Deuterium-Uranium reactor (CANDU) is probably the most widely used heavy water reactor). Gas-cooled reactors usually use graphite as their moderator, and usually use helium as coolant, but can also use carbon dioxide. Finally, sodium fast reactors differ from LWRs. In a fast reactor, the fission chain reaction is sustained by fast neutrons, and thus does not need a neutron moderator. Also, because water acts as a neutron moderator, it is not usually used as a coolant in a fast reactor; rather, the coolant is a gas or a liquid metal, such as sodium or lead.

Although the list above does include some advanced reactor designs that are improvements to previous versions of LWRs (considered originally in the existing standard), these technologies may need to be given greater consideration in a potential revision to 40 CFR part 190 as design details regarding effluent contaminants are developed.

The regulation at 40 CFR part 190 specifically indicates it is restricted to the uranium fuel cycle for electricity production. As mentioned above, the use of thorium as a fuel in power reactors is being pursued by other countries and could also be used in the U.S. Thorium-232 is fertile material, that is, it cannot be used in the reactor directly but needs to be irradiated by neutrons in a uranium fuel reactor first in order to transmute it to fissile uranium-233 that can it be used as fuel in a reactor. As such, a thorium fuel cycle could also be considered as simply a variant of the uranium fuel cycle. However, to remove any potential ambiguity as to the limit of 40 CFR part 190, it may be useful to broaden the scope of 40 CFR part 190 to include all power generation technologies using nuclear fission.

Another new technology class being considered for commercialization within the U.S. is the Small Modular Reactors (SMRs). The term SMR refers to the size, or amount of energy generated by these reactors. They have been defined by the International Atomic Energy Agency as nuclear reactors generating 300 MW of electricity or less. The SMRs under development utilize traditional LWR designs, but also envision non-traditional water reactor or non-water reactor designs, with the common feature being that of a smaller reactor. These designs would contain smaller amounts of fuel, thus posing smaller safety and associated hazards than those of traditional 1000 MW reactors or larger. Some small reactor designs envision placing compact reactor modules relatively deep underground and operating them without refueling for the entire plant life. Other countries have already begun building floating nuclear power plants based on small reactors. These plants can be docked at remote locations to deliver power to ground-based installations on shore. These designs could be used for generating electricity in isolated areas or producing high-temperature process heat for industrial purposes. The NRC expects to receive applications for staff review and approval of some of these designs in the near future (see *www.nrc.gov/reactors/advanced.html*). As mentioned earlier, this class of reactors potentially utilizes varying existing technology concepts at a smaller scale. The Agency could consider how to address this class of reactors in the future, in an updated rule, because of its projected growth.

4. What policies and approaches are relevant?

The Agency limited the existing standards to the uranium fuel cycle and to light-water reactors, based on the state of the industry at the time. The Agency is considering whether the existing standards need to be revised to address new nuclear technologies that have been developed or may come on line in the near future, and, if so, which technologies should be considered.

5. What aspects of the issue are most important and what options might be considered to address this issue in revised standards?

There are a couple of key considerations in determining the importance of new nuclear technologies. The first consideration is that any potential standard revision must provide protection from radiation emitted from new nuclear technologies. The Agency would need to develop standards for any new technology being commercialized if it is not already covered by the existing standards. The correction may be as simple as a definition change, but even the definition change could necessitate an analysis to identify if the existing standard appropriately protects the public from environmental releases from the new technology. The analysis may also be significantly more complex if the new technology to be commercialized uses different radionuclides as a fuel and produces fission products in proportions which are different from those typical of LWRs. Even in the event that the fission products are similar in nature to those in the existing standard, the new technology could change the effluent concentrations of fission products significantly.

An example of this would be the commercialization of the thorium fuel cycle. Although the thorium is transmuted to uranium-233 for fission, the resulting fission products are projected to have a different composition from those generated by uranium-235. The fuel requirements for the thorium fuel cycle also require higher concentrations of enriched uranium and/or plutonium and would potentially yield larger amounts of low-level wastes. The Agency may have to conduct a review to determine what, if any, analyses would need to be conducted for the thorium variant.

The second consideration is that any potential revision must provide clarity on environmental requirements for new nuclear technologies. This is an important factor so that the industry will be able to properly plan and complete design criteria. The nuclear power industry has become more efficient, and new technologies have been developed for some aspects of the uranium industry. Many in the nuclear industry have spoken of the significant growth that may occur if constraints on carbon emissions come into existence.[20] Developing applicable radiation protection standards for future technologies now could provide regulatory certainty for the nuclear industry.

We recognize that the technologies discussed above, or other concepts being researched, may be at different stages of development. Some may be relatively close to commercialization, while the horizon for development and adoption of others may be much longer. While we believe it is appropriate to be forward-looking in gathering information to consider as part of a rulemaking that could adequately

[20] In response to major climate change initiatives proposed by Congress, the Nuclear Energy Institute has stated ''Two major analyses issued in 2009 of the House version of the bill (H.R. 2454) make the case that significant nuclear energy provisions are necessary to achieve U.S. greenhouse gas emission reduction goals.'' The Energy Information Administration issued *Energy Market and Economic Impacts of H.R. 2454, the American Clean Energy and Security Act of 2009.* The Environmental Protection Agency released *EPA Analysis of the American Clean Energy and Security Act of 2009 (H.R. 2454).*

address future technologies, we acknowledge that it may be premature to address certain of these technologies in a rule before their potential implications and impacts are well understood. Therefore, the Agency could potentially address new technologies by using one of several approaches. These approaches include:

a. Review the technologies that are available in the U.S. and propose potential revisions only if they are not addressed by our existing standard.

b. Review technologies and anticipated near-term technologies that are available in the U.S. and propose revisions if these technologies are not addressed by our existing standard. Near-term technologies would have to be defined, but could be viewed as technologies anticipated to be commercialized within the next 10–30 years.

c. Review internationally available and anticipated near-term technologies and propose revisions if they are not addressed by our existing standard. This approach would consider foreign technologies that could be adopted in the U.S.

6. Questions for Public Comment

The Agency is seeking input on the following aspects regarding this issue:

a. *Are there specific new technologies or practices with unique characteristics that would dictate the need for separate or different limits and do these differences merit a reconsideration of the technical basis for 40 CFR part 190?*

b. *Should the Agency develop standards that will proactively apply to new nuclear technologies developed in the future, and if so, how far into the future should the Agency look (near-term, mid-term, etc.)?*

c. *In particular, do small modular reactors pose unique environmental concerns that warrant separate standards within 40 CFR part 190?*

G. Other Possible Issues for Comment

If revised, the Radiation Protection Standards for Nuclear Power Operations may also address any number of issues identified during the public comment period. We will consider the comments submitted in response to this ANPR as we consider revision of the existing standards.

III. What will we do with this information?

This Advance Notice of Proposed Rulemaking is being published to inform stakeholders, including federal and state entities, the nuclear industry, the public and any interested groups, that the Agency is reviewing the existing standards to determine how the regulation at 40 CFR part 190 should be updated and soliciting input on changes (if any) that should be made. This action is not meant to be construed as an advocacy position either for or against nuclear power. EPA wants to ensure that environmental protection standards are adequate for the foreseeable future for nuclear fuel cycle facilities. As noted earlier, we believe the existing standards remain protective of public health and the environment; however, we believe that the issues mentioned above are sufficient to warrant a review and collection of public input on whether some portions of the standards need to be updated.

If the Agency does revise 40 CFR part 190, then the Agency would follow procedures outlined in the AEA and the APA and publish a proposed rule in the **Federal Register**. Comments received on this ANPR would be considered in the development of a proposed rule and would be used by the Agency to provide a clearer understanding of science, technology, or other concerns and perspectives of stakeholders. However, the Agency will not respond directly to comments submitted to this ANPR. The public would have the opportunity to submit written comments on any proposed rule that might be developed.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this is a ''significant regulatory action'' because the action raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. Because this action does not propose or impose any requirements, and instead seeks comments and suggestions for the Agency to consider in possibly developing a subsequent proposed rule, the various statutes and Executive Orders that normally apply to rulemaking do not apply in this case. Should EPA subsequently determine to pursue a rulemaking, EPA will address the statutes and Executive Orders as applicable to that rulemaking.

References

1. Blue Ribbon Commission (BRC). *The President's Blue Ribbon Commission on America's Nuclear Future—Draft Report to the Secretary of Energy.* Washington, DC: 2011.
2. Blue Ribbon Commission (BRC). *The President's Blue Ribbon Commission on America's Nuclear Future—Final Report to the Secretary of Energy.* Washington, DC: 2012.
3. Department of Energy (DOE). *Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste.* Washington, DC: 2013.
4. Environmental Protection Agency (EPA). *Environmental Radiation Protection Requirements for Normal Operation of Activities in the Uranium Fuel Cycle, Draft Environmental Statement.* EPA Publication No. 450R75101. Washington, DC: 1975.
5. Environmental Protection Agency (EPA). ''Environmental Radiation Protection Standards for Nuclear Power Operations, Proposed Rule.'' **Federal Register** 40 (29 May 1975): 23420.
6. Environmental Protection Agency (EPA). *40 CFR 190 Environmental Radiation Protection Requirements for Normal Operation of Activities in the Uranium Fuel Cycle, Final Environmental Statement.* EPA Publication No. 520/4–76–016. Washington, DC: 1976.
7. Environmental Protection Agency (EPA). *Environmental Analysis of the Uranium Fuel Cycle, Part IV—Supplementary Analysis.* EPA Publication No. 520/4–76–017. Washington DC: 1976.
8. Environmental Protection Agency (EPA). ''40 CFR 190, Environmental Radiation Protection Standards for Nuclear Power Operations—Final Rule.'' **Federal Register** 42 (13 January 1977): 2860.
9. Environmental Protection Agency (EPA). ''40 CFR Part 191, Environmental Radiation Protection Standards for Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Waste.'' **Federal Register** 50 (19 September 1985): 38084.
10. Environmental Protection Agency (EPA). *Protecting the Nation's Ground Water: EPA's Strategy for the 1990s.* Washington, DC: 1991.
11. Environmental Protection Agency (EPA). *High-Level and Transuranic Radioactive Wastes—Response to Comments for 40 CFR 191.* Washington, DC: 1993.
12. Environmental Protection Agency (EPA). ''40 CFR Part 194, Criteria for the Certification and Re-Certification of the Waste Isolation Pilot Plant's Compliance with the 40 CFR Part 191 Disposal Regulations—Final Rule.'' **Federal Register** 61 (9 February 1996): 5235.
13. Environmental Protection Agency (EPA). Office of Solid Waste and Emergency Response. Directive 9200.4–18. Washington, DC: 1997.
14. Environmental Protection Agency (EPA). Office of Solid Waste and Emergency Response. Directive 9200.4–23. Washington, DC: 1997.
15. Environmental Protection Agency (EPA). ''40 CFR Parts 9, 141, and 142, National Primary Drinking Water Regulations; Radionuclides; Final Rule.'' **Federal Register** 65 (7 December 2000): 76708.
16. Environmental Protection Agency (EPA). ''40 CFR 197, Public Health and Environmental Radiation Protection

Standards for Yucca Mountain, Nevada, Final Rule.'' **Federal Register** 66 (13 June 2001): 32074.
17. Environmental Protection Agency (EPA) *EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population.* EPA Publication No. 402–R–11–001. Washington, DC: 2011.
18. Federal Radiation Council (FRC). ''Radiation Protection Guidance for Federal Agencies.'' **Federal Register** 26 (18 May 1960): 4402
19. Federal Radiation Council (FRC). ''Radiation Protection Guidance for Federal Agencies.'' **Federal Register** 26 (26 September 1961): 9057.
20. International Commission on Radiological Protection (ICRP). *Recommendations of the International Commission on Radiological Protection.* ICRP Publication 26. Oxford: Pergamon Press, 1977.
21. International Commission on Radiological Protection (ICRP). *1990 Recommendations of the International Commission on Radiological Protection.* ICRP Publication 60. Oxford: Pergamon Press, 1991.
22. International Commission on Radiological Protection (ICRP). *Radiation Protection Recommendations.* ICRP Publication 103. Oxford: Pergamon Press, 2008.
23. National Research Council. *Technical Bases for Yucca Mountain Standards.* Washington DC: National Academy Press, 1995.
24. National Research Council. *The Disposition Dilemma—Controlling the Release of Solid Materials from Nuclear Regulatory Commission-Licensed Facilities.* Washington DC: National Academy Press, 2002.
25. National Council on Radiation Protection and Measurements (NCRP). *Principles and Application of Collective Dose in Radiation Protection.* NCRP Report No. 121. Bethesda, MD: 1995.
26. Nuclear Regulatory Commission (NRC). ''10 CFR 50, Domestic Licensing of Production and Utilization Facilities.'' **Federal Register** 21 (19 June 1956): 355.
27. Nuclear Regulatory Commission (NRC). ''10 CFR 20, Standards for Protection Against Radiation.'' **Federal Register** 56 (21 May 1991): 23360.
28. Nuclear Regulatory Commission (NRC). ''10 CFR 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.'' **Federal Register** 53 (19 August 1988): 31658.
29. Nuclear Regulatory Commission (NRC). *Groundwater Task Force Final Report.* ADAMS Accession Number ML101740509. Washington, DC: 2010.
30. Nuclear Regulatory Commission (NRC). *Tritium, Radiation Protection Limits, and Drinking Water Standards.* Rockville, MD: 2010.

Dated: January 24, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–02307 Filed 2–3–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 131203999–4061–01]

RIN 0648–XD020

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement an annual catch limit (ACL), harvest guideline (HG), annual catch target (ACT), and associated annual reference points for Pacific sardine in the U.S. exclusive economic zone (EEZ) off the Pacific coast for a one-time interim harvest period of January 1, 2014, through June 30, 2014, and to set annual harvest levels, such as overfishing limit (OFL), available biological catch (ABC), annual catch limit (ACL), for Pacific sardine for the whole calendar year 2014. This rulemaking is proposed according to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP), and reflects the proposed change to the starting date of the annual Pacific sardine fishery from January 1 to July 1 as published in the **Federal Register** on December 23, 2013. The proposed 2014 ACT or maximum directed HG is 19,846 (mt). Based on the seasonal allocation framework in the FMP, this equates to a first period (January 1 to June 30) allocation of 6,946 mt (35% of ACT). This rulemaking also proposes an adjusted directed non-tribal harvest allocation for this period of 5,446 mt. This value was reduced from the total first period allocation by 1000 mt for potential harvest by the Quinault Indian Nation as well as 500 mt to be used as an incidental set aside for other non-tribal commercial fisheries if the 5,446 mt limit is reached and directed fishing for sardine is closed. This rulemaking is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Comments must be received by March 6, 2014.

ADDRESSES: You may submit comments on this document identified by NOAA–NMFS–2013–0180 by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0180,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.
- 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: Joshua Lindsay, West Coast Region, NMFS, (562) 980–4034.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific sardine is presented to the Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fisheries are reviewed and discussed. The biomass estimate is then presented to the Council along with the calculated overfishing limit (OFL), available biological catch (ABC), annual catch limit (ACL) and harvest guideline (HG), along with recommendations and comments from the Team, Subpanel and SSC. Following review by the Council and after hearing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to the National Marine Fisheries Service (NMFS). Each year NMFS then implements regulations that set the annual quota for the Pacific sardine fishing year that currently begins January 1 and ends December 31.

However, on December 23, 2013 NMFS published a proposed rule (78 FR 77413) to change the start date of the 12-month Pacific sardine fishery from January 1 to July 1, thus changing the fishing season from one based on the

calendar year to a fishing year that will begin on July 1 and extend till the following June 30, as well as establish a one-time interim harvest period for the 6 months from January 1, 2014, through June 30, 2014. The purpose of this change is to better align the timing of the research and science that is used in the annual stock assessments with the annual management schedule. Under this proposed scenario, the start of the next complete fishing season would begin on July 1, 2014, and extend through June 30, 2015. Because the current 2013 fishing season ended on December 31, 2013, it is necessary to implement interim management measures and harvest specifications for the period January 1, 2014 to June 30, 2014, to allow for fishing opportunities to continue during a transition from the current start of the fishing season to the proposed new start on July 1. Therefore this rule assumes that the proposal will be approved and implemented to allow for the establishment of interim harvest specifications for the January 1 through June 30, 2014, period. The purpose of this proposed rule is to implement the quota for the January 2014 through June 2014 period, as well as the other annual harvest levels (OFL, ABC and ACL) for the whole calendar year 2014, with the expectation that the latter will be replaced for the new fishing year, beginning in July 2014, based on a new stock assessment and Council action in April 2014. The Council is scheduled to address complete year (12-month) sardine management (July 1 to June 30) at its April 2014 meeting.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific sardine fishery based on the annual specification framework in the FMP. This framework includes a harvest control rule that determines the maximum HG, the primary management target for the fishery, for the current fishing season. The HG is based, in large part, on the current estimate of stock biomass. The harvest control rule in the CPS FMP is HG = [(Biomass-Cutoff) * Fraction * Distribution] with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific sardine age one and above.

2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *Distribution.* The average portion throughout the year of the Pacific sardine biomass estimated to occur in the EEZ off the Pacific coast in any given year. The FMP established this level at is 87 percent.

4. *Fraction.* The harvest fraction is the percentage of the biomass above 150,000 mt that may be harvested.

At the November 2013 Council meeting, the Council adopted a report completed by NMFS Southwest Fisheries Science Center providing a biomass projection estimate for Pacific sardine of 378,120 mt. This report and the resulting biomass estimate were endorsed by the Council's SSC as the best available information on the stock status. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is proposing, and OFL of 59,214 metric tons (mt), an ABC of 54,052 mt, an ACL of 54,052 mt (equal to the ABC), and a HG of 29,770. The current 2014 biomass estimate represents a 42 percent decrease from the updated stock assessment previously adopted by the Council in November, 2012. This current biomass estimate is based on a catch-only projection model that included updated catches from 2012 and 2013, but did not include other fishery or survey data collected over the past year. New data will, however, be incorporated in the next full assessment that will serve as the basis for the complete 12-month fishery management cycle beginning July 1, 2014.

The Council also adopted and NMFS is proposing an ACT or maximum directed HG of 19,846 (mt) as the maximum harvest level from which to calculate the first period allocation. Based the seasonal allocation framework in the FMP, this equates to a January 1 to June 30 allocation of 6,946 mt (35% of HG/ACT). The Council then adopted and NMFS is proposing an adjusted non-tribal harvest allocation for this period of 5,946 mt. This number has been reduced from the total allocation for this period by 1,000 mt for potential harvest by the Quinault Indian Nation. A 500 mt incidental catch set aside is also being proposed for this period, leaving 5,446 mt as the non-tribal directed fishing allocation for the period of January 1, 2014, through June 30, 2014. The purpose of the incidental set-aside allotment and allowance of an incidental catch-only fishery is to allow for the restricted incidental landings of Pacific sardine in other fisheries, particularly other CPS fisheries, when a seasonal directed fishery is closed to reduce bycatch and allow for continued prosecution of other important CPS fisheries. If during this period the directed harvest allocation is projected to be taken, fishing would be closed to directed harvest and only incidental harvest would be allowed. For the remainder of the period, any incidental Pacific sardine landings would be counted against that period's incidental set-aside. As an additional accountability measure, the proposed incidental fishery would also be constrained to a 40 percent by weight incidental catch rate when Pacific sardine are landed with other CPS so as to minimize the targeting of Pacific sardine and reduce potential discard of sardine. In the event that an incidental set-aside is projected to be attained, the incidental fishery will be closed for the remainder of the period. If the total January 1 to June 30 allocation of Pacific sardine is reached or is expected to be reached, the Pacific sardine fishery would be closed until it re-opens at the beginning of the next fishing season. The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any such closure.

For the last two years, the Quinault Indian Nation requested, and NMFS approved, set-asides for the exclusive right to harvest Pacific sardine in the Quinault Usual and Accustomed Fishing Area off the coast of Washington State, pursuant to the 1856 Treaty of Olympia (Treaty with the Quinault). For the interim harvest period of January 1, 2014, through June 30, 2014, the Quinault Indian Nation has again requested that NMFS provide the Quinault with a tribal set-aside. The Quinault Indian Nation has requested a 1,000 mt set-aside for this interim period and NMFS is considering the request.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure NMFS will also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 3 of the Regulatory

Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The results of the analysis are stated below. For copies of the IRFA, and instructions on how to send comments on the IRFA, please see the **ADDRESSES** section above.

The purpose of this proposed rule is to implement harvest specifications for the Pacific sardine fishery in the U.S. EEZ off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to set an OFL, ABC, ACL and HG or ACT for the Pacific sardine fishery based on the specified harvest control rules in the FMP.

On December 23, 2013, NMFS published a proposed rule (78 FR 77413) to change the start date of the 12-month Pacific sardine fishery from January 1 to July 1, thus changing the fishing season from one based on the calendar year to a fishing year that will begin on July 1 and extend until the following June 30, as well as establish a one-time interim harvest period for the 6 months from January 1, 2014, through June 30, 2014. The purpose of this change is to better align the timing of the research and science that is used in the annual stock assessments with the annual management schedule. Under this proposed scenario, the start of the next complete fishing season would begin on July 1, 2014, and go until June 30, 2015. Because the 2013 fishing season ended on December 31, 2013, it is necessary to implement interim management measures and harvest specifications for the period January 1, 2014 to June 30, 2014, to allow for fishing opportunities to continue during the transition from January 1, the current start of the fishing season, to the proposed new start on July 1. Therefore, the purpose of this proposed rule is to implement the quota and associated management measures for the January 2014 through June 2014 interim harvest period, as well as the other annual harvest levels (OFL, ABC, and ACL) for 2014, with the expectation that these annual reference points will be replaced when complete year (12-month) sardine management (July 1 to June 30) is addressed in a subsequent rulemaking in Spring 2014.

On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). The rule increased the size standard for Finfish Fishing from $4.0 million to $19.0 million, Shellfish Fishing from $4.0 million to $5.0 million, and Other Marine Fishing from $4.0 million to $7.0 million. NMFS conducted its analysis for this action using the new size standards

As stated above, the U.S. Small Business Administration now defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below $19 million. Under the former, lower size standards, all entities subject to this action in previous years were considered small entities, and under the new standards they continue to be considered small. The small entities that would be affected by the proposed action are the vessels that fish for Pacific sardine as part of the West Coast CPS finfish fleet. In 2013 there were approximately 96 vessels permitted to operate in the directed sardine fishery component of the CPS fishery off the U.S. West Coast, 55 vessels in the Federal CPS limited entry fishery off California (south of 39 N. lat.), and a combined 23 vessels in Oregon and Washington's state Pacific sardine fisheries. The average annual per vessel revenue in 2013 for the West Coast CPS finfish fleet was well below $19 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner. Therefore this rule will not create disproportionate costs between small and large vessels/businesses.

The profitability of these vessels as a result of this proposed rule is based on the average Pacific sardine ex-vessel price per mt. NMFS used average Pacific sardine ex-vessel price per mt to conduct a profitability analysis because cost data for the harvesting operations of CPS finfish vessels was unavailable.

For the 2013 fishing year, approximately 19,000 mt were available for harvest by the directed fishery during the 6-month time period of January 1, 2013 through June 30, 2013. Approximately 4,000 mt (approximately 2,500 mt in California and 1,500 mt in Oregon and Washington) of this allocation was harvested during that time period, for an estimated ex-vessel value of $850,000. Using these figures, the average 2013 ex-vessel price per mt of Pacific sardines was approximately $215 during that time period.

The proposed annual catch target (ACT) or maximum directed HG that is used to calculate the first period allocation of January 1, 2014 to June 30, 2014 is 19,846 (mt). This value is approximately 40,000 mt less than the maximum directed HG used to calculate the three seasonal allocations in 2013. Based on the seasonal allocation framework in the FMP, this equates to an allocation of 6,946 mt (35% of the 19,846 HG/ACT) for the interim harvest period of January 1, 2014 to June 30, 2014. From this value, the proposed non-tribal directed fishing allocation for this period, accounting for a tribal set-aside and an incidental harvest allocation, is 5,446 mt. This equates to a decrease of approximately 12,000 mt between the first period (January-June) directed harvest allocation for 2014 compared to the same period in 2013. If the fleet were to take the entire January 1 through June 30, 2014, allocation, and assuming a coastwide average ex-vessel price per mt of $230 (average 2013 ex-vessel price per mt), the potential revenue to the fleet would be approximately $1.25 million. Therefore, because the proposed non-tribal directed fishing allocation for the January 1, 2014 to June 30, 2014 period is 12,000 mt less than for the same period in 2013, this proposed rule will decrease the effected small entities' potential profitability during this same time period when compared to the same period last season.

However, although there is a decrease in potential profitability to sardine harvesting vessels for the January 1, 2014 to June 30, 2014 time period based on this rule compared to last season, as stated above, only approximately 4,000 mt of the allocated 19,000 mt were landed in 2013 during the first allocation period, therefore it is difficult to predict whether the proposed allocation will ultimately restrict the harvesting capacity of the fleet for this period. Additionally, revenue derived from harvesting Pacific sardine is typically only one factor determining the overall revenue for a majority of the vessels that harvest Pacific sardine; as a result, the economic impact to the fleet from the proposed action cannot be viewed in isolation. From year to year, depending on market conditions and availability of fish, most CPS/sardine vessels supplement their income by harvesting other species. Many vessels in California also harvest anchovy, mackerel, and in particular squid, making Pacific sardine only one component of a multi-species CPS fishery. For example, market squid have been readily available to the fishery in California over the last three years with total annual ex-vessel revenue averaging approximately $66 million over that time, compared to an annual average ex-

vessel from sardine of $16 million over that same time period.

These vessels typically rely on multiple species for profitability because abundance of sardine, like the other CPS stocks, is highly associated with ocean conditions and different times of the year, and therefore are harvested at various times and areas throughout the year. Because each species responds to ocean conditions in its own way, not all CPS stocks are likely to be abundant at the same time; therefore, as abundance levels and markets fluctuate, it has necessitated that the CPS fishery as a whole rely on a group of species for its annual revenues. Therefore, although there will be a potential reduction in sardine revenue for the small entities affected by this proposed action when compared to the previous season, it is difficult to predict exactly how this reduction will impact overall annual revenue for the fleet.

There are no significant alternatives to this proposed rule that would accomplish the stated objectives of the applicable statutes and would also minimize any significant economic impact of this proposed rule on the affected small entities. The CPS FMP and its implementing regulations require NMFS to set an annual HG for the Pacific sardine fishery based on the harvest formula in the FMP. The harvest formula is applied to the current stock biomass estimate to determine the HG. Therefore, if the estimated biomass decreases or increases from one year to the next, the HG will correspondingly decrease or increase. Because the current stock biomass estimate decreased from 2013 to 2014, the HG and subsequent first period allocation also decreased.

There are no reporting, record-keeping, or other compliance requirements required by this proposed rule. Additionally, no other Federal rules duplicate, overlap, or conflict with this proposed rule.

This action does not contain a collection-of-information requirement for purposes of the Paper Reduction Act.

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

Dated: January 29, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–02179 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 23

Tuesday, February 4, 2014

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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0102]

Availability of an Environmental Assessment for Field Testing a Porcine Reproductive and Respiratory Syndrome Vaccine, Respiratory Form, Modified Live Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed Porcine Reproductive and Respiratory Syndrome Vaccine, Respiratory Form, Modified Live Virus. The environmental assessment, which is based on a risk analysis prepared to assess the risks associated with the field testing of this vaccine, examines the potential effects that field testing this veterinary vaccine could have on the quality of the human environment. Based on the risk analysis and other relevant data, we have reached a preliminary determination that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment, and that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing following the close of the comment period for this notice unless new substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a U.S. Veterinary Biological Product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and the issuance of a finding of no significant impact and the product meets all other requirements for licensing.

DATES: We will consider all comments that we receive on or before March 6, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2013-0102-0001.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2013–0102, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0102* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Operational Support Section, Center for Veterinary Biologics, Policy, Evaluation, and Licensing, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1231; phone (301) 851–3426, fax (301) 734–4314.

For information regarding the environmental assessment or the risk analysis, or to request a copy of the environmental assessment (as well as the risk analysis with confidential business information removed), contact Dr. Patricia L. Foley, Risk Manager, Center for Veterinary Biologics, Policy, Evaluation, and Licensing VS, APHIS, 1920 Dayton Avenue, P.O. Box 844, Ames, IA 50010; phone (515) 337–6100, fax (515) 337–6120.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

To determine whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS considers the potential effects of this product on the safety of animals, public health, and the environment. Using the risk analysis and other relevant data, APHIS has prepared an environmental assessment (EA) concerning the field testing of the following unlicensed veterinary biological product:

Requester: ProtaTek International, Inc.

Product: Porcine Reproductive and Respiratory Syndrome Vaccine, Respiratory Form, Modified Live Virus.

Possible Field Test Locations: Iowa, North Carolina, and Texas.

The above-mentioned product is a live chimeric virus constructed from an infectious clone and a field isolate of porcine reproductive and respiratory syndrome virus to produce an attenuated vaccine. The vaccine is intended for use in swine, 3 weeks of age or older, as an aid in the reduction of lung lesions caused by porcine reproductive and respiratory syndrome virus.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial issues with adverse environmental impacts are raised in response to this notice, APHIS intends to issue a finding of no significant impact (FONSI) based on the EA and authorize shipment of the above product for the initiation of field tests following the close of the comment period for this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA that is generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and the

issuance of a FONSI, APHIS does not intend to issue a separate EA and FONSI to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensing.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 29th day of January 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–02273 Filed 2–3–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2013–0100]

International Sanitary and Phytosanitary Standard-Setting Activities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with legislation implementing the results of the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade, we are informing the public of the international standard-setting activities of the World Organization for Animal Health, the Secretariat of the International Plant Protection Convention, and the North American Plant Protection Organization, and we are soliciting public comment on the standards to be considered.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0082-0001.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2012–0082, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0082* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For general information on the topics covered in this notice, contact Mrs. Jessica Mahalingappa, Acting Associate Deputy Administrator for SPS Management, International Services, APHIS, room 1132, USDA South Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 799–7121.

For specific information regarding standard-setting activities of the World Organization for Animal Health, contact Dr. Michael David, Director, International Animal Health Standards Team, National Center for Import/Export, VS, APHIS, 4700 River Road Unit 33, Riverdale, MD 20737–1231; (301) 851–3302.

For specific information regarding the standard-setting activities of the International Plant Protection Convention, contact Ms. Julie E. Aliaga, Program Director, International Phytosanitary Standards, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 851–2032.

For specific information on the North American Plant Protection Organization, contact Dr. Christina Devorshak, PPQ Technical Director for NAPPO, PPQ, APHIS, 1730 Varsity Drive, Suite 300, Raleigh, NC 27606; (919) 855–7547.

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established as the common international institutional framework for governing trade relations among its members in matters related to the Uruguay Round Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade. U.S. membership in the WTO was approved by Congress when it enacted the Uruguay Round Agreements Act (Pub. L. 103–465), which was signed into law on December 8, 1994. The WTO Agreements, which established the WTO, entered into force with respect to the United States on January 1, 1995. The Uruguay Round Agreements Act amended Title IV of the Trade Agreements Act of 1979 (19 U.S.C. 2531 *et seq.*). Section 491 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2578), requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization. The designated agency must inform the public by publishing an annual notice in the **Federal Register** that provides the following information: (1) The SPS standards under consideration or planned for consideration by the international standard-setting organization; and (2) for each SPS standard specified, a description of the consideration or planned consideration of that standard, a statement of whether the United States is participating or plans to participate in the consideration of that standard, the agenda for U.S. participation, if any, and the agency responsible for representing the United States with respect to that standard.

''International standard'' is defined in 19 U.S.C. 2578b as any standard, guideline, or recommendation: (1) Adopted by the Codex Alimentarius Commission (Codex) regarding food safety; (2) developed under the auspices of the World Organization for Animal Health (OIE, formerly known as the Office International des Epizooties) regarding animal health and welfare, and zoonoses; (3) developed under the auspices of the Secretariat of the International Plant Protection Convention (IPPC) in cooperation with the North American Plant Protection Organization (NAPPO) regarding plant health; or (4) established by or developed under any other international organization agreed to by the member countries of the North American Free Trade Agreement (NAFTA) or the member countries of the WTO.

The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the Secretary of Agriculture as the official responsible for informing the public of the SPS standard-setting activities of Codex, OIE, IPPC, and NAPPO. The United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) informs the public of Codex standard-setting activities, and USDA's Animal and Plant Health Inspection Service (APHIS) informs the public of OIE, IPPC, and NAPPO standard-setting activities.

FSIS publishes an annual notice in the **Federal Register** to inform the public of SPS standard-setting activities for Codex. Codex was created in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization. It is the major international organization for encouraging international trade in food and protecting the health and economic interests of consumers.

APHIS is responsible for publishing an annual notice of OIE, IPPC, and NAPPO activities related to international standards for plant and animal health and representing the United States with respect to these standards. Following are descriptions of the OIE, IPPC, and NAPPO organizations and the standard-setting agenda for each of these organizations. We have described the agenda that each of these organizations will address at their annual general sessions, including standards that may be presented for adoption or consideration, as well as other initiatives that may be underway at the OIE, IPPC, and NAPPO.

The agendas for these meetings are subject to change, and the draft standards identified in this notice may not be sufficiently developed and ready for adoption as indicated. Also, while it is the intent of the United States to support adoption of international standards and to participate actively and fully in their development, it should be recognized that the U.S. position on a specific draft standard will depend on the acceptability of the final draft. Given the dynamic and interactive nature of the standard-setting process, we encourage any persons who are interested in the most current details about a specific draft standard or the U.S. position on a particular standard-setting issue, or in providing comments on a specific standard that may be under development, to contact APHIS. Contact information is provided at the beginning of this notice under **FOR FURTHER INFORMATION CONTACT**.

OIE Standard-Setting Activities

The OIE was established in Paris, France, in 1924 with the signing of an international agreement by 28 countries. It is currently composed of 178 Members, each of which is represented by a delegate who, in most cases, is the chief veterinary officer of that country or territory. The WTO has recognized the OIE as the international forum for setting animal health and welfare standards, reporting global animal disease events, and presenting guidelines and recommendations on sanitary measures relating to animal health.

The OIE facilitates intergovernmental cooperation to prevent the spread of contagious diseases in animals by sharing scientific research among its Members. The major functions of the OIE are to collect and disseminate information on the distribution and occurrence of animal diseases and to ensure that science-based standards govern international trade in animals and animal products. The OIE aims to achieve these through the development and revision of international standards for diagnostic tests, vaccines, and the safe international trade of animals and animal products.

The OIE provides annual reports on the global distribution of animal diseases, recognizes the free status of Members for certain diseases, categorizes animal diseases with respect to their international significance, publishes bulletins on global disease status, and provides animal disease control guidelines to Members. Various OIE commissions and working groups undertake the development and preparation of draft standards, which are then circulated to Members for consultation (review and comment). Draft standards are revised accordingly and are then presented to the OIE World Assembly of Delegates (all the Members) during the General Session, which meets annually every May, for review and adoption. Adoption, as a general rule, is based on consensus of the OIE membership.

The next OIE General Session is scheduled for May 25–30, 2014, in Paris, France. Currently, the Deputy Administrator for APHIS' Veterinary Services program is the official U.S. Delegate to the OIE. The Deputy Administrator for APHIS' Veterinary Services program intends to participate in the proceedings and will discuss or comment on APHIS' position on any standard up for adoption. Information about OIE draft Terrestrial and Aquatic Animal Health Code chapters may be found on the Internet at *http://www.aphis.usda.gov/import_export/animals/oie/* or by contacting Dr. Michael David (see **FOR FURTHER INFORMATION CONTACT** above).

OIE Terrestrial and Aquatic Animal Health Code Chapters and Appendices Adopted During the May 2013 General Session

Over 30 Code chapters were amended, rewritten, or newly proposed and presented for adoption at the General Session. The following Code chapters are of particular interest to the United States:

1. *Glossary*
   Updates the definition of *veterinarian* in the chapter.
2. *Chapter 1.1, Notification of Diseases and Epidemiological Information*
   Text changes update some of the terminology in this chapter.
3. *Chapter 3.2, Evaluation of Veterinary Services*
   Text in this chapter was modified for clarity.
4. *Chapter 3.4, Veterinary Legislation*
   This Code chapter was adopted in 2012, but in 2013 it received minor modifications to clarify some of the text.
5. *Chapter 4.6, Collection and Processing of Bovine, Small Ruminant, and Porcine Semen*
   This Code chapter was slightly updated to clarify some points.
6. *Chapter 4.7, Collection and Processing in vivo Derived Embryos from Livestock and Equids*
   This Code chapter also received some minor updates for clarity.
7. *Chapter 6.9. Responsible and Prudent Use of Antimicrobial Agents in Veterinary Medicine*
   This Code chapter provides new text for additional clarification of the responsibilities of the Competent Authority to oversee the use of antimicrobial agents.
8. *Chapter 8.13, Infection with Trichinella spp.*
   This Code chapter was completely rewritten and its recommendations are meant to complement the *Codex Alimentarius* chapter on Trichinella.
9. *Chapter 10.4 Infection with Avian Influenza (AI) Viruses*
   The terminology of ''avian influenza'' was changed by removing the term ''notifiable'' and replacing it with ''avian influenza'' or ''highly pathogenic AI,'' depending on the context of the chapter.
10. *Chapter 12. 9. Infection with Equine Viral Arteritis (EVA)*
    The text in this chapter was expanded to include embryo transfer as a vehicle of virus transmission from an EVA carrier stallion to a recipient mare.
11. *Chapter 14.8 Infection with Peste des Petits Ruminants Virus (PPR)*
    An updated chapter was adopted with the inclusion of specific requirements for the trade of meat and meat products as safe commodities regardless of the country PPR status.
12. *Chapter 7.9, Animal Welfare and Beef Cattle Production Systems*
    Text in the chapter was amended to include the avoidance of dragging of non-ambulatory cattle, the reduction of stocking density as a measure of managing heat stress, and conditions for tethering were modified to improve clarity.
13. *Chapter 7.10, Animal Welfare and Broiler Chicken Production Systems*
    Throughout the chapter, the Code Commission accepted Member Country suggestions to improve clarity and to consistently use the terms *completely outdoors systems, humanely killed, day-old bird(s),* and *broilers.*

The following Aquatic Code chapters are of particular interest to the United States:

1. *Chapter 1.3, Diseases Listed by the OIE*
   Listing of infection with ostreid herpesvirus-1 microvariant, as an emerging molluskan disease.

OIE Terrestrial Animal Health Code Chapters and Appendices for Future Review

Existing Terrestrial Animal Health Code chapters that may be further revised and new chapters that may be drafted in preparation for the next General Session in 2014 include the following:

- Chapter 6.10, Risk Assessment for Antimicrobial Resistance Arising from the Use of Antimicrobial Agents in Animals.
- Chapter 12.1, Infection with African Horse Sickness Virus.
- Chapter 11.8, Infection with *Mycoplasma mycoides* subsp. *Mycoides* (Contagious bovine pleuropneumonia).
- Chapter 1.6, Procedures for self-declaration and for official recognition by the OIE (Chapter 11.8).
- Draft Chapter 4.X., The High Health Status horse subpopulation.
- Chapter 1.4., Animal health surveillance.
- Chapter 8.X., Infection with *Brucella abortus, B. melitensis* and *B. suis.*
- Chapter 15.2, Classical swine fever.
- Chapter 7.X Animal Welfare and Dairy Cattle Production Systems.

IPPC Standard-Setting Activities

The IPPC is a multilateral convention adopted in 1952 for the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control. Under the IPPC, the understanding of plant protection has been, and continues to be, broad, encompassing the protection of both cultivated and noncultivated plants from direct or indirect injury by plant pests. Activities addressed by the IPPC include the development and establishment of international plant health standards (ISPMs), the harmonization of phytosanitary activities through emerging standards, the facilitation of the exchange of official and scientific information among countries, and the furnishing of technical assistance to developing countries that are signatories to the IPPC.

The IPPC is under the authority of the Food and Agriculture Organization (FAO), and the members of the Secretariat of the IPPC are appointed by the FAO. The IPPC is implemented by national plant protection organizations (NPPOs) in cooperation with regional plant protection organizations (RPPOs), the Commission on Phytosanitary Measures (CPMand the Secretariat of the IPPC. The United States plays a major role in all standard-setting activities under the IPPC and has representation on FAO's highest governing body, the FAO Conference.

The United States became a contracting party to the IPPC in 1972 and has been actively involved in furthering the work of the IPPC ever since. The IPPC was amended in 1979, and the amended version entered into force in 1991 after two-thirds of the contracting countries accepted the amendment. More recently, in 1997, contracting parties completed negotiations on further amendments that were approved by the FAO Conference and submitted to the parties for acceptance. This 1997 amendment updated phytosanitary concepts and formalized the standard-setting structure within the IPPC. The 1997 amended version of the IPPC entered into force after two-thirds of the contracting parties notified the Director General of FAO of their acceptance of the amendment in October 2005. The U.S. Senate gave its advice and consent to acceptance of the newly revised IPPC on October 18, 2000. The President submitted the official letter of acceptance to the FAO Director General on October 4, 2001.

The IPPC has been, and continues to be, administered at the national level by plant quarantine officials whose primary objective is to safeguard plant resources from injurious pests. In the United States, the national plant protection organization is APHIS' Plant Protection and Quarantine (PPQ) program.

Every 2 years, NPPOs and RPPOs propose topics for ISPMs, which are then prioritized and approved by the CPM. All contracting parties agree to the scope of the draft ISPM and then NPPOs and RPPOs nominate experts to draft the ISPM. The draft ISPM then enters the member consultation stage, in which countries submit comments. The comments are incorporated and the draft ISPM is presented for the final member consultation stage, and is then adopted by the CPM. On average, this process takes 5 to 7 years. More detailed information on the standard setting process can be found on the IPPC Web site.[1]

Each member country is represented on the CPM by a single delegate. Although experts and advisors may accompany the delegate to meetings of the CPM, only the delegate (or an authorized alternate) may represent each member country in considering a standard proposed for approval. Parties involved in a vote by the CPM are to make every effort to reach agreement on all matters by consensus. Only after all efforts to reach a consensus have been exhausted may a decision on a standard be passed by a vote of two-thirds of delegates present and voting.

Technical experts from the United States have participated directly in working groups and indirectly as reviewers of all IPPC draft standards. The United States also has a representative on the Standards Committee, Capacity Development Committee, and the CPM Bureau. In addition, documents and positions developed by APHIS and NAPPO have been sources of significant input for many of the standards adopted to date. This notice describes each of the IPPC standards currently under consideration or up for adoption. Interested individuals may review the standards[2] and submit comments to *Julie.E.Aliaga@aphis.usda.gov.*

The Ninth Session of the CPM is scheduled for March 31 to April 4, 2014, at FAO Headquarters in Rome, Italy. The Deputy Administrator for APHIS' PPQ program is the U.S. delegate to the CPM. The Deputy Administrator intends to participate in the proceedings and will discuss or comment on APHIS' position on any standards up for adoption.

It is expected that the following standards will be sufficiently developed to be considered by the CPM for adoption at its 2014 meeting. The United States, represented by the Deputy Administrator for APHIS' PPQ program, will participate in consideration of these standards. The U.S. position on each of these issues will be developed prior to the CPM session and will be based on APHIS' analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

- Appendix to ISPM 12: Electronic certification, information on standard

[1] IPPC Standard Setting procedure: *https://www.ippc.int/core-activities/standards-setting.*

[2] Draft ISPMs submitted for member consultation: *https://www.ippc.int/core-activities/standards-setting/member-consultation-draft-ispms.*

Draft ISPMs submitted for substantial concerns commenting period: *https://www.ippc.int/core-activities/standards-setting/substantial-concerns-commenting-period-sccp-draft-ispms.*

Draft ISPMs submitted for adoption: *https://www.ippc.int/core-activities/standards-setting/formal-objections-draft-ispms-14-days-prior-cpm.*

XML schemas and exchange mechanisms.

- Annex to ISPM 26: Establishment of fruit fly quarantine areas within a pest free area in the event of an outbreak.
- New ISPM: Determination of host status of fruits and vegetables to fruit fly (Tephritidae) infestation.
- Annexes to ISPM 28: Phytosanitary treatments.
  - Cold treatment for *Ceratitis capitata* on *Citrus sinensis.*
  - Cold treatment for *Ceratitis capitata* on *Citrus reticulata* × *C. sinensis.*
  - Cold treatment for *Ceratitis capitata* on *Citrus limon.*
  - Cold treatment for Bactrocera tryoni on *Citrus limon.*
  - Cold treatment for Bactrocera tryoni on *Citrus sinensis.*
  - Cold treatment for Bactrocera tryoni on *Citrus reticulata* × *C. sinensis.*
  - Cold treatment for *Ceratitis capitata* on *Citrus* paradisi.
  - Vapor heat treatment for *Bactrocera cucurbitae* on *Cucumis melo* var. *Reticulatus.*
  - Irradiation for *Dysmicoccus neobrevipes* Beardsley, *Planococcus lilacinus* (Cockerell), and *Planococcus minor* (Maskell) (Hemiptera: Pseudococcidae).
- Annexes to ISPM 27: Diagnostic Protocols.
  - *Phyllosticta citricarpa* on fruit.
  - *Tilletia indica.*

New Standard-Setting Initiatives, Including Those in Development

A number of expert working group (EWG) meetings or other technical consultations will take place during 2014 on the topics listed below. These standard-setting initiatives are under development and may be considered for future adoption. APHIS intends to participate actively and fully in each of these working groups. The U.S. position on each of the topics to be addressed by these various working groups will be developed prior to these working group meetings and will be based on APHIS' technical analysis, information from other U.S. Government agencies, and relevant scientific information from interested stakeholders.

- EWG on international movement of cut flowers and branches.
- Technical Panel on phytosanitary treatments.
- Technical Panel on the Glossary.
- Technical Panel on forest quarantine.
- Technical Panel on diagnostic protocols.
- The specification for the international movement of grain will be available for country consultation.

For more detailed information on the above, contact Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above).

APHIS posts links to draft standards on the Internet as they become available and provides information on the due dates for comments.[3] Additional information on IPPC standards (including the standard setting process and adopted standards) is available on the IPPC Web site.[4] For the most current information on official U.S. participation in IPPC activities, including U.S. positions on standards being considered, contact Ms. Julie E. Aliaga (see **FOR FURTHER INFORMATION CONTACT** above). Those wishing to provide comments on any of the areas of work being undertaken by the IPPC may do so at any time by responding to this notice (see **ADDRESSES** above) or by providing comments through Ms. Aliaga.

NAPPO Standard-Setting Activities

NAPPO, a regional plant protection organization created in 1976 under the IPPC, coordinates the efforts among Canada, the United States, and Mexico to protect their plant resources from the entry, establishment, and spread of harmful plant pests, while facilitating intra- and inter-regional trade. NAPPO conducts its business through commodity based panels, expert groups, and annual meetings held among the three member countries. The NAPPO Executive Committee charges individual panels or expert groups with the responsibility for drawing up proposals for NAPPO positions, policies, and standards. Panels and expert groups are made up of representatives from each member country who have scientific expertise related to the policy or standard being considered, as well as representatives from key industries or commodity groups (e.g., nursery, seed, forestry, grains, potato, citrus, etc.). Proposals drawn up by the individual panels are circulated for review to Government and industry officials in Canada, the United States, and Mexico, who may suggest revisions. In the United States, draft standards are circulated to industry, States, and various government agencies for consideration and comment. The draft standards are posted on the Internet at *http://www.nappo.org/en/.* Once revisions are made, the proposal is sent to the NAPPO Working Group and the NAPPO Standards Panel for technical reviews, and then to the Executive Committee for final approval, which is granted by consensus.

The annual NAPPO meeting was held October 29 to 31, 2013, in Guelph, Ontario, Canada. The NAPPO Executive Committee meeting took place on October 28, 2013. The Deputy Administrator for PPQ, or his designee (in this case, the Assistant Deputy Administrator for Field Operations), is a member of the NAPPO Executive Committee. The Assistant Deputy Administrator for Field Operations participated in the proceedings to discuss or comment on APHIS' position on standards proposed for adoption or any proposals to develop new standards.

Below is a summary of the current NAPPO work program as it relates to the ongoing development of NAPPO standards. The United States (i.e., USDA/APHIS) intends to participate actively and fully in the NAPPO work program. The U.S. position on each topic will be guided and informed by the best scientific information available on each of these topics. For each of the following topics, the United States will consider its position on any draft standard after it reviews a prepared draft. Information regarding the following NAPPO panel topics, assignments, activities, and updates on meeting times and locations may be obtained from the NAPPO homepage at *http://www.nappo.org* or by contacting Dr. Christina Devorshak (see **FOR FURTHER INFORMATION CONTACT** above).

The current work program includes the following topics.

1. Authorization—The Authorization panel will finalize RSPM 28, ''Guidelines for Authorization of Entities to Perform Phytosanitary Services,'' based on comments received through country consultation.

2. Citrus—The Citrus commodity panel will finalize a document on recommended measures for the establishment and maintenance of area wide management programs for Huanglongbing and its vector. The panel will also develop a document for identification of new and emerging citrus quarantine pests and methods for their identification and management (no meeting/work electronically only).

3. Forestry—The Forestry commodity panel will organize a workshop (regional or international) on implementation of ISPM 15, Regulation of wood packaging material in international trade. It will also review and incorporate comments made to the Science and Technology document on heat treatment of wood products. The panel is also developing a specification for a possible standard on the potential

[3] For more information on the IPPC draft ISPM member consultation: *http://www.aphis.usda.gov/plant_health/international/PhytosanitaryStandards/draft_standards.shtml.*

[4] IPPC Web site: *https://www.ippc.int/.*

use of systems approaches to manage pest risks associated with the movement of wood. Lastly the panel is completing development of a Science and Technology document on biological control of emerald ash borer (EAB).

4. Pest risk analysis—An expert group will be appointed to develop a NAPPO Science and Technology paper on the risks associated with Lymantriids of potential concern to the NAPPO region, identifying potential species and pathways of concern. A specification for a regional standard on diversion from intended use is also being prepared.

5. Fruit—The Fruit panel will finalize the Annex to RSPM 17 on guidelines for development of, and efficacy verification for, lures and traps for arthropod pests of fruits: format as Appendix, submit for country consultation and finalize.

6. Grain—The Grain panel will develop a discussion paper related to the issue of phytosanitary certification of grain re-export and in-transit movement within North America and for re-export of grain to off-continent destinations.

7. Host status—An expert group will be established to develop a standard on ''Criteria for the determination of host status of pest arthropods and pathogens based on available information'' according to the approved specifications.

8. Oversight—The Oversight panel will finalize RSPM 41, Guidelines for oversight programs, based on comments received through country consultation, due to begin in November 2013.

9. Pest Risk Management—A draft regional standard for pest risk management (RSPM 40, Pest Risk Management), is under final revision based on comments received through country consultation.

10. Phytosanitary Alert System—The Phytosanitary Alert System (PAS) manages the NAPPO pest reporting system and work towards eliminating any duplication in reporting to the IPPC.

11. Plants for Planting—An expert group will be appointed to revise RSPM 18 (2004), Guidelines for phytosanitary action following detection of plum pox virus.

12. Potato—The Potato panel will revise Annex 6 of RSPM 3 (2011), Guidelines for movement of potatoes into a NAPPO member country based on the PVY TAG Science and Technology document finalized in 2013; they will also revise the pest list for RSPM 3. They will review the existing RSPM 3 (2011), Guidelines for movement of potatoes into a NAPPO member country to align it with ISPM 33 (2010), Pest free potato (*Solanum* sp.) micropropagative material and minitubers for international trade and discuss any adjustments required by NAPPO member countries.

13. Seed—The Seed panel will continue the development of technical information for the RSPM 36 (2013), Phytosanitary guidelines for the movement of seed into a NAPPO member country, including the preparation of a process for petitioning NAPPO to officially add technical information to RSPM 36 and the development of annexes and appendices for five additional seed commodities: Tomato, pepper, spinach, lettuce, and watermelon. They will also prepare a comprehensive analysis and evaluation of overall phytosanitary risk of seed that is moved internationally, and prospects for harmonization of seed phytosanitary approaches among the NAPPO member countries, as a NAPPO discussion document.

14. Electronic Phytosanitary Certification (E-phyto) Panel—The panel conducted a regional workshop on E-phyto in Costa Rica for Latin American countries in 2013. Ongoing E-phyto work is primarily conducted through the IPPC; however, the NAPPO Annual Symposium conducted in conjunction with the Annual Meeting in 2014 will be focused on further development of E-phyto internationally.

The PPQ Assistant Deputy Administrator, as the official U.S. delegate to NAPPO, intends to participate in the adoption of these regional plant health standards, including the work described above, once they are completed and ready for such consideration.

The information in this notice contains all the information available to us on NAPPO standards currently under development or consideration. For updates on meeting times and for information on the working panels that may become available following publication of this notice, go to the NAPPO Web site on the Internet at *http://www.nappo.org* or contact Dr. Christina Devorshak (see **FOR FURTHER INFORMATION CONTACT** above). Information on official U.S. participation in NAPPO activities, including U.S. positions on standards being considered, may also be obtained from Dr. Devorshak. Those wishing to provide comments on any of the topics being addressed in the NAPPO work program may do so at any time by responding to this notice (see **ADDRESSES** above) or by transmitting comments through Dr. Devorshak.

Done in Washington, DC, this 29th day of January 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–02274 Filed 2–3–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection: Comment Request: Form FNS–583, Supplemental Nutrition Assistance Program Employment and Training Program Activity Report

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice invites the public and other public agencies to comment on a proposed information collection burden for the Supplemental Nutrition Assistance Program (SNAP), Employment and Training (E&T) Program, currently approved under OMB No. 0584–0339. This is an extension without revision of a currently approved collection. The burden estimate remains 21,889 hours.

DATES: Submit written comments on or before April 7, 2014.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information, including validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other form of information technology.

Comments may be sent to Sasha Gersten-Paal, Acting Chief, Program Design Branch, Program Development Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 810, Alexandria, Virginia, 22302. Comments may also be submitted via fax to the attention of Sasha Gersten-Paal at 703–

305–2454 or via email to *Sasha.Gersten-Paal@fns.usda.gov*.

Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically. All written comments will be open for public inspection at the office of the Food and Nutrition Service located at 3101 Park Center Drive, Room 810, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday).

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

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of this information collection should be directed to Sasha Gersten-Paal at (703) 305–2507.

SUPPLEMENTARY INFORMATION:

Title: Employment and Training Program Activity Report.

OMB Number: 0584–0339.

Expiration Date: June 30, 2014.

Type of Request: Extension without revision of a currently approved collection.

Abstract: 7 CFR 273.7(c)(9) requires State agencies to submit quarterly E&T Program Activity Reports containing monthly figures for participation in the program. FNS uses Form FNS–583, to collect participation data. The information collected on the FNS–583 report includes:

- On the first quarter report, the number of work registrants receiving SNAP as of October 1 of the new fiscal year;
- On each quarterly report, by month, the number of new work registrants; the number of able-bodied adults without dependents (ABAWDs) applicants and recipients participating in qualifying components; the number of all other applicants and recipients (including ABAWDs involved in non-qualifying activities) participating in components; and the number of ABAWDs exempt under the State agency's 15 percent exemption allowance;
- On the fourth quarter report, the total number of individuals who participated in each component, which is also sorted by ABAWD and non-ABAWD participants and the number of individuals who participated in the E&T Program during the fiscal year.

7 CFR 273.7(d)(1)(i)(D) provides that if a State agency will not expend all of the funds allocated to it for a fiscal year, FNS will reallocate unexpended funds to other State agencies during the fiscal year or the subsequent fiscal year as FNS considers appropriate and equitable. After FNS makes initial E&T allocations, State agencies may request more funds as needed. Typically FNS receives fourteen such requests per year.

The time it takes to prepare these requests is included in the burden. After receiving the State requests, FNS will reallocate unexpended funds as provided above. The following is the estimated burden for E&T reporting including the burden for State agencies to request additional funds.

Reporting

FNS–583 Report

Frequency: 4.

Affected Public: State Agency.

Number of Respondents: 53.

Number of Responses: 684. (Note this reflects multiple responses within the FNS–583 form; In aggregate, 53 State Agencies submit 1 form each quarter or 212 total responses per year.)

Estimated Time per Response: 31.9363 hours per State agency.

Estimated Total Annual Reporting Burden: 21,844.40 hours.

Requests for Additional Funds

Frequency: .2641.

Affected Public: State Agency.

Number of Respondents: 53.

Number of Responses: 14.

Estimated Time per Response: 1.00 hour per request.

Estimated Total Annual Reporting Burden: 14 hours.

Recordkeeping

FNS–583 Report

Number of Respondents: 53.

Number of Records: 212.

Number of Hours per Record: 0.137 hours.

Estimated Total Annual Recordkeeping Burden: 29.04 hours.

Requests for Additional Funds

Number of Respondents: 53.

Number of Records: 14.

Number of Hours per Record: 0.137 hours.

Estimated Total Annual Recordkeeping Burden: 1.92 hours.

TOTAL ANNUAL REPORTING AND RECORDKEEPING BURDEN

[Compiling and reporting for the FNS–583 and requests for more funding]

[Snap Employment and Training Program Activity Report]

Section of regulation	Title	Number of respondents	Reports filed annually	Total responses (C × D)	Estimated number of hours per response	Estimated total hours (C × D × F)
A	B	C	D	E	F	G
REPORTING						
7 CFR 273.7(c)(8)	Compile and report new work registrants on FNS–583.	53	4	212	90.94	19,278.28
7 CFR 273.24(g)	Compile and report 15 percent ABAWD exemptions on FNS–583.	12*	4	48	4.59	220.32
7 CFR 273.7(f)	Compile and report E&T activities (placements) on FNS–583.	53	4	212	10.10	2,142.20
7 CFR 273.7(C)(8)	Preparing FNS–583:					
	States filing electronically	50	4	200	1.00	200
	States filing manually	3	4	12	0.3	3.6

TOTAL ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

[Compiling and reporting for the FNS–583 and requests for more funding]

[Snap Employment and Training Program Activity Report]

Section of regulation	Title	Number of respondents	Reports filed annually	Total responses (C × D)	Estimated number of hours per response	Estimated total hours (C × D × F)
A	B	C	D	E	F	G
7 CFR 273.7(d)(1)(i)(F)	Preparing requests for more funds after initial allocation.	53	0.2641	14	1	14
Total Reporting for FNS–583 and Additional Funds Requests.	.....	53	13.1698	698	31.32	21,858.40
RECORDKEEPING						
7 CFR 277.12	Recordkeeping burden for FNS–583.	53	4	212	0.137	29.04
7 CFR 277.12	Record-keeping burden for additional requests.	53	0.26415	14	0.137	1.92
Total Recordkeeping Burden for FNS 583 and Additional Funds Requests.	.....	53	4.26	226	0.137	30.96
SUMMARY						
TOTAL ALL BURDENS	.....	53	17.43	924	23.689	21,889.36

* There are 12 States without statewide waivers of the time-limit that will likely use 15 percent exemptions.

Dated: January 24, 2014.

Audrey Rowe,

Administrator,Food and Nutrition Service.

[FR Doc. 2014–02256 Filed 2–3–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to provide information regarding the monitoring of RAC projects.

DATES: The meeting will be held March 25, 2014 6:30 p.m.

ADDRESSES: The meeting will be held at the Bitteroot National Forest Supervisor's Office located at 1801 N. 1st, Hamilton, MT. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Bitteroot National Forest Supervisor's Office. Please call ahead to 406–363–7100 to facilitate entry into the building and to view comments.

FOR FURTHER INFORMATION CONTACT: Dan Ritter, Acting Forest Supervisor or Joni Lubke, Executive Assistant at 406–363–7100.

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. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Vote on Project proposals for 2014 funding. Contact Joni Lubke at 406–363–7100 for a full agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. Individuals wishing to make an oral statement should request in writing by March 24, 2014 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Joni Lubke at 1801 N. 1st, Hamilton, MT 59840 or by email to *jmlubke@fs.fed.us* or via facsimile to 406–363–7159. A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Ravalli+County* within 21 days of the meeting.

Dated: January 22, 2014.

Daniel G. Ritter,

Acting Forest Supervisor.

[FR Doc. 2014–02257 Filed 2–3–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Current Population Surveys (CPS) Housing Vacancy Survey (HVS)

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before April 7, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, U.S. Census Bureau, 7H110F, Washington, DC 20233–8400 at (301) 763–3806 (or via the internet at *Karen.g.wms.woods@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of data concerning the HVS. The current clearance expires June 30, 2014.

Collection of the HVS in conjunction with the CPS began in 1956, and serves a broad array of data users. We conduct the HVS interviews with landlords or other knowledgeable people concerning vacant housing units identified in the monthly CPS sample and meeting certain criteria. The HVS provides the only quarterly statistics on rental vacancy rates and homeownership rates for the United States, the four census regions, the 50 states and the District of Columbia, and the 75 largest metropolitan areas (MAs). Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time.

In addition, the rental vacancy rate is a component of the index of leading economic indicators published by the Department of Commerce.

Policy analysts, program managers, budget analysts, and congressional staff use these data to advise the executive and legislative branches of government with respect to the number and characteristics of units available for occupancy and the suitability of housing initiatives. Several other government agencies use these data on a continuing basis in calculating consumer expenditures for housing as a component of the gross national product; to project mortgage demands; and to measure the adequacy of the supply of rental and homeowner units. In addition, investment firms use the HVS data to analyze market trends and for economic forecasting.

II. Method of Collection

Field representatives collect this HVS information by personal-visit interviews in conjunction with the regular monthly CPS interviewing. We collect HVS data concerning units that are vacant and intended for year-round occupancy as determined during the CPS interview. Approximately 7,000 units in the CPS sample meet these criteria each month. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Control Number: 0607–0179.

Form Number: HVS–600 (Fact Sheet for the Housing Vacancy Survey), CPS–263 (MIS–1) (L) (Introductory letter explaining the need for the survey and answering frequently asked questions) and BC–1428RV (Brochure—The U.S. Census Bureau Respects Your Privacy and Keeps Your Personal Information Confidential).

Type of Review: Regular submission.

Affected Public: Individuals who have knowledge of the vacant sample unit (e.g., landlord, rental agents, neighbors).

Estimated Number of Respondents: 7,000 per month.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 4,317 hours.

Estimated Total Annual Cost: There is no cost to the respondents other than their time.

Respondents Obligation: Voluntary.

Legal Authority: Title 13, U.S.C. 182, and Title 29, U.S.C. 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 29, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–02222 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912 and C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (the USITC) that revocation of the antidumping duty (AD) order and revocation of the countervailing duty (CVD) order on certain new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC) would likely lead to a continuation or recurrence of dumping and a continuation or recurrence of net countervailable subsidies and material injury to an industry in the United States, the Department is publishing a notice of continuation of these AD and CVD orders.

DATES: *Effective Date:* February 4, 2014.

FOR FURTHER INFORMATION CONTACT: Andrew Huston (AD) or Demitrios Kalogeropoulos (CVD), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4261 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2013, the Department initiated a sunset review of these orders, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the Act).[1] As a result of its review, the Department determined that revocation of the AD order on OTR Tires from the PRC would likely lead to a continuation or recurrence of dumping and that revocation of the CVD order on OTR Tires from the PRC would likely lead to a continuation or recurrence of net countervailable subsidies and, therefore, notified the USITC of the magnitude of the margins of dumping and the subsidy rates likely to prevail should the order be revoked.[2] On January 22, 2014, the USITC published its determination, pursuant to sections 751(c) and 752 of the Act, that revocation of the AD and CVD orders on OTR Tires from the PRC would lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The products covered by the scope of these *Orders* are new pneumatic tires designed for off-the-road (OTR) and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[4] combine harvesters,[5] agricultural high clearance sprayers,[6] industrial tractors,[7] log-skidders,[8] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders; [9] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[10] front end loaders,[11] dozers,[12] lift trucks, straddle carriers,[13] graders,[14] mobile cranes,[15] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[16] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.,* tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the proceeding range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type [17] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P—Identifies a tire intended primarily for service on passenger cars;

[1] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 46575 (August 1, 2013).

[2] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the Expedited Sunset Review of the Countervailing Duty Order,* 78 FR 77101 (December 20, 2013); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 79 FR 2415 (January 14, 2014), (collectively, *Orders*).

[3] *See Certain Off-the-Road Tires From China,* 79 FR 3624 (January 22, 2014).

[4] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[5] Combine harvesters are used to harvest crops such as corn or wheat.

[6] Agricultural sprayers are used to irrigate agricultural fields.

[7] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[8] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[9] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[10] Haul trucks, which may be either rigid frame or articulated (*i.e.,* able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[11] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[12] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.,* typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[13] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[14] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[15] *I.e.,* ''on-site'' mobile cranes designed for off-highway use.

[16] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

[17] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.,* sold with or separately from subject merchandise).

• LT—Identifies a tire intended primarily for service on light trucks; and,

• ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

• TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″

• MH—Identifies tires for Mobile Homes;

• HC—Identifies a heavy duty tire designated for use on ''HC'' 15″ tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

• Example: 8R17.5 LT, 8R17.5 HC;

• LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and

• MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Continuation of the Order

As a result of the determinations by the Department and the USITC that revocation of the AD and CVD orders would likely lead to a continuation or recurrence of dumping and net countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD and CVD *Orders* on OTR Tires from the PRC. U.S Customs and Border Protection will continue to collect AD duty and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of this continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the effective date of the continuation.

The five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: January 29, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–02289 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–844, A–489–818]

Steel Concrete Reinforcing Bar From Mexico and Turkey: Postponement of Preliminary Determination in the Antidumping Duty Investigations

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 4, 2014.

FOR FURTHER INFORMATION CONTACT: Joy Zhang (Mexico) or Jolanta Lawska (Turkey), AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1168, or (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of the Preliminary Determination

On September 24, 2013, the Department of Commerce (the Department) initiated antidumping duty investigations on steel concrete reinforcing bar from Mexico and Turkey.[1] The notice of initiation stated that the Department, in accordance with section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1), would issue its preliminary determination for these investigations, unless postponed, no later than 140 days after the date of the initiation. The original signature date for the preliminary determination was February 11, 2014. Subsequently, as explained in a memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[2] Accordingly, all deadlines in these investigations were extended by 16 days. Thus, the preliminary determination of these antidumping duty investigations is currently due no later than February 27, 2014.

On January 27, 2014, more than 25 days before the scheduled preliminary determination, the Rebar Trade Action Coalition (RTAC) and its individual members (collectively, ''Petitioners''),[3] pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(b)(2) and (e), made a timely request for a 50-day postponement of the preliminary determination in these investigations.[4] Petitioners noted in their request that this extension will provide additional time for the Department to review respondents' submissions and to request supplemental information, so that the preliminary determinations will reflect the most accurate results possible.

The Department has found no compelling reason to deny the request and, therefore, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination to no later than 206 days after the date on which it initiated these investigations (the original 140-day period, plus a 50-day postponement, and the 16 days tolled for the shutdown of the Federal Government). Therefore, the new deadline for issuing the preliminary determination is now April 18, 2014.

This notice is issued and published pursuant to section 733(c)(2) of the Act.

Dated: January 29, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–02290 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Steel Concrete Reinforcing Bar From Mexico and Turkey: Initiation of Antidumping Duty Investigations,* 78 FR 60827 (October 2, 2013).

[2] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[3] Petitioners are RTAC and its individual members: Byer Steel Group, Inc., Schnitzer Steel Industries d/b/a Cascade Steel Rolling Mills, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., and Nucor Corporation.

[4] *See* Letter from Petitioners to the Secretary of Commerce, ''Steel Concrete Reinforcing Bar from Mexico and Turkey—Request to Extend the Antidumping Duty Preliminary Determination,'' dated January 27, 2014.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before February 24, 2014. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 13–050. Applicant: The University of Memphis, 275 Administration Building, 3720 Alumni Drive, Memphis, TN 38152–3370. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used for multiple objectives including understanding the interplay between structural, magnetic and electromagnetic properties of synthesized magnetic nanostructures, and promoting and improving the ability of implants to integrate into bone and to deliver locally therapeutic agents such as antimicrobials and/or growth factors. The experiments to be conducted will include observations of the nanometer scale morphology of biocompatible/biodegradable hydrogel systems, the determination of how various therapeutic drugs affect the microscopic cellular architecture, determining the limit of feature size that can be fabricated using E-beam lithography from sensor materials, and determining the spatial limits in simultaneous multi-analyte electrochemical sensing. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: December 12, 2013.

Docket Number: 13–051. Applicant: The Scripps Research Institute, 10550 North Torrey Pines Road, M/S BCC–206, La Jolla, CA 92037. Instrument: Transmission Electron Microscope—Titan Krios. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to gain significant insight into the manner in which macromolecular assemblies perform crucial life processes by determining the three-dimensional structure of these macromolecular assemblies. The instrument will be used to determine the manner in which biological assemblies function and the mechanisms through which they interact with other cellular components. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: December 16, 2013.

Dated: January 28, 2014.

Gregory W. Campbell,

Director of Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2014–02291 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee (CINTAC) Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the CINTAC.

DATES: The meeting is scheduled for Thursday, February 27, 2014, at 10:00 a.m. Eastern Standard Time (EST). The public session is from 3:00 p.m.–4:00p.m.

ADDRESSES: The meeting will be held in Room 6031, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the February 27, 2014 CINTAC meeting is as follows:

Closed Session (10:00 a.m.–3:00 p.m.)

1. Discussion of matters determined to be exempt from the provisions of the Federal Advisory Committee Act relating to public meetings found in 5 U.S.C. App. §§ (10)(a)(1) and 10(a)(3).

Public Session (3:00 p.m.–4:00 p.m.)

1. International Trade Administration's Civil Nuclear Trade Initiative Update
2. Civil Nuclear Trade Promotion Activities Discussion
3. Public comment period

The meeting will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information below by 5:00 p.m. EST on Friday, February 21, 2014 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EST on Friday, February 21, 2014. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments

concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on February 21, 2014. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Dated: January 28, 2014.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2014–02114 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

CBS Outdoor, Inc.; Notice of Appeal

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Appeal.

SUMMARY: This announcement provides notice that the Department of Commerce (Department) has received a ''Notice of Appeal'' filed by CBS Outdoor, Inc. (Appellant) requesting that the Secretary override an objection by the California Coastal Commission to a consistency certification for a proposed project in Humboldt County, California.

ADDRESSES AND DATES: You may submit written comments concerning this appeal or requests for a public hearing to NOAA, Office of General Counsel, Oceans and Coasts Section, Attn. Molly Holt, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, or via email to gcos.comments@noaa.gov. Comments or requests for a public hearing must be sent in writing postmarked or emailed no later than March 4, 2014.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

In December 2013, the Secretary of Commerce (Secretary) received a ''Notice of Appeal'' filed by CBS Outdoor, Inc., pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, Subpart H. The appeal is taken from an objection by the California Coastal Commission to a consistency certification for a highway improvement project partially funded by the Federal Highway Administration.

Under the CZMA, the Secretary may override the California Coastal Commission's objection on grounds that the project is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department must find that: (1) the proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity is not permitted to go forward as proposed. 15 CFR 930.122.

II. Request for Public and Federal Agency Comments

We encourage the public and interested federal agencies to participate in this appeal by submitting written comments and any relevant materials supporting those comments. All comments received are a part of the public record. 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.

III. Public Hearing Request

You may submit a request for a public hearing using one of the methods specified in the **ADDRESSES** section of this notice. In your request, explain why you believe a public hearing would be beneficial. If we determine that a public hearing would aid the decisionmaker, a notice announcing the date, time, and location of the public hearing will be published in the **Federal Register**. The public and federal agency comment period will also be reopened for a ten-day period following the conclusion of the public hearing to allow for additional input.

IV. Public Availability of Appeal Documents

NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following Web site: *http://coastalmanagement.noaa.gov/consistency/fcappealdecisions.html;* and during business hours, at the NOAA, Office of General Counsel in the location specified in the **ADDRESSES AND DATES** section of this notice.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: January 28, 2014.

Jeffrey S. Dillen,

Acting Chief, Oceans & Coasts Section NOAA Office of General Counsel.

[FR Doc. 2014–02302 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Notice of Appeal

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Appeal.

SUMMARY: This announcement provides notice that the Department of Commerce (Department) has received a ''Notice of Appeal'' filed by CBS Outdoor, Inc. (Appellant) requesting that the Secretary override an objection by the California Coastal Commission to a consistency certification for a proposed project in Humboldt County, California.

ADDRESSES AND DATES: You may submit written comments concerning this appeal or requests for a public hearing to NOAA, Office of General Counsel, Oceans and Coasts Section, Attn. Molly Holt, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, or via email to gcos.comments@noaa.gov. Comments or requests for a public hearing must be sent in writing postmarked or emailed no later than March 4, 2014.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

In December 2013, the Secretary of Commerce (Secretary) received a ''Notice of Appeal'' filed by CBS Outdoor, Inc., pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, Subpart H. The appeal is taken from an objection by the California Coastal Commission to a consistency certification for a highway

improvement project partially funded by the Federal Highway Administration.

Under the CZMA, the Secretary may override the California Coastal Commission's objection on grounds that the project is consistent with the objectives or purposes of the CZMA or otherwise necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Department must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired if the activity is not permitted to go forward as proposed. 15 CFR 930.122.

II. Request for Public and Federal Agency Comments

We encourage the public and interested federal agencies to participate in this appeal by submitting written comments and any relevant materials supporting those comments. All comments received are a part of the public record. 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.

III. Public Hearing Request

You may submit a request for a public hearing using one of the methods specified in the **ADDRESSES** section of this notice. In your request, explain why you believe a public hearing would be beneficial. If we determine that a public hearing would aid the decisionmaker, a notice announcing the date, time, and location of the public hearing will be published in the **Federal Register**. The public and federal agency comment period will also be reopened for a ten-day period following the conclusion of the public hearing to allow for additional input.

IV. Public Availability of Appeal Documents

NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following Web site: *http://coastalmanagement.noaa.gov/consistency/fcappealdecisions.html;* and during business hours, at the NOAA, Office of General Counsel in the location specified in the **ADDRESSES AND DATES** section of this notice.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: January 30, 2014.

Jeffrey S. Dillen,

Acting Chief, Oceans & Coasts Section,

NOAA Office of General Counsel.

[FR Doc. 2014–02306 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: The public meeting will be held on February 25–26, 2014. February 25th from 8:30 a.m. to 6:00 p.m. EST; February 26th from 8:30 a.m. to 5:30 p.m. EST.

Location: Grand Hyatt New York, 109 East 42nd Street, Park Avenue at Grand Central Station, New York, New York, 10017, tel: (212) 883–1234. Refer to the HSRP Web site listed below for the most current meeting agenda. Times and agenda topics are subject to change. For interested members of the public who cannot attend in person, the HSRP meeting will provide webinar (WebEX) and teleconference capability for public access to listen and observe the meeting presentations. Members of the public who wish to participate virtually must register in advance by February 19, 2014. WebEX is available for Tuesday, February 25th from 8:30 a.m. to 6:00 p.m., and on Wednesday, February 26th from 8:30 a.m. to 11:15 a.m. and from 2:15 p.m. to 5:30 p.m. To register for virtual access via WebEX/teleconference and/or to submit public comments, please contact Ashley Chappell at email: *Ashley.Chappell@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kathy Watson, HSRP Program Coordinator, National Ocean Service (NOS), Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770 ext. 158; Fax: 301–713–4019; Email: *Kathy.Watson@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and public comment periods (on-site and via teleconference line) will be scheduled at various times throughout the meeting. These comment periods will be included in the final agenda published before February 21, 2014, on the HSRP Web site listed above. Each individual or group making verbal comments will be limited to a total time of five (5) minutes. Comments will be recorded. Written comments should be submitted to *Kathy.Watson@noaa.gov* by February 19, 2014. Written comments received after February 19, 2014, will be distributed to the HSRP, but may not be reviewed until the meeting. Public seating will be available on a first-come, first-served basis.

Special Accommodations: HSRP public meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Watson, HSRP Program Coordinator, National Ocean Service (NOS), Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770 ext. 158, or Email: *Kathy.Watson@noaa.gov* by February 14, 2014.

Matters To Be Considered: Regional and local stakeholders will present to the HSRP on issues relevant to NOAA's navigation services mission. Broad topic areas to be discussed include: (1) NOAA's navigation services mission to support the U.S. marine transportation system and economy; (2) the use of NOAA's navigation data, products, and services for national and regional preparedness, response, recovery, and resiliency efforts, specifically in relation to Post Tropical Cyclone Sandy and the Disaster Relief Appropriations Act of 2013; and (3) the use and need for

improvements to NOAA's data, products, and services for navigation safety, improved Federal emergency response, informed local and regional coastal planning, risk reduction strategies for resilient coastal communities; and (4) the use and application of NOAA's charting, geodetic and tide, current and water level information to support pre-storm preparation and post-storm response and recovery.

The HSRP will also hold focused breakout sessions with regional and local stakeholders to further discuss challenges and issues presented during the stakeholder panel presentations, and other issues not previously presented. The breakout sessions will be held on Wednesday, February 26, 2014, with three general themes: (1) Updated nautical charting and consistency in standards; (2) Integrated Ocean and Coastal Mapping, modeling and resiliency; and (3) integrating Federal emergency response efforts for coastal resiliency.

Members of the public (attending in person) are welcome to participate and register for these sessions by contacting NOAA's Northeast Navigation Manager, LCDR Brent Pounds at email: *Brent.Pounds@noaa.gov*; or the HSRP Program Coordinator, Kathy Watson at email: *Kathy.Watson@noaa.gov* by February 19, 2014. Members of the public, who wish to participate in the breakout session virtually (via teleconference capability), should contact Ashley Chappell at email: *Ashley.Chappell@noaa.gov* by February 19, 2014.

The breakout sessions provide the public with the opportunity to interact with HSRP members on concerns or issues with NOAA's navigation data, products, and services, and to present options or recommendations for improvement. The HSRP will consider input from these breakout sessions, and from the meeting presentations, to develop its recommendations for submission to the NOAA Acting Administrator for improving NOAA's navigation data, products, and services.

Dated: January 28, 2014.

Christopher C. Cartwright,

Associate Assistant Administrator for Management and CFO/CAO, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2014–02258 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA425

Endangered Species; File No. 15661

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

ACTION: Notice; issuance of permit modification.

SUMMARY: Notice is hereby given that the Commonwealth of the Northern Mariana Islands (CNMI) Division of Fish and Wildlife, (Arnold Palacios, Responsible Party) has been issued a modification to scientific research Permit No. 15661.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301)427–8401.

SUPPLEMENTARY INFORMATION: On June 25, 2013, notice was published in the **Federal Register** (78 FR 38013) that a modification of Permit No. 15661, issued January 24, 2012 (77 FR13097), had been requested by the above-named organization. The requested modification has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 15661 authorizes the CNMI to characterize population structure, size class composition, foraging ecology, and migration patterns for green (*Chelonia mydas*) and hawksbill (*Eretmochelys imbricata*) sea turtles in the Northern Mariana Islands. Researchers may count and hand capture sea turtles during vessel surveys. Captured sea turtles may be: Measured, weighed, flipper and passive integrated transponder tagged, temporarily marked, tissue sampled, photographed, and/or satellite tagged and tracked before release. Sea turtle carcasses and parts may be opportunistically salvaged. The modification (–01) authorizes blood and scute sampling of a subset of captured sea turtles for analysis of environmental pollutants. The permit expires January 31, 2017.

Issuance of this modification, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 30, 2014.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–02282 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD001

Takes of Marine Mammals During Specified Activities; Confined Blasting Operations by the U.S. Army Corps of Engineers During the Port of Miami Construction Project in Miami, Florida

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

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Army Corps of Engineers (ACOE) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by Level B harassment, incidental to confined blasting operations in the Port of Miami in Miami, Florida. NMFS has reviewed the application, including all supporting documents, and determined that it is adequate and complete. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on the its proposal to issue an IHA to ACOE to incidentally harass, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than March 6, 2014.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine

Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Goldstein@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

This project was previously evaluated by the ACOE under an Environmental Impact Statement (EIS) and a Record of Decision (ROD) for the project was signed on May 22, 2006, which is also available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1361(a)(5)(D)) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small number of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (I) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

16 U.S.C. 1362(18).

Summary of Request

On November 15, 2013, NMFS received a letter from the ACOE, requesting an IHA. The requested IHA would authorize the take, by Level B (behavioral) harassment, of small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to confined blasting operations in the Miami Harbor, Port of Miami, in Miami-Dade County, Florida. The IHA application was considered adequate and complete on November 26, 2013. NMFS issued an IHA to the ACOE on July 31, 2012 (77 FR 49278, August 15, 2012) for the same activities from March 15, 2013 to March 14, 2014 and the ACOE complied with the mitigation and monitoring requirements in the IHA. The ACOE plans to conduct four components as part of the project in Miami Harbor (see Figure 1 of the ACOE's IHA application for a map and more details). These components are:

(1) Widening of Cut 1 and deepening of Cut 1 and Cut 2;

(2) Adding a turn widener and deepening at the southern intersection of Cut 3 within Fisherman's Channel;

(3) Widening and deepening the Fisher Island Turning Basin; and

(4) Expanding the Federal Channel and Port of Miami berthing areas in Fisherman's Channel and the Lummus Island Turning Basin.

The construction would likely be completed using a combination of mechanical dredge (i.e., a clamshell or backhoe), cutterhead dredge, and rock pre-treatment by confined blasting. The dredging would remove approximately 5,000,000 cubic yards (3,822,774.3 cubic meters [m^3]) of material from the harbor. Material removed from the dredging would be placed in Miami Harbor Ocean Dredged Material Disposal Site, or used to construct seagrass and reef mitigation projects.

The confined blasting is planned to take place beginning during the spring of 2014 (March 2014), and is expected to take up to 24 months in Miami, Florida. Additional information on the construction project is contained in the application, which is available upon request (see **ADDRESSES**). Confined blasting means that the shots would be ''confined'' in the rock with stemming that prevents the explosive energy from going upward from the hole into the water column, and forces it to go laterally into the surrounding rock. In confined blasting, each charge is placed in a hole drilled in the rock approximately 5 to 10 feet (ft) (1.5 to 3.1 meters [m]) deep; depending on how much rock needs to be broken and the intended project depth. The hole is then capped with an inert material, such as crushed rock. A charge is the total weight of the explosives to be detonated during a blast. This can also be broken down into the weight of the individual delays. This process is referred to as ''stemming the hole'' (see Figure 6 and 7 of the ACOE's application).

Description of the Proposed Specified Activities

The ACOE proposes to deepen and widen the Federal channels at Miami Harbor, Port of Miami, in Miami-Dade County, Florida. The recommended plan (Alternative 2 of the Environmental Impact Statement [EIS]) includes four components:

(1) Widen the seaward portion of Cut 1 from 500 to 800 ft (152.4 to 243.8 m) and deepen Cut 1 and Cut 2 from a project depth of −44 to −52 ft (13.4 to 15.9 m);

(2) Add a turn widener at the southern intersection of Cut 3 within Fisherman's Channel and deepen to a project depth of −50 ft (−15.2 m);

(3) Increase the Fisher Island Turning Basin from 1,200 to 1,500 ft (365.8 to 457.2 m), truncate the northeast section of the turning basin to minimize seagrass impacts, and deepen from −42 ft (−12.8 m) to a project depth of −50 ft; and

(4) Expand the Federal Channel and Port of Miami berthing areas in Fisherman's Channel and in the eastern end of the Lummus Island Turning Basin (LITB) by 60 ft (18.3 m) to the south for a total of a 160 ft (48.8 m) wide berthing area and would be deepened from −42 ft to a project depth of −50 ft. The Federal Channel would be widened 40 ft (12.2 m) to the south, for a 100 ft (30.5 m) total width increase in Fisherman's Channel. This component (referred to as Component 5 in the ACOE's IHA application) would deepen Fisherman's Channel and the LITB from −42 ft to a project depth of −50 ft. See Figure 1 of ACOE's IHA application for a map of the proposed project's components.

Disposal of the estimated five million cubic yards of dredged material would occur at up to three disposal sites (seagrass mitigation area, offshore artificial reef mitigation areas, and the Miami Offshore Dredged Material Disposal Site). This project was previously evaluated under an Environmental Impact Statement (EIS) titled ''Miami Harbor Miami-Dade County, Florida Navigation Study, Final General Reevaluation Report and Environmental Impact Statement,'' prepared under the National Environmental Policy Act, and a Record of Decision for the project was signed on May 22, 2006. The original proposed project included six components, two of which (components four and six) have been removed. The EIS provides a detailed explanation of project location as well as all aspects of project implementation. It is also available online for public review at: *http://www.saj.usace.army.mil/Divisions/Planning/Branches/Environmental/DOCS/OnLine/Dade/MiamiHarbor/NAV_STUDY_VOL-1_MIAMI.pdf.*

To achieve the deepening of the Miami Harbor from the existing depth of −45 ft (−13.7 m) to project depth of −52 ft, pretreatment of some of the rock areas may be required using confined underwater blasting, where standard construction methods are unsuccessful due to the hardness of the rock. The ACOE has used two criteria to determine which areas are most likely to need confined blasting for the Miami Harbor expansion: (1) areas documented by core borings to contain hard and/or massive rock; and (2) areas previously blasted in the harbor during the 2005 confined blasting and dredging project.

The duration of the confined blasting is dependent upon a number of factors including hardness of rock, how close the drill holes are placed, and the type of dredging equipment that would be used to remove the pretreated rock. Without this information, an exact estimate of how many confined ''blast days'' would be required for the project cannot be determined. The harbor deepening project at Miami Harbor in 2005 to 2006 estimated between 200 to 250 days of confined blasting with one shot per day (a blast day) to pre-treat the rock associated with that project; however, the contractor completed the project in 38 days with 40 confined blasts. A shot, or blast, is an explosion made up of a group of blast holes set in a pattern referred to as a blast array that are detonated all at once or in a staggered manner with delays between them. A blast hole is the hole drilled into the bottom substrate that would be filled with explosives, capped with stemming, and detonated.

The upcoming expansion at Miami Harbor estimates a maximum of 600 blast days for the entire multi-year project footprint. The ACOE estimates a maximum number of 313 blast days for the duration of this IHA (i.e., 365 days in a year minus 52 Sundays [no confined blasting is allowed on Sundays due to local ordinances]). A blast day is defined as one confined blast event/day. A blast event is made up of all the actions during a shot, this includes the Notice of Project Team and Local Authorities, which occurs two hours before the blast is detonated, through the end of the protected species watch, which last 30 minutes after the blast detonation. A typical blast timeline consists of: Notice to Project Team and Local Authorities (T minus 2 hours), protected species watch begins (T minus 1 hour), Notice to Mariners (channel closes, T minus 15 minutes), fish scare (T minus 1 minute), blast detonation, all clear signal (T plus 5 minutes), protected species watch ends (T plus 30 minutes), and delay capsule—if an animal is observed in either the danger or safety zones, the blast is delayed to monitor the animal until it leaves, on its own volition, from both the danger and safety zones (can occur between T minus 1 hour and detonation). There may be more than one confined blast event in a calendar day. While confined blasting events would occur only during daylight hours, typically six days a week. Other operations associated with the action (i.e., dredging activities) would take place 24 hours a day, typically seven days a week. Confined blasting activities normally would not take place on Sundays due to local ordinances. The contractor may drill the blast array (i.e., to physically drill the holes in the substrate to be removed in the pattern designed by the blasting engineer to remove the rock in the manner he/she needs to achieve the needed results) at night and then blast after at least two hours after sunrise (1 hour, plus one hour of monitoring). After detonation of the first explosive array, a second array may be drilled and detonated before the one-hour before sunset prohibition is triggered. An explosive array is the pattern of blast holes drilled into the bottom substrate that would be fractured by the blast detonation.

In May 2013, the ACOE awarded the contract to the Great Lakes Dock and Dredge Company, the firm that completed the previous blasting and dredging at Miami Harbor in 2005 to 2006. The current contract was split into three portions, a base bid, which includes the Outer Entrance Channel (Cuts 1 and 2 in Figure 1) as well as construction of the artificial reefs and seagrass mitigation areas; Option A includes Fisherman's Channel and the Inner Entrance Channel inside the jetties, as well as the Port of Miami's berthing areas and Option B includes the Fisher Island Turning Basin (Cut 3). Although a contractor has been selected, per the contract specifications, the contractor does not have to prepare the contractor-developed confined blasting plan no less than 30 days prior to blasting activities begin. This plan specifically identifies the number of holes that would be drilled, the amount of explosives that would be used for each hole, the number of confined blasts per day (usually no more than two per a day) or the number of days the construction is anticipated to take to complete. Although the blasting plan has not been provided to the ACOE, the contractor has identified a more specific timeframe for the blasting to occur. Blasting in the base bid would be conducted between March and June 2014. Because Options A and B have not been exercised, the blasting in these areas has not been scheduled. The ACOE is required to have all authorizations and permits completed (including the possession of an IHA) prior to the request for proposal and advertising the contract, per the Competition in Contracting Act, and the Federal Acquisition Regulations. When possible, the ACOE has made reasonable

estimates of the bounds based on previous similar projects that have been conducted by the ACOE here and at other locations. NMFS supports the ACOE's use of the worst-case scenarios to estimate confined blasting activities and associated potential impacts.

Drill holes are small in diameter (typically 2 to 4 in [5.1 to 10.2 cm] in diameter) and only 5 to 10 ft (1.5 to 3.1 m) deep, drilling activities take place for a short time duration, with no more than three holes being drilled at the same time (based on the current drill-rigs available in the industry that range from one to three drills). During the 2005 confined blasting event, dolphins were seen near the drill barge during drilling events and the ACOE did not observe avoidance behavior. No measurements associated with noise from drilling small blast holes have been recorded. The ACOE does not expect incidental harassment from drilling operations and is not requesting take associated with this activity. The ACOE is collecting data regarding noise from drilling activities associated with confined blasting activities in an effort to increase the available knowledge concerning confined underwater blasting and all its related component elements.

Although the ACOE does not have a specific contractor-provided confined blasting plan, the ACOE developed plans and specifications for the project that direct the contractor to do certain things in certain ways and are basing these plans and specifications on the previous deepening project in Miami Harbor (construction was conducted in 2005 to 2006).

The previous ACOE project in Miami Harbor required a maximum weight of explosives used in each delay of 376 pounds (lb) (170.6 kilograms [kg]) and the contractors blasted once or twice daily from June 25 to August 25, 2005, for a total of 40 individual blasts in 38 days of confined blasting. The 2005 project, which utilized confined blasting, was limited to Fisherman's Channel and the Dodge-Lummus Island Turning Basin (see Figure 2 of ACOE's IHA application, which shows the confined blasting footprint for the 2005 project), whereas the project described in the ACOE's application includes Fisherman's Channel, Dodge-Lummus Island Turning Basin, Fisher Island Turning Basin, and Inner and Outer Entrance Channel. This larger area would result in more confined blasting for this project than was completed in 2005, as it includes areas not previously blasted in 2005.

A copy of the **Federal Register** notice of issuance for the IHA from 2003 (68 FR 32016, May 29, 2003), the IHA renewal from 2005 (70 FR 21174, April 25, 2005), and the final biological monitoring report from the ACOE's Miami Harbor Phase II project (completed in 2006) was provided as part of the ACOE's 2012 application (and attached to the current application) and available on NMFS's Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*. For the new construction at Miami Harbor, the ACOE expects the project may take up to two calendar years (March 2014 through June 2015), and the ACOE would seek subsequent renewals of this IHA after issuance, with sufficient time to prevent any delay to the project.

For the proposed deepening at Miami Harbor, the ACOE has consulted with blasting industry experts and believes, based on the rock hardness and composition at Miami Harbor, a maximum charge weight per delay of 450 lbs (204.1 kg) should be expected. The minimum charge weight would be 10 lbs (4.5 kg). A delay is a period of time (in milliseconds) between small detonations that are part of the total charge weight of the entire detonation.

The focus of the confined blasting work at the Miami Harbor is to pre-treat the massive limestone formation that makes up the base of Miami Harbor prior to removal by a dredge utilizing confined blasting, meaning the explosive shots would be ''confined'' in the rock. Typically, each blast array is set up in a square or rectangle area divided into rows and columns (see Figures 3, 4, and 5 in the ACOE's IHA application). A typical blast array is 10 holes long by 4 holes wide with holes being spaced 40 ft (12.2 m) apart covering an area of 4,000 ft^2 (371.6 m^2). Blast arrays near bulkheads can be long-linear feature of one-hole wide by 8 or 10 holes long (see Figure 4 of the IHA application).

In confined blasting, each charge is placed in a hole drilled in the rock approximately 5 to 10 ft (1.5 to 3.0 m) deep; depending on how much rock needs to be broken and the intended project depth. The hole is then capped with an inert material, such as crushed rock. This process is referred to as ''stemming the hole'' (see Figure 6 and 7 of ACOE's IHA application; each bag as shown contains approximate volume of material used per discharge). The ACOE used this technique previously at the Miami Harbor Phase II project in 2005. NMFS issued an IHA for that operation on May 22, 2003 (68 FR 32016, May 29, 2003) and renewed the IHA on April 19, 2005 (70 FR 21174, April 25, 2005).

For the Port of Miami expansion project (Miami Harbor Phase II) that used confined blasting as a pre-treatment technique, the stemming material was angular crushed rock. (Stemming is the process of filling each borehole with crushed rock after the explosive charge has been placed. After the blasting charge has been set, then the chain of explosives within the rock is detonated. A chain of explosives refers to all of the detonations within the blast array, without regard to how many holes are in the array. They would detonate within milliseconds of each other. Stemming reduces the strength of the outward pressure wave produced by blasts.) The optimum size of stemming material is material that has an average diameter of approximately 0.05 times the diameter of the blast-hole. The selected material must be angular to perform properly (Konya, 2003). For the ACOE's project, specifications have been prepared by the geotechnical branch of the Jacksonville District and are the same as those completed during the Miami Harbor Phase II project.

The specifications for any construction utilizing the confined blasting for the deepening of Miami Harbor would have similar stemming requirements as those that were used for the Miami Harbor Phase II project in 2005 to 2006. The length of stemming material would vary based on the length of the hole drilled, however a minimum of two 2-ft (0.6 m) walls would be included in the project specific specifications. Studies have shown that stemmed blasts have up to a 60 to 90 percent decrease in the strength of the pressure wave released, compared to open water blasts of the same charge weight (Nedwell and Thandavamoorthy, 1992; Hempen *et al.,* 2005; Hempen *et al.,* 2007). However, unlike open water (unconfined) blasts (see Figure 8 of ACOE's IHA application), very little peer-reviewed research exists on the effects that confined blasting can have on marine animals near the blast (Keevin *et al.,* 1999). The visual evidence from a typical confined blast is shown in Figure 9 of ACOE's IHA application.

In confined blasting, the detonation is conveyed from the drill barge to the primer and the charge itself by Primacord and Detaline. These are used to safely fire the blast from a distance to ensure human safety from the blast. The Primacord and Detaline used on this project have a specific grain weight, and they burn like a fuse. They are not electronic. The time delay from activation to detonation of the charge is less than one second.

To estimate the maximum poundage of explosives that may be utilized for this project, the ACOE has reviewed previous confined blasting projects, including San Juan Harbor, Puerto Rico in 2000, and Miami Harbor, Florida in 2005. Additional data was also reviewed from the New York Harbor deepening project (ACOE, 2004 and Keevin *et al.,* 2005) and the Wilmington Harbor project (Settle *et al.,* 2002). The San Juan Harbor and 2005 Miami Harbor projects are most similar to the existing project in general environment, hardness/massiveness of rock, and species composition. The San Juan Harbor project's heaviest confined blast event using explosives was 375 lbs (170.1 kg) per delay and in Miami it was 376 lbs (170.6 kg) per delay. Based on discussion with the ACOE's geotechnical engineers, it is expected that the maximum weight of delays for Miami Harbor would be larger since the rock is deeper, and expected to be harder and massive, in comparison to the previous two blasting projects.

Based upon industry standards and ACOE Safety & Health Regulations, the confined blasting program would follow these operating guidelines:

- The weight of explosives to be used in each confined blast would be limited to the lowest poundage of explosives that can adequately break the rock.
- Drill patterns (i.e., holes in the array) are restricted to a minimum of 8 ft (2.4 m) separation from a loaded hole.
- Hours of confined blasting are restricted from two hours after sunrise to one hour before sunset to allow for adequate observation of the project area for marine mammals.
- Selection of explosive products and their practical application method must address vibration and air blast (overpressure) control for protection of existing structures and marine wildlife.
- Loaded blast holes would be individually delayed to reduce the maximum lbs per delay at point detonation, which in turn would reduce the mortality radius.
- The blast design would consider matching the energy in the ''work effort'' of the borehole to the rock mass or target for minimizing excess energy vented into the water column or hydraulic shock.
- Delay timing adjustments with a minimum of 8 milliseconds (ms) between delay detonations to stagger the blast pressures and prevent cumulative addition of pressures in the water.

Test Blast Program

Prior to implementing a construction blasting program, a test blast program would be completed. The test blast program would have all the same protective monitoring and mitigation measures in place for protected species as blasting operations for construction purposes. The purpose of the test blast program is to demonstrate and/or confirm the following:

- Drill boat capabilities and production rates;
- Ideal drill pattern for typical boreholes;
- Acceptable rock breakage for excavation;
- Tolerable vibration level emitted;
- Directional vibration; and
- Calibration of the environment.

The test blast program begins with a single range of individually delayed holes and progresses up to the maximum production blast intended for use. The test blast program would take place in the project area and would count toward the pre-treatment of material, since the blasts of the test blast program would be cracking rock. Each test blast is designed to establish limits of vibration and air blast overpressure, with acceptable rock breakage for excavation. The final test event simulates the maximum explosive detonation as to size, overlying water depth, charge configuration, charge separation, initiation methods, and loading conditions anticipated for the typical production blast.

The results of the test blast program would be formatted in a regression analysis with other pertinent information and conclusions reached. This would be the basis for developing a completely engineered procedure for the construction blasting plan.

During the test blast program, the following data would be used to develop a regression analysis:

- Distance;
- Pounds per delay;
- Peak particles velocities (Threshold Limit Value [TVL]);
- Frequencies (TVL);
- Peak vector sum; and
- Air blast, overpressure.

As part of the development of the protected species monitoring and mitigation protocols, which would be incorporated into the plans and specification for the project, ACOE would continue to coordinate with the resource agencies and non-governmental organizations (NGOs) to address concerns and potential impacts associated with the use of blasting as a construction technique.

Additional details regarding the proposed confined blasting and dredging project can be found in the ACOE's IHA application and EIS. The EIS can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Description of the Proposed Dates, Duration, and Specified Geographic Region

At this time the ACOE has not been provided a blasting plan; however, the contractor has identified a more specific timeframe for the blasting to occur within the Port of Miami. Because Options A and B have not been exercised, the blasting in these areas have not been scheduled. As soon as the options are exercised and confined blasting scheduled, ACOE would notify NMFS. The current IHA expires on March 14, 2014. The ACOE's contractor would have begun confined blasting the week prior to this expiration and to ensure no loss of time or slip in the schedule, the ACOE requests the new IHA be issued prior to the expiration of the existing IHA. The ACOE requested that the first IHA be issued by the end of July 2012, with an effective date of March 15, 2013, to allow for the advertisement of the contract for construction in 2012; award the contract and provide the NTP to be selected in 2013 to the selected contractor, resulting in construction work beginning in March 2014. The proposed construction activities are expected to last about to 24 months and at this time, it is possible that confined blasting could take place at any time during construction. The ACOE also notes that multiple IHAs (up to three, at least one additional IHA after 2014 to 2015) would be needed and requested for this project due to the project duration.

The proposed confined blasting activities would be limited to waters shallower than 60 ft (18.3 m) and located entirely on the continental shelf and would not take place seaward of the outer reef. The specified geographic area of the construction would be within the boundaries of the Port of Miami, in Miami, Florida (see Figure 11 of the ACOE's IHA application). The Port of Miami is an island facility consisting of 518 upland acres and is located in the northern portion of Biscayne Bay in South Florida. The City of Miami is located on the west side of the Biscayne Bay; the City of Miami Beach is located on an island on the northeast side of Biscayne Bay, opposite of Miami. Both cities are located in Miami-Dade County, Florida, and are connected by several causeways crossing the bay. The Port of Miami is the southernmost major port on the Atlantic Coast. The Port of Miami's landside facilities are located on Dodge-Lummus Island, which has a GPS location 25°46′05″ North 80°09′40″ West. See Figure 11 of the ACOE's IHA application for more information on the

location of the project area in the Port of Miami.

Description of Marine Mammals in the Area of the Proposed Specified Activity

Several cetacean species and a single species of sirenian are known to or could occur in the Miami Harbor action area and off the Southeast Atlantic coastline (see Table 1 below). Species listed as endangered under the U.S. Endangered Species Act (ESA), includes the humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), North Atlantic right (*Eubalaena glacialis*), and sperm (*Physeter macrocephalus*) whale, and West Indian (Florida) manatee (*Trichechus manatus latirostris*). The marine mammals that occur in the Atlantic Ocean off the U.S. southeast coast belong to three taxonomic groups: mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the manatee). The West Indian manatee in Florida and U.S. waters is managed under the jurisdiction of the USFWS and therefore is not considered further in this analysis.

Table 1 below outlines the marine mammal species and their habitat in the region of the proposed project area.

TABLE 1—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED PROJECT AREA IN THE ATLANTIC OCEAN OFF THE U.S. SOUTHEAST COAST

Species	Habitat	ESA [1]	MMPA [2]
Mysticetes			
North Atlantic right whale (*Eubalaena glacialis*)	Coastal and shelf	EN	D.
Humpback whale (*Megaptera novaeangliae*)	Pelagic, nearshore waters, and banks.	EN	D.
Bryde's whale (*Balaenoptera brydei*)	Pelagic and coastal	NL	NC.
Minke whale (*Balaenoptera acutorostrata*)	Shelf, coastal, and pelagic	NL	NC.
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	EN	D.
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	EN	D.
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic	EN	D.
Odontocetes			
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep seas	EN	D.
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	NL	NC.
Gervais' beaked whale (*Mesoplodon europaeus*).	Pelagic	NL	NC.
True's beaked whale (*Mesoplodon mirus*)	Pelagic	NL	NC.
Blainville's beaked whale (*Mesoplodon densirostris*).	Pelagic	NL	NC.
Dwarf sperm whale (*Kogia sima*)	Offshore, pelagic	NL	NC.
Pygmy sperm whale (*Kogia breviceps*)	Offshore, pelagic	NL	NC.
Killer whale (*Orcinus orca*)	Widely distributed	NL NL EN (Southern Resident).	NC NC D (Southern Resident, AT1 Transient).
Short-finned pilot whale (*Globicephala macrorhynchus*).	Inshore and offshore	NL	NC.
False killer whale (*Pseudorca crassidens*)	Pelagic	NL	NC.
Mellon-headed whale (*Peponocephala electra*)	Pelagic	NL	NC.
Pygmy killer whale (*Feresa attenuata*)	Pelagic	NL	NC.
Risso's dolphin (*Grampus griseus*)	Pelagic, shelf	NL	NC.
Bottlenose dolphin (*Tursiops truncatus*)	Offshore, Inshore, coastal, and estuaries.	NL	NC S (Biscayne Bay and Central Florida Coastal stocks) D (Western North Atlantic Coastal).
Rough-toothed dolphins (*Steno bredanensis*)	Pelagic	NL	NC.
Fraser's dolphin (*Lagenodelphis hosei*)	Pelagic	NL	NC.
Striped dolphin (*Stenella coeruleoalba*)	Pelagic	NL	NC.
Pantropical spotted dolphin (*Stenella attenuata*).	Pelagic	NL	NC D (Northeastern Offshore).
Atlantic spotted dolphin (*Stenella frontalis*)	Coastal to pelagic	NL	NC.
Spinner dolphin (*Stenella longirostris*)	Mostly pelagic	NL	NC D (Eastern).
Clymene dolphin (*Stenella clymene*)	Pelagic	NL	NC.
Sirenians			
West Indian (Florida) manatee (*Trichechus manatus latirostris*).	Coastal, rivers, and estuaries	EN	D.

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, NC = Not classified.

The one species of marine mammal under NMFS jurisdiction known to commonly occur in close proximity to the blasting area of the Port of Miami is the Atlantic bottlenose dolphin, specifically the stocks living near the Port of Miami within Biscayne Bay (the Biscayne Bay stock) or transiting the outer entrance channel (Western North Atlantic Central Florida Coastal stock).

Atlantic Bottlenose Dolphin

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters, and in U.S. waters occur in multiple complex stocks along

the U.S. Atlantic coast. The coastal morphotype of bottlenose dolphins is continuously distributed along the Atlantic coast south of Long Island, New York, to the Florida peninsula, including inshore waters of the bays, sounds, and estuaries. Except for animals residing within the Southern North Carolina and Northern North Carolina Estuarine Systems (e.g., Waring *et al.,* 2009), estuarine dolphins along the U.S. east coast have not been previously included in stock assessment reports. Several lines of evidence support a distinction between dolphins inhabiting coastal waters near the shore and those present in the inshore waters of the bays, sounds, and estuaries. Photo-ID and genetic studies support the existence of resident estuarine animals in several inshore areas of the southeastern United States (Caldwell, 2001; Gubbins, 2002; Zolman, 2002; Mazzoil *et al.,* 2005; Litz, 2007), and similar patterns have been observed in bays and estuaries along the Gulf of Mexico coast (Well *et al.,* 1987; Balmer *et al.,* 2008). Recent genetic analyses using both mitochondrial DNA and nuclear microsatellite markers found significant differentiation between animals biopsied along the coast and those biopsied within the estuarine systems at the same latitude (NMFS, unpublished data). Similar results have been found off the west coast of Florida (Sellas *et al.,* 2005).

Biscayne Bay Stock

Biscayne Bay is a shallow estuarine system located along the southeast coast of Florida in Miami-Dade County. The Bay is generally shallow (depths less than 5 m [16.4 ft]) and includes a diverse range of benthic communities including seagrass beds, soft coral and sponge communities, and mud flats. The northern portion of Biscayne Bay is surrounded by the cities of Miami and Miami Beach and is therefore heavily influenced by industrial and municipal pollution sources. The water flow in this portion of Biscayne Bay is very restricted due to the construction of dredged islands (Bialczak *et al.,* 2001). In contrast, the central and southern portions of Biscayne Bay are less influenced by development and are better flushed. Water exchange with the Atlantic Ocean occurs through a broad area of grass flats and tidal channels termed the Safety Valve. Biscayne Bay extends south through Card Sound and Barnes Sound, and connects through smaller inlets to Florida Bay.

The Biscayne Bay stock of bottlenose dolphins is bounded by Haulover Inlet to the north and Card Sound Bridge to the south. This range corresponds to the extent of confirmed home ranges of bottlenose dolphins observed residing in Biscayne Bay by a long-term photo-ID study conducted by the Southeast Fisheries Science Center (Litz, 2007; SEFSC unpublished data). It is likely that the range of Biscayne Bay dolphins extends past these boundaries; however, there have been few surveys outside of this range. These boundaries are subject to change upon further study of dolphin home ranges within the Biscayne Bay estuarine system and comparison to an extant photo-ID catalog from Florida Bay to the south.

Dolphins residing within estuaries north of this stock along the southeastern coast of Florida are currently not included in a stock assessment report. There are insufficient data to determine whether animals in this region exhibit affiliation to the Biscayne Bay stock, the estuarine stock further to the north in the Indian River Lagoon Estuarine System (IRLES), or are simply transient animals associated with coastal stocks. There is relatively limited estuarine habitat along this coastline; however, the Intracoastal Waterway extends north along the coast to the IRLES. It should be noted that during 2003 to 2007, there were three stranded bottlenose dolphins in this region in enclosed waters. One of these had signs of human interaction from a boat strike and another was identified as an offshore morphotype of bottlenose dolphin.

Bottlenose dolphins have been documented in Biscayne Bay since the 1950's (Moore, 1953). Live capture fisheries for bottlenose dolphins are known to have occurred throughout the southeastern U.S. and within Biscayne Bay during the 1950's and 1960's; however, it is unknown how many individuals may have been removed from the population during this period (Odell, 1979; Wells and Scott, 1999).

The Biscayne Bay bottlenose dolphin stock has been the subject of an ongoing photo-ID study conducted by the NMFS SEFSC since 1990. From 1990 to 1991, preliminary information was collected focusing on the central portion of Biscayne Bay. The survey was re-initiated in 1994, and it was expanded to include the northern portion of Biscayne Bay and south to the Card Sound Bridge in 1995 (SEFSC unpublished data; Litz, 2007). Through 2007, the photo-ID catalog included 229 unique individuals. Approximately 80% of these individuals may be long-term residents with multiple sightings over the 17 years of the study (SEFSC, unpublished data). Analyses of the sighting histories and associations of individuals from the Biscayne Bay segregated along a north/south gradient (Litz, 2007).

Remote biopsy samples of Biscayne Bay animals were collected between 2002 and 2004 for analyses of population genetic structure and persistent organic pollutant concentrations in blubber. Genetic structure was investigated using both mitochondrial DNA and nuclear (microsatellite) markers, and the data from Biscayne Bay were compared to data from Florida Bay dolphins to the south (Litz, 2007). Within Biscayne Bay, dolphins sighted primarily in the northern half of Biscayne Bay were significantly differentiated from those sighted primarily in the southern half at the microsatellite loci but not at the mitochondrial locus. There was not sufficient genetic information between these groups to indicate true population subdivision (Litz, 2007). However, genetic differentiation was found between the Biscayne Bay and Florida Bay dolphins in both markers (Litz, 2007). The observed genetic differences between resident animals in Biscayne Bay and those in an adjacent estuary combined with the high levels of sight fidelity observed, demonstrate that the resident Biscayne Bay bottlenose dolphins are a demographically distinct population stock.

The total number of bottlenose dolphins in the Biscayne Bay stock is unknown. During small boat surveys between 2003 and 2007, 157 unique individuals were identified using standard methods, however, this catalog size does not represent a valid estimate of population size because the residency patterns of dolphins in Biscayne Bay is not fully understood. Litz (2007) determined that 69 animals in Biscayne Bay have a northern home range. Based on Waring *et al.* (2010), the maximum population of animals that may be in the project area is equal to the total number of uniquely identified animals for the entire photo-ID study of Biscayne Bay—229 individuals. Present data are insufficient to calculate a minimum population estimate, and to determine the population trends, for the Biscayne Bay stock of bottlenose dolphins. The total human-caused mortality and serious injury for this stock is unknown and there is insufficient information available to determine whether the total fishery-related mortality and serious injury for this stock is insignificant and approaching zero mortality and serious injury rate. Documented human-caused mortalities in recreational fishing gear entanglement and ingestion of gear reinforce concern for this stock. Because the stock size is currently unknown, but likely small and relatively few

mortalities and serious injuries would exceed potential biological removal, NMFS considers this stock to be a strategic stock.

Western North Atlantic Central Florida Coastal Stock

On the Atlantic coast, Scott *et al.* (1988) hypothesized a single coastal migratory stock ranging seasonally from as far north as Long Island, to as far south as central Florida, citing stranding patterns during a high mortality event in 1987 to 1988 and observed density patterns. More recent studies demonstrate that the single coastal migratory stock hypothesis is incorrect, and there is instead a complex mosaic of stocks (McLellan *et al.,* 2003; Rosel *et al.,* 2009).

The coastal morphotype is morphologically and genetically distinct from the larger, more robust morphotype primarily occupying habitats further offshore (Hoelzel *et al.,* 1998; Mead and Potter, 1995; Rosel *et al.,* 2009). Aerial surveys conducted between 1978 and 1982 (CETAP, 1982) north of Cape Hatteras, North Carolina, identified two concentrations of bottlenose dolphins, one inshore of the 82 ft (25 m) isobath and the other offshore of the 164 ft (50 m) isobath. The lowest density of bottlenose dolphins was observed over the continental shelf, with higher densities along the coast and near the continental shelf edge. It was suggested, therefore, that north of Cape Hatteras, North Carolina, the coastal morphotype is restricted to waters less than 82 ft deep (Kenney, 1990). Similar patterns were observed during summer months in more recent aerial surveys (Garrison and Yeung, 2001; Garrison *et al.,* 2003). However, south of Cape Hatteras during both winter and summer months, there was no clear longitudinal discontinuity in bottlenose dolphin sightings (Garrison and Yeung 2001; Garrison *et al.,* 2003). To address the question of distribution of coastal and offshore morphotypes in waters south of Cape Hatteras, tissue samples were collected from large vessel surveys during the summers of 1998 and 1999, from systematic biopsy sampling efforts in nearshore waters from New Jersey to central Florida conducted in the summers of 2001 and 2002, and from winter biopsy collection effort in 2002 and 2003 in nearshore continental shelf waters of North Carolina and Georgia. Additional biopsy samples were collected in deeper continental shelf waters south of Cape Hatteras during the winter of 2002. Genetic analyses using mitochondrial DNA sequences of these biopsies identified individual animals to the coastal or offshore morphotype. Using the genetic results from all surveys combined, a logistic regression was used to model the probability that a particular bottlenose dolphin group was of the coastal morphotype as a function of environmental variables including depth, sea surface temperature, and distance from shore. These models were used to partition the bottlenose dolphin groups observed during aerial surveys between the two morphotypes (Garrison *et al.,* 2003).

The genetic results and spatial patterns observed in aerial surveys indicate both regional and seasonal differences in the longitudinal distribution of the two morphotypes in coastal Atlantic waters. Generally, from biopsy samples collected, the coastal morphotype is found in nearshore waters, the offshore morphotype in deeper waters and a spatial overlap between the two morphotypes in intermediate waters. More information on the seasonal differences and genetic studies off of the Carolina's, Georgia, and Florida, differentiating morphotypes of bottlenose dolphins can be found online in the NMFS stock assessment reports.

In summary, the primary habitat of the coastal morphotype of bottlenose dolphin extends from Florida to New Jersey during summer months and in waters less than 65.6 ft (20 m) deep, including estuarine and inshore waters.

In addition to inhabiting coastal nearshore waters, the coastal morphotype of bottlenose dolphin also inhabits inshore estuarine waters along the U.S. east coast and Gulf of Mexico (Wells *et al.,* 1987; Wells *et al.,* 1996; Scott *et al.,* 1990; Weller, 1998; Zolman, 2002; Speakman *et al.,* 2006; Stolen *et al.,* 2007; Balmer *et al.,* 2008; Mazzoil *et al.,* 2008). There are multiple lines of evidence supporting demographic separation between bottlenose dolphins residing within estuaries along the Atlantic coast. In Biscayne Bay, Florida, there is a similar community of bottlenose dolphins with evidence of year-round residents that are genetically distinct from animals residing in a nearby estuary in Florida Bay (Litz, 2007). A few published studies demonstrate that there are significant genetic distinctions and differences between animals in nearshore coastal waters and estuarine waters (Caldwell, 2001; Rosel *et al.,* 2009). Despite evidence for genetic differentiation between estuarine and nearshore populations, the degree of spatial overlap between these populations remains unclear. Photo-ID studies within estuaries demonstrate seasonal immigration and emigration and the presence of transient animals (e.g., Speakman *et al.,* 2006). In addition, the degree of movement of resident estuarine animals into coastal waters on seasonal or shorter time scales is poorly understood. However, for the purposes of this analysis, bottlenose dolphins inhabiting primarily estuarine habitats are considered distinct from those inhabiting coastal habitats. Initially, a single stock of coastal morphotype bottlenose dolphins was thought to migrate seasonally between New Jersey (summer months) and central Florida based on seasonal patterns in strandings during a large scale mortality event occurring during 1987 to 1988 (Scott *et al.,* 1988). However, re-analysis of stranding data (McLellan *et al.,* 2003) and extensive analysis of genetic (Rosel *et al.,* 2009), photo-ID (Zolman, 2002) and satellite telemetry (NMFS, unpublished data) data demonstrate a complex mosaic of coastal bottlenose dolphin stocks. Integrated analysis of these multiple lines of evidence suggests that there are five coastal stocks of bottlenose dolphins: The Northern Migratory and Southern Migratory stocks, a South Carolina/Georgia Coastal stock, a Northern Florida Coastal stock, and a Central Florida Coastal stock.

The spatial extent of these stocks, their potential seasonal movements, and their relationships with estuarine stocks are poorly understood. More information on the migratory movements and genetic analyses of bottlenose dolphins can be found online in the NMFS stock assessment reports.

The NMFS stock assessment report addresses the Central Florida Coastal stock, which is present in coastal Atlantic waters from 29.4° North south to the western end of Vaca Key (approximately 24.69° North to 81.11° West) where the stock boundary for the Florida Keys stock begins (see Figure 1 of the NMFS Stock Assessment Report). There has been little study of bottlenose dolphin stock structure in coastal waters of southern Florida; therefore the southern boundary of the Central Florida stock is uncertain. There is no obvious boundary defining the offshore extent of this stock. The combined genetic and logistic regression analysis (Garrison *et al.,* 2003) indicated that in waters less than 32.8 ft (10 m) depth, 70% of the bottlenose dolphins were of the coastal morphotype. Between 32.8 ft and 65.6 ft depth, the percentage of animals of the coastal morphotype dropped precipitously, and at depths greater than 131.2 ft (40 m) nearly all (greater than 90%) animals were of the offshore morphotype. These spatial patterns may not apply in the Central Florida Coastal stock, as there is a

significant change in the bathymetric slope and a close approach of the Gulf Stream to the shoreline south of Cape Canaveral.

Aerial surveys to estimate the abundance of coastal bottlenose dolphins in the Atlantic were conducted during winter (January to February) and summer (July to August) of 2002. Abundance estimates for bottlenose dolphins in each stock were calculated using line-transect methods and distance analysis (Buckland *et al.,* 2001). More information on the survey tracklines, design, effort, animals sighted, and methods for calculating estimated abundance can be found online in the NMFS stock assessment reports.

The estimated best and minimum population for the Central Florida Coastal Stock is 6,318 and 5,094 animals, respectively. There are insufficient data to determine the population trends for this stock. From 1995 to 2001, NMFS recognized only a single migratory stock of coastal bottlenose dolphins in the western North Atlantic, and the entire stock was listed as depleted. This stock structure was revised in 2002 to recognize both multiple stocks and seasonal management units and again in 2008 and 2010 to recognize resident estuarine stocks and migratory and resident coastal stocks. The total U.S. fishery-related mortality and serious injury for the Central Florida Coastal stock likely is less than 10% of the calculated PBR, and thus can be considered to be insignificant and approaching zero mortality and serious injury rate. However, there are commercial fisheries overlapping with this stock that have no observer coverage. This stock retains the depleted designation as a result of its origins from the originally delineated depleted coastal migratory stock. The species is not listed as threatened or endangered under the ESA, but this is a strategic stock due to the depleted listing under the MMPA.

Further information on the biology and local distribution of these species and others in the region can be found in ACOE's IHA application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/.*

Potential Effects on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include mortality, serious injury, as well as Level A harassment (injury) and Level B harassment. In the absence of mitigation, marine mammals could be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects would be likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called ''cavitation.''

A second potential possible cause of mortality (in the absence of mitigation) is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS's criteria for determining potential for non-lethal injury (Level A harassment) from explosives are the peak pressure that would result in: (1) The onset of slight lung hemorrhage, or (2) a 50 percent probability level for a rupture of the tympanic membrane (TM). These are injuries from which animals would be expected to recover on their own.

NMFS has established dual criteria for what constitutes Level B harassment: (1) An energy based temporary threshold shift (TTS) in hearing at received sound levels of 182 dB re 1 μPa^2-s cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway *et al.,* 1997; Schlundt *et al.,* 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS). The threshold for sub-TTS behavioral harassment is 177 dB re 1 μPa^2 s. The Level B harassment zone is the distance from the mortality, serious injury, injury (Level A harassment) zone to the radius where neither of these criterion is exceeded.

TABLE 2—NMFS'S THRESHOLD CRITERIA AND METRICS UTILIZED FOR IMPACT ANALYSES FROM THE USE OF EXPLOSIVES

Mortality	Level A Harassment (Non-lethal injury)		Level B Harassment (Non-injurious; TTS and associated behavioral disruption [dual criteria])	Level B Harassment (Non-injurious behavioral, Sub-TTS)
31 psi-msec (onset of severe lung injury [mass of dolphin calf]).	205 dB re 1 μPa^2·s EFD (50 percent of animals would experience TM rupture).	13 psi-msec positive pressure (onset of slight lung injury).	182 dB re 1 μPa^2·s EFD*; 23 psi peak pressure (< 2,000 lb) 12 psi peak pressure (> 2,000 lb).	177 dB re 1 μPa^2·s EFD* (for multiple detonations only).

* Note: In greatest ⅓-octave band above 10 Hz or 100 Hz.

The primary potential impact to the Atlantic bottlenose dolphins occurring in the Port of Miami action area from the proposed detonations is Level B harassment incidental to noise generated by explosives. In the absence of any monitoring or mitigation measures, there is a very small chance that a marine mammal could be injured, seriously injured, or killed when exposed to the energy generated from an explosive force on the sea floor. However, the ACOE and NMFS believe that the monitoring and mitigation measures would preclude this possibility in the case of this particular specified activity.

Non-lethal injurious impacts (Level A harassment) are defined in this IHA as TM rupture and the onset of slight lung injury. The threshold for Level A harassment corresponds to a 50 percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 μPa^2 s. TM rupture is well-correlated with permanent hearing impairment (Ketten, 1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold. The farthest distance from the source at which an animal is exposed to the EFD level for the Level A harassment threshold is unknown at this time.

Level B (non-injurious) harassment includes temporary (auditory) threshold

shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 μPa² s maximum EFD level in any 1/3-octave band above 100 Hz for toothed whales (e.g., dolphins). A second criterion, 23 psi, has been established by NMFS to provide a more conservative range of TTS when the explosive or animals approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. For the project in Miami Harbor, the distance from the blast array at which the 23 psi threshold could be met for various charge detonation weights can be, and has been calculated.

The threshold for sub-TTS behavioral harassment is 177 dB re 1 μPa² s. However, as described previously, this criterion would not apply to the ACOE's activity because there would only be a maximum of two blasting events a day (minimum four to six hours apart), and the multiple (staggered) detonations are within a few milliseconds of each other and do not last more than a few seconds in total duration per a blasting event.

For a fully confined blast, the pressure at the edge of the danger zone is expected to be 6 psi. Utilizing the pressure data collected the Miami Harbor Phase II project in 2005, for a maximum charge weight of 450 lbs in a fully confined blast, the pressure is expected to be 22 psi approximately 700 ft (213.4 m) from the blast, which is below the threshold for Level B harassment (i.e., 23 psi criteria for explosives less than 2,000 lb). However to ensure the protection of marine mammals, and in case of an incident where a detonation is not fully confined, the ACOE assumes that any animal within the boundaries of a designated ''danger zone'' at the time of detonation would be taken by Level B harassment.

The ACOE is planning to implement, and NMFS has required, a series of monitoring and mitigation measures to protect marine mammals from the potential impacts of the proposed confined blasting activities. The ACOE has designated a ''danger zone'' as the area within which the potential for Level B harassment occurs, and the ''exclusion zone'' as the area within which if an animal crosses and enters that zone then the confined blast would be delayed until the animal leaves the zone of its own volition. The exclusion zone is larger than the area where the ACOE has determined that Level B harassment would occur, so if the monitoring and mitigation measures implemented are successful as expected, and no detonation occurs when an animal is inside of the exclusion zone, no take by Level B harassment is likely to occur. However, to be conservative, the ACOE has calculated the potential exists for Level B harassment and is pursuing an IHA from NMFS. More information on how the danger and exclusion zones are determined is included in the ''Mitigation'' section of this document (see below).

In a previous monitoring report for ACOE's Miami Harbor Phase II project in 2005, it was noted that a bottlenose dolphin outside the exclusion zone, in the deeper water channel, exhibited a startle response immediately following a confined blast. Details of that event from the monitoring report are included below:

Any animals near the exclusion zone were watched carefully during the blast for any changes in behavior or noticeable reaction to the blast. The only observation that showed signs of a possible reaction to the blast was on July 27, when two dolphins were in the channel west of the blast. The dolphins were stationary at approximately 2,400 ft (731.5 m) from the blast array, feeding and generally cavorting. Due to the proximity of the dolphins, the drill barge was contacted prior to the blast to confirm that the exclusion zone calculation was 1,600 ft (487.7 m) for the lower weight of explosives used that day. The topography of the bottom in that area is very shallow (approximately 3.3 ft [1 m]) to the south, then an exceptionally steep drop off into the channel at 40 plus ft ending at the bulkhead wall to the north. Westward, the channel continues and has a more gradual upward slope. At the time of the blast, one of the dolphins was at the surface in the shallows, while the other dolphin was underwater within the channel. The dolphin that was underwater showed a strong reaction to the blast. The animal jumped fully out of the water in a 'breaching' fashion; behavior that had not been exhibited prior to the blast. The animal was observed jumping out of the water immediately before the observers heard the blast suggesting that the animal reacted to the blast and not some other stimulus. It is probable that, because this animal was located in the channel, the sound and pressure of the blast traveled either farther or was more focused through the channeling and the reflection from the bulkhead, thus causing the animal to react even though it was well outside the safety radius. These two dolphins were tracked for the entire 30 min post blast period and no obvious signs of distress or behavior changes were observed. Other animals observed near the safety radius during the blast were all to the south of the blasting array, well up on the seagrass beds or in the pipe channel that runs through the seagrass beds. None of these animals showed any reaction to the blast.

Individual dolphins from other stocks and within the Biscayne Bay and Western North Atlantic Central Florida Coastal stocks potentially move both inshore and offshore of Biscayne Bay due to the openness of this bay system and closeness of the outer continental shelf. These movements are not fully understood and the possibility exists that these other stocks may be affected in the same manner as the Biscayne Bay and Western North Atlantic Central Florida Coastal stocks.

Based on the data from the Miami Harbor project in 2005 and the implementation of the monitoring and mitigation measures, the ACOE and NMFS expects limited potential effects of the proposed construction and confined blasting activities on marine mammals in the Port of Miami action area.

Potential Effects on Marine Mammal Habitat

No information is currently available that indicates resident bottlenose dolphins in the proposed action area specifically utilize the inner and outer channels, walls, and substrate of the Port of Miami as habitat for feeding, resting, mating, or other biologically significant functions. The bottom of the channel has been previously blasted, and the rock and sand dredged. The walls of the channels are composed of vertical rock. The ACOE acknowledges that while the port may not be suitable foraging habitat for bottlenose dolphins in Biscayne Bay, it is likely that dolphins may use the area to traverse to and from North Biscayne Bay or offshore via the main channel (i.e., Government Cut).

The temporary modification of the action area by the construction and confined blasting activities may potentially impact the two stocks of bottlenose dolphins expected to be present in the Port of Miami, however, these impacts are not expected to be adverse. If animals are using the Port of Miami project area to travel from south to north Biscayne Bay or vice-versa and/or exiting the Biscayne Bay via the main shipping channel, the construction and confined blasting activities may delay or detour their movements.

Confined blasting within the boundaries of the Port of Miami would be limited both spatially and temporally. The explosives utilized in the confined blasting operations are water soluble and non-toxic. If an

explosive charge is unable to be fired and must be left in the drill hole, it is designed to break down. Also, each drill hole has a booster with detonator and detonation cord. Most of the detonation cord is recovered onto the drill barge by pulling it back onboard the drill barge after the confined blasting event. Small amounts of detonation cord may remain in the water after the confined blasting event has taken place, and would be recovered by small vessels with scoop nets. Any material left in the drill hole after the confined blast event would be recovered through the dredging process, when the cutterhead dredge excavates the fractured rock material.

With regard to prey species (mainly fish), a very small number of fish are expected to be impacted by the Miami Harbor project, based on the results of the 2005 blasting project in Miami Harbor. That project consisted of 40 confined blast events over a 38 day time frame. Of these 40 confined blast events, 23 were monitored (57.5% of the total) by the State, and injured and dead fish were collected after the all clear was given (the ''all-clear'' is normally at least two to three min after the shot is fired, since seagulls and frigate birds quickly learned to approach the confined blast site and swoop in to eat some of the stunned, injured, and dead fish floating on the surface of the water). State biologists and volunteers collected the carcasses of the floating fish (note that not all dead fish float after a blasting event, and due to safety concerns, there are no plans to put divers on the bottom of the channel in the blast zone to collect non-floating fish carcasses. The fish were described to the lowest taxonomic level possible (usually species) and the injury types were categorized. The data forms are available from the FWC and ACOE upon request.

A summary of those data shows that 24 different genera were collected during the previous Miami Harbor blasting project. The species with the highest abundance were white grunts (*Haemulon plumier,* N = 51), scrawled cowfish (*Lactophrys quadricornis,* N = 43), and pygmy filefish (*Monocanthus setifer,* N = 30). The total fish collected during the 23 confined blasts was 288 or an average of 12.5 fish per blast (range 3 to 38). In observation of the three confined blasts with the greatest number of fish killed (see Table 4 of ACOE's application) and reviewing the maximum charge weight per delay for the Miami Harbor project, it appears that there is no direct correlation between the charge weight and fish killed that can be determined from such a small sample. Reviewing the 23 blasting events where dead and injured fish were collected after the ''all-clear'' signal was given, no discernable pattern exists. Factors that affect fish mortality include, but are not limited to fish size, body shape (fusiform, etc.), proximity of the blast to a vertical structure like a bulkhead (e.g., see the August 10, 2005 blast event, a much smaller charge weight resulted in a higher fish kill due to the closeness of a bulkhead).

TABLE 3—CONFINED BLAST MAXIMUM CHARGE WEIGHT AND NUMBER OF FISH KILLED DURING MIAMI HARBOR 2005 PROJECT

Date	Max charge weight/delay (lb)	Fish killed
July 25, 2005	112	35
July 26, 2005	85	38
August 10, 2005	17	28

In the past, to reduce the potential for fish to be injured or killed by the confined blasting, the resource agencies have requested, and ACOE has allowed, that confined blasting contractors utilize a small, unconfined explosive charge, usually a 1 lb (0.5 kg) booster, detonated about 30 seconds before the main confined blast, to drive fish away from the confined blasting zone. It is assumed that noise or pressure generated by the small charge would drive fish from the immediate area, thereby reducing impacts from the larger and potentially more-damaging confined blast. Blasting companies use this method as a ''good faith effort'' to reduce the potential impacts to aquatic natural resources. The explosives industry recommends firing a ''warning shot'' to frighten fish out of the area before seismic exploration work is begun (Anonymous, 1978 in Keevin *et al.,* 1997).

There are limited data available on the effectiveness of fish scare charges at actually reducing the magnitude of fish kills, and the effectiveness may be based on the fish's life history. Keevin *et al.* (1997) conducted a study to test if fish scare charges are effective in moving fishes away from blast zones. They used three freshwater species (i.e., largemouth bass (*Micropterus salmoides*), channel catfish (*Ictalurus punctatus*), and flathead catfish (*Pylodictis olivaris*), equipping each fish with an internal radio tag to allow the fishes movements to be tracked before and after the scare charge. Fish movement was compared with a predicted lethal dose (LD) 0% mortality distance for an open water shot (no confinement) for a variety of charge weights. Largemouth bass showed little response to repelling charges and none would have moved from the kill zone calculated for any explosive size. Only one of the flathead catfish and two of the channel catfish would have moved to a safe distance for any blast. This means that only 11% of the fish used in the study would have survived the blast events.

These results call into question the effectiveness of this minimization methodology; however, some assert that based on the monetary value of fish (American Fishery Society, 1992 in Keevin *et al.,* 1997), including the high value commercial or recreational species like snook (*Centropomus undecimalis*) and tarpon (*Megalops atlanticus*) found in southeast Florida inlets like Port Everglades, the low cost associated with repelling charge use would be offset if only a few fish moved from the kill zone (Keevin *et al.,* 1997).

To calculate the potential loss of prey species from the project area as an impact of the confined blasting events, the ACOE used a 12.5 fish kill per blasting event estimate based on the Miami Harbor 2005 project, and multiplied it by the 40 shots, reaching a total estimate of 500 floating fish. As stated previously, not all carcasses float to the surface and there is no way to estimate how many carcasses did not float. Using an estimate of 12.5 fish kill per blasting event, and the maximum 600 detonations for the entire multi-year project, the minimum number of fish expected to be killed by the project is approximately 7,500 fish across the entire 28,500 ft (8,686.8 m) long channel footprint, assuming the worst case

scenario and the entire channel needs to be blasted.

NMFS anticipates that the proposed action would result in no significant impacts to marine mammal habitat beyond rendering the areas immediately around the Port of Miami less desirable shortly after each confined blasting event and during dredging operations and potentially eliminating a relatively small amount of locally available prey. The impacts would be localized and instantaneous. Impacts to marine mammal habitat, as well as invertebrate and fish species are not expected to be significantly detrimental.

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

Over the last 10 years, the ACOE's Jacksonville District has been collecting data concerning the effects of confined blasting projects on marine mammals. This effort began in the early 1990's when the ACOE contracted with Dr. Calvin Koyna, Precision Blasting Services, to review previous ACOE blasting projects. The ACOE also received recommendations from the Florida Fish and Wildlife Conservation Commission (FWC, then known as the Florida Department of Natural Resources) and the USFWS to prepare for a harbor deepening project at Port Everglades, Florida, which was conducted in the mid-1980s. The recommendations prepared for the project were specifically aimed at protecting endangered manatees and endangered and threatened sea turtles.

The ACOE would develop and implement four zones as protective measures that are based on the use of an unconfined blast. The use of unconfined blast in development of these protective zones for a confined blast would increase the conservation measures afforded marine mammals in the action area. These four zones are referred to as the danger zone (i.e., inner most zone, located closest to the blast), the exclusion zone (i.e., the danger zone plus 500 ft (152.4 m) to add an additional layer of conservatism for marine mammals), the safety zone (i.e., the third zone), and the watch zone (i.e., the outer most zone). All of these zones are noted in Figure 11 of ACOE's IHA application and described in further detail in this section of the document (see below). Of these four zones, only the danger zone is associated with a MMPA threshold. The danger zone has been determined to be larger than or equal to the threshold for Level B harassment, as defined by the MMPA. Injury (Level A harassment), serious injury, or mortality are expected to occur at closer distances to the blasting array within the danger zone. These four zone calculations would be included as part of the specifications package that the contractors would bid on before the project is awarded.

As part of the ACOE's Miami Harbor Phase II project, the ACOE monitored the confined blasting project and collected data on the pressures associated with confined blasts, while employing a formula to calculate buffer and exclusion zones that would protect marine mammals. Results from the pressure monitoring at Miami Harbor Phase II demonstrate that stemming each drill hole reduces the blast pressure entering the water (Nedwell and Thandavamoorthy, 1992; Hemen *et al.,* 2005; Hempen *et al.,* 2007).

The following standard conditions have been incorporated into the project specifications to reduce the risk to marine mammals in the proposed project area. While this application is specific to bottlenose dolphins, these specifications are written for all protected species that may be in the proposed project area.

If confined blasting is planned during the period of November 1 through March 31, significant operational delays should be expected due to the increased likelihood of manatees being present within the project area. If possible, avoid scheduling confined blasting during the period from November 1 through March 31. In the area where confined blasting could occur or any area where confined blasting is required to obtain channel design depth, the following marine mammal protective measures shall be employed, before, during, and after each confined blast:

(A) The USFWS and NMFS must review the contractor's approved Blasting Plan prior to any confined blasting activities. (Copies of this blasting plan shall be provided to FDEP and FWC as a matter of comity.) This confined blasting proposal must include information concerning a watch program and details of the confined blasting events. This information must be submitted at least 30 days prior to the date of the confined blast(s) to the following addresses:

(1) FWC—ISM, 620 South Meridian Street, Mail Stop 6A, Tallahassee, FL 32399–1600 or *ImperiledSpecies@myfwc.com.*

(2) NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(3) USFWS, 1339 20th Street, Vero Beach, FL 32960–3559.

(4) NMFS Southeast Regional Office, Protected Species Management Branch, 263 13th Avenue South, St. Petersburg, FL 33701.

In addition to plan review, Dr. Allen Foley shall be notified at the initiation and completion of all in-water blasting (*allen.foley@myfwc.com*).

(B) The contractor's blasting plan shall include at least the following information, as required by the project's specifications:

(1) A list of PSOs, their qualifications, and positions for the watch, including a map depicting the locations for boat or land-based PSOs. Qualified PSOs must have prior on-the-job experience observing for protected species during previous in-water blasting events where the blasting activities were similar in nature to this project.

(2) The amount of explosive charge, the explosive charge's equivalency in TNT, how it would be executed (depth of drilling, stemming, in-water, etc.), a drawing depicting the placement of the charges, size of the exclusion zone, and how it would be marked (also depicted on a map), tide tables for the blasting event(s), and estimates of times and days for blasting events (with an understanding this is an estimate, and may change due to weather, equipment, etc.).

(C) For each explosive charge placed, four zones would be calculated, denoted on monitoring reports and provided to PSOs before each blast for incorporation in the watch plan for each planned detonation. All of the zones would be noted by buoys for each of the blasts. These zones are:

(1) Danger Zone: The danger zone radius is equal to 260 (79.25 m) times the cube root of the weight of the explosive charge in lbs per delay (equivalent weight of tetryl or TNT). The radius of the danger zone has been determined to be equal to or larger than the distance from the charge to a location where a marine mammal would experience Level B harassment.

$$\text{Danger zone (ft)} = 260\ (\text{lbs/delay})^{1/3}$$

Danger Zone Development: The radius of the danger zone would be calculated to determine the maximum distance from the confined blast at which mortality to marine mammals is likely to occur. The danger zone was determined by the amount of explosives used within each delay (which can

contain multiple boreholes). (The original basis of this calculation was to protect human U.S. Navy Seal divers from underwater detonations of underwater mines [Goertner, 1982]). Goertner's calculations were based on impacts to terrestrial animals in water when exposed to a detonation suspended in the water column (unconfined blast) as researched by the U.S. Navy in the 1970's (Yelverton *et al.,* 1973; Richmond *et al.,* 1973). Additionally, observations of sea turtle injury and mortality associated with unconfined blasts for the cutting of oil rig structures in the Gulf of Mexico (Young, 1991; Young and O'Keefe, 1994) were also incorporated in this radius beyond its use by the Navy.

The U.S. Navy Dive Manual and the FWC Guidelines (2005) set the danger zone formula for an unconfined blast suspended in the water column, which is as follows:

$R = 260 (W)^{1/3}$

Where:

R = radius of the danger zone in ft
W = weight of the explosive charge in lbs (tetryl or TNT)

This formula is conservative for the confined blasting being done by the ACOE in the Port of Miami since the blast would be confined with the rock and not suspended in the water column. The reduction of impact by confining the shots more than compensates for the presumed higher sensitivity of marine mammals. The ACOE and NMFS believes that the radius of the danger zone, coupled with a strong marine mammal monitoring and protection plan is a conservative approach to the protection of marine mammals in the action area.

(2) Exclusion Zone: The exclusion zone radius is equal to the danger zone plus a buffer of 500 ft. Detonation would not occur if a marine mammal is known to be (or based on previous sightings, may be) within the exclusion zone.

Exclusion zone (ft) = danger zone + 500 ft

Exclusion Zone Development: The exclusion zone is not associated with any threshold of take under the MMPA. The exclusion zone was developed during consultations with the FWC during the 2005 to 2006 Phase II dredging and confined blasting project in Miami Harbor. FWC requested a larger ''no blast'' radius due to the high number of manatees documented in the vicinity of the Port of Miami, particularly utilizing the Bill Sadowski Critical Wildlife Area directly south of the port and north of Virginia Key. The ACOE concurred with this request and added a second zone with an additional 500 ft radius above the calculated radius of the danger zone. To be consistent with the previous blasting activities at Miami Harbor, and since the confined blasting would take place in the same area, with the same concerns about the proximity of manatees to the blasting sites along Fisherman's Channel, the ACOE plans to maintain the exclusion zone.

(3) Safety Zone: The safety zone is equal to 520 (158.50 m) times the cube root of the weight of the explosive charge in lbs per delay (equivalent weight of tetryl or TNT).

Safety zone (ft; two times the size of the danger zone) = $520 (\text{lbs/delay})^{1/3}$

Safety Zone Development: The safety zone is not associated with any threshold of take. The safety zone was developed to be an area of ''heightened awareness'' of protected species (e.g. dolphins, manatees, and sea turtles) entering the blast area, without triggering a shut-down. This area triggers individual specific monitoring of each individual or group of animals as they transit in, out, or through the designated zones.

(4) Watch Zone: The watch zone is three times the radius of the danger zone to ensure that animals entering or traveling close to the exclusion zone are sighted and appropriate actions can be implemented before or as the animal enters the any impact areas (i.e., a delay in blasting activities).

Watch zone (ft; three times the size of the Danger Zone) = $3 [260 (\text{lbs/delay})^{1/3}]$

Watch Zone Development: The watch zone is not associated to any threshold of take. The watch zone is the area that can be typically covered by a small helicopter based on the blasting site, flight speed, flight height, and available fuel to ensure effective mitigation-monitoring of the project area.

(D) The watch program shall begin at least one hour prior to the scheduled start of blasting to identify the possible presence of marine mammals. The watch program shall continue for at least 30 minutes (min) after detonations are complete.

(E) The watch program shall consist of a minimum of six PSOs. Each PSO shall be equipped with a two-way radio that shall be dedicated exclusively to the watch. Extra radios should be available in case of failures. All of the PSOs shall be in close communication with the blasting sub-contractor in order to halt the blast event if the need arises. If all PSOs do not have working radios and cannot contact the primary PSO and the blasting sub-contractor during the pre-blast watch, the blast shall be postponed until all PSOs are in radio contact. PSOs would also be equipped with polarized sunglasses, binoculars, a red flag for back-up visual communication, and a sighting log with a map to record sightings. All confined blasting events would be weather dependent. Climatic conditions must be suitable for optimal viewing conditions, to be determined by the PSOs.

(F) The watch program shall include a continuous aerial survey to be conducted by aircraft, as approved by the Federal Aviation Administration (FAA). The confined blasting event shall be halted if an animal(s) is sighted within the exclusion zone, within the five min before the explosives are scheduled to be detonated. An ''all clear'' signal must be obtained from the aerial PSO before the detonation can occur. The confined blasting event shall be halted immediately upon request of any of the PSOs. If animals are sighted, the blast event shall not take place until the animal(s) moves out of the exclusion zone under its own volition. Animals shall not be herded away or intentionally harassed into leaving. Specifically, the animals must not be intentionally approached by project watercraft or aircraft. If the animal(s) is not sighted a second time, the event may resume 30 min after the last sighting.

(G) An actual delay in blasting shall occur when a marine mammal is detected within the exclusion zone at the point where the blast countdown reaches the T-minus five min. At that time, if an animal is in or near the exclusion zone, the countdown is put on hold until the zone is completely clear of marine mammals and all 30 min sighting holds have expired. Animal movements into the safety zone prior to that point are monitored closely, but do not necessarily stop the countdown. The exception to this would be stationary animals that do not appear to be moving out of the area or animals that begin moving into the exclusion zone late in the countdown. For these cases, holds on the T-minus 15 minutes may be called to keep the shipping channel open and minimize the impact on the Port of Miami operations.

(H) The PSOs and contractors shall evaluate any problems encountered during blasting events and logistical solutions shall be presented during blasting events and logistical solutions shall be presented to the Contracting Officer. Corrections to the watch shall be made prior to the next blasting event. If any one of the aforementioned conditions is not met prior to or during the blasting, the watch PSOs shall have the authority to terminate the blasting

event, until resolution can be reached with the Contracting Officer. The Contracting Officer would contact FWC, USFWS, and NMFS.

(I) If an injured or dead marine mammal is sighted after the confined blast event, the PSOs on watch shall contact the ACOE and the ACOE would then contact the proper Federal and/or state natural resource agencies.

The PSOs shall maintain contact with the injured or dead marine mammal until authorities arrive. Blasting shall be postponed until consultations are reinitiated and completed, and determinations can be made of the cause of injury or mortality. If blasting injuries are documented, all demolition activities shall cease. The ACOE would then submit a revised blasting plan to USFWS and NMFS for review with copies provided to FWC and FLDEP as a matter of comity.

(J) Within 30 days after completion of all blasting events, the primary PSO shall submit a report the ACOE, who would provide it to the USFWS, NMFS, FWC, and FLDEP providing a description of the event, number and location of animals seen and what actions were taken when animals were seen. Any problems associated with the event and suggestions for improvements shall also be documented in the report.

Proposed Monitoring for Mitigation During Confined Blasting Events

The ACOE would rely upon the same monitoring protocol developed for the Port of Miami project in 2005 (Barkaszi, 2005) and published in Jordan *et al.* (2007), which can be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The monitoring protocol is summarized here:

A watch plan would be formulated based on the required monitoring radii and optimal observation locations. The watch plan would consist of at least six PSOs including at least one aerial PSO, two boat-based PSOs, and two PSOs stationed on the drill barge (see Figures 13, 14, 15, and 16 of the ACOE's IHA application). This watch plan would be consistent with the program that was utilized successfully at Miami Harbor in 2005. The sixth PSO would be placed in the most optimal observation location (boat, barge, or aircraft) on a day-by-day basis depending on the location of the blast and the placement of dredging equipment. This process would ensure complete coverage of the four zones as well as any critical areas. The watch would begin at least one hour prior to each blast and continue for one half hour after each blast (Jordan *et al.,* 2007).

The aerial PSO would fly in a turbine engine helicopter (bell jet ranger) with the doors removed. This provided maximum visibility of the watch and safety zones as well as exceptional maneuverability and the needed flexibility for continual surveillance without fuel stops or down time, minimization of delays due to weather or visibility and the ability to deliver post-blast assistance. Additionally, at least six commercial helicopter, small Cessna, and ultra-light companies operate on Key Biscayne, immediately south of the Port of Miami and offer ''flight-seeing'' operations over downtown Miami, Bayfront, and the Port of Miami. Recreational use of ultra-lights launching from Key Biscayne is also common in the area, as are overflights of commercial seaplanes, jet aircraft, and helicopters. The action area being monitored is a high traffic area, surrounded by an urban environment where animals are potentially exposed to multiple overflights daily. ACOE conferred with Mary Jo Barkaszi, owner and chief PSO of Continental Shelf Associates International, Inc. (CSA), a protected species monitoring company with 25 years of experience, and has worked on the last five blasting events involving marine mammal concerns for the ACOE throughout the country. All of these blasting events had bottlenose dolphins commonly occur in the project area. Ms. Barkaszi states that in her experience, she has not observed bottlenose dolphins diving or fleeing the area because a helicopter is hovering nearby at 500 ft (pers. comm., September 12, 2011). During monitoring events, the helicopter hovers at 500 ft above the watch zone and only drops below that level when helping to confirm identification of something small in the water, like a sea turtle. The ACOE and NMFS do not expect the incidental take of bottlenose dolphins, by Level B harassment, from helicopter-based monitoring of the proposed confined blasting operations and the ACOE is not requesting take.

Boat-based PSOs are placed on one of two vessels, both of which have attached platforms that place the PSOs eyes at least 10 ft (3 m) above the water surface enabling optimal visibility of the water from the vessels. The boat-based PSOs cover the safety zone where waters are deep enough to safely operate the boats without any impacts to seagrass resources. The shallow seagrass beds south of the project site relegate the PSO boats mainly to the channel east and west of the blast zone. At no time are any of the PSO boats allowed in shallow areas where propellers could potentially impact the fragile seagrass.

At times, turbidity in the water may be high and visibility through the water column may be reduced so that animals are not seen below the surface as they should be under normal conditions. This may be more common on an ebb tide or with a sustained south wind. However, animals surfacing in these conditions are still routinely sighted from the air and from the boats, thus the overall PSO program is not compromised, only the degree to which animals were tracked below the surface. Adjustments to the program are made accordingly so that all protected species are confirmed out of the safety zone prior to the T-minus five min, just as they are under normal visual conditions. The waters within the project area are exceptional for observation so that the decreased visibility below the surface during turbid conditions make the waters more typical of other port facilities where PSO programs are also effective throughout the U.S., for example New York and Boston harbors, where this monitoring method has also been employed.

All PSOs are equipped with marine-band VHF radios, maps of the blast zone, polarized sunglasses, and appropriate data sheets. Communications among PSOs and with the blaster is of critical importance to the success of the watch plan. The aerial-based PSO is in contact with vessel and drill barge-based PSOs and the drill barge with regular 15 min radio checks throughout the watch period. Constant tracking of animals spotted by any PSO is possible due to the amount and type of PSO coverage and the excellent communications plan. Watch hours are restricted to between two hours after sunrise and one hour before sunset. The watch begins at least one hour prior to the scheduled blast and is continuous throughout the blast. Watch continues for at least 30 min post blast at which time any animals that were seen prior to the blast are visually re-located whenever possible and all PSOs in boats and in the aircraft assisted in cleaning up any blast debris.

If any marine mammals are spotted during the watch, the PSO notifies the aerial-based PSO and/or the other PSOs via radio. The animals is located by the aerial-based PSO to determine its range and bearing from the blast array. Initial locations and all subsequent re-acquisitions are plotted on maps. Animals within or approaching the exclusion zone are tracked by the aerial and boat-based PSOs until they exited the exclusion zone. Anytime animals

are sighted near the safety zone, the drill barge is alerted as to the animal's proximity and some indication of any potential delays it might cause.

If any animal(s) is sighted inside the exclusion zone and not re-acquired, no blasting is authorized until at least 30 minutes has elapsed since the last sighting of that animal(s). The PSOs on watch would continue the countdown up until the T-minus five minute point. At this time, the aerial-based PSO confirms that all animals are outside the safety zone and that all holds have expired prior to clearing the drill barge for the T-minus five min notice. A fish scare charge would be fired at T-minus five min and T-minus one min to minimize effects of the blast on fish that may be in the same area of the blast array by scaring them from the blast area.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' NMFS implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The ACOE would be conducting a study on fish kill associated with confined underwater blasting that would provide information on the effects of confined underwater blasting on prey species for dolphins in the proposed project area. This study would determine the minimum distance from the blast array, based on charge weight, at which fish would not be killed, or injured (the ''lethal dose of zero'' distance) by confined underwater blasting. Similar studies have been completed for open water (unconfined) blasts as cited by Hempen and Keevin (1995), Keevin *et al.* (1995a, 1995b, and 1997), and Keevin (1998), but no such studies have been conducted for confined underwater blasting. This data would be useful for future confined blasting projects where pisciverous marine mammals are found, since it would allow resource managers to assess the impacts of the blasting activities on marine mammal prey, where species composition and density data have been collected for that project.

Contractor's Additional Monitoring—The contractor selected by the ACOE has incorporated the proposed monitoring from the project specifications (which were incorporated into the specifications from the original IHA). Additionally, the contractor has added two additional monitoring efforts to their confined blasting methods. These have been incorporated into the project contract and planned to be a requirement of the proposed project.

(1) Water pressure monitoring of each blast at 140 ft (42.7 m) and 3,500 ft (1,066.8 m). The monitoring program would comprise measuring both noise and transient underwater peak overpressure resulting from proposed controlled blasting, and utilizing these measurements to monitor the quality of the confined blasting program and to optimize the protection of marine resources. The contractor would record the noise associated with 30 blast events on a hydrophone system capable of recording in a broad frequency range (75 Hz to 350 kHz). The contractor would also record associated work as separate recordings, including borehole drilling and fish repelling charges. Files would be provided to the government for its records. This condition is a requirement in the ACOE's contract. More details and information, including the equipment planned to be used for the underwater overpressure monitoring for the proposed action, can be found in Great Lakes Dredge and Dock Company's Technical Approach Plan.

(2) Electronic surveillance by sonar fish finders during final 20 minutes before each confined blast. It is expected that some fish would be stunned or killed during a blast event. In order to enumerate these events and collect data on important game fish species, a fisheries technician would be deployed during each blast event. The technician would have a firm background in local fish identification and in the processing and analysis of fish species and anatomy. The technician would be deployed onboard one of the vessels used for protected species monitoring. During the watch period, the technician would watch a standard acoustical ''fish finder'' mounted on the vessel with graphical display. The technician would record large species or schools of fish as well as any fish observed from the surface during the pre-blast monitoring. Immediately after the all-clear siren, the vessel would move into the blast zone. While the PSOs search for marine mammals, the fisheries technician would search for stunned and dead fish species.

Most modern off-the-shelf fish finders use a dual beam transducer to allow for use in a broad range of water depths. The dual beam transducer consist of two separate sonar transceivers, the first transmitting at 200 kHz or greater and the second transmitting between 50 to 85 kHz depending on the brand. The higher frequency beam is used for greater resolution in shallow water (less than 100 ft) and the lower frequency is used for penetration into deeper water (greater than 100 ft). Most of the units have the ability to manually switch between frequencies and to disable on the other frequencies. The marine mammal of concern managed under NMFS jurisdiction in Miami Harbor is the bottlenose dolphin, which is considered to be in the mid-frequency functional hearing group (150 Hz to 160 kHz) according to Southall *et al.* (2007). Since the water in and around the Miami Harbor action area is not more than 100 ft, it would be acceptable to only use the 200 kHz (or greater) beam and not use the lower frequency beam. The vessels proposed to be used are equipped with the Garmin 440s echosounder/GPS combination. These units utilize the 50 kHz and 200 kHz sonar beams and have the function to disable the 50 kHz beam. If the fish-finding sonar sound source has a frequency lower than 200 kHz, the ACOE would shut-down the fish-finding sonar if a marine mammal(s) is sighted in the proposed action area (i.e., the watch zone).

Additionally, ACOE would provide sighting data for each blast to researchers at NMFS Southeast Fisheries Science Center's marine mammal program and any other researchers working on dolphins in the proposed project area to add to their database of animal usage of the project area. The ACOE would rely upon the same monitoring protocol developed for the Port of Miami project in 2005 (Barkaszi, 2005) and published in Jordan *et al.* (2007).

The ACOE plans to coordinate monitoring with the appropriate Federal and state resource agencies, and would provide copies of all relevant monitoring reports prepared by their contractors. After completion of all detonation, the ACOE would submit a summary report to regulatory agencies.

Within 30 days after completion of all blasting events, the lead PSO shall submit a report to the ACOE, who would provide it to NMFS. The report would contain the PSO's logs (including names and positions during the blasting events), provide a description of the events, environmental conditions, number and location of animals sighted, the behavioral observations of the marine mammals, and what actions were taken when animals were sighted in the action area of the project. Any

problems associated with the event and suggestions for improvements shall also be documented in the report. A draft final report must be submitted to NMFS within 90 days after the conclusion of the blasting activities. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of detonations as well as pre- and post-blasting monitoring observations. A final report must be submitted to NMFS within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury, serious injury or mortality, ACOE would immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*) (Florida Marine Mammal Stranding Hotline at 888–404–3922). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description of the incident;
- Status of all noise-generating source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ACOE to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ACOE may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that ACOE discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ACOE would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299) and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with ACOE to determine whether modifications in the activities are appropriate.

In the event that ACOE discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ACOE would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299), and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*), within 24 hours of discovery. ACOE would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

The ACOE is requesting the take of Atlantic bottlenose dolphins, by Level B harassment only, incidental to proposed confined blasting activities at Miami Harbor. The ACOE notes that multiple IHAs (up to three) would likely be needed and requested for the project due to the duration of the planned blasting activities. See Table 2 (above) for NMFS's threshold criteria and metrics utilized for impact analyses from the use of explosives.

Biscayne Bay Stock

The Biscayne Bay stock of Atlantic bottlenose dolphins is bounded by Haulover Inlet to the north and Card Sound Bridge to the south. Biscayne Bay is 428 square mi (mi^2) (1,108.5 square km [km^2]) in area. The Port of Miami channel, within the boundaries of Biscayne Bay, is approximately 7,200 ft (2,194.6 m) long by 500 ft (152.4 m) wide, with the 3,425 ft (1,044 m) long by 1,400 ft (426.7 m) wide Dodge-Lummus Island turning basin (total area 0.3 mi^2 [0.8 km^2]) at the western terminus of Fisherman's Channel. The Port of Miami's channels consist of approximately 0.1% of the entire area of Biscayne Bay. To determine the maximum area of Biscayne Bay in which bottlenose dolphins may experience pressure levels greater than or equal to the 23 psi threshold for explosives less than 2,000 lb (907.2 kg), which has the potential to result in Level B harassment due to temporary threshold shift (TTS) and associated behavioral disruption, the ACOE may utilize a maximum charge weight of 450 lb (204.1 kg) with a calculated danger zone of 1,995 ft (608.1 m). Using this radius, the total area of this zone is approximately 0.1% of Biscayne Bay (12,503,617 ft^2 [1,161,624 m^2]).

Utilizing the pressure data collected the Miami Harbor Phase II project in 2005, for a maximum charge weight of 450 lbs in a fully confined blast, the pressure is expected to be 22 psi approximately 700 ft (213.4 m) from the blast, which is below the threshold for Level B harassment (i.e., 23 psi criteria for explosives less than 2,000 lb). However to ensure the protection of marine mammals, and in case of an incident where a detonation is not fully confined, the ACOE assumes that any animal within the boundaries of the danger zone would be taken by Level B harassment.

Litz (2007) identified 69 individuals of the Biscayne Bay stock that she classified as the ''northern dolphins'' meaning animals with a mean sighting history from 1994 to 2004 north of 25.61° North. The photo-ID study that Litz's data is based on encompassed an

area of approximately 200 mi² (518 km²), approximately 50% of Biscayne Bay. The estimated maximum population of animals that may be in the project area is equal to the total number of uniquely identified animals for the entire photo-ID study of Biscayne Bay is 229 individuals (Waring *et al.,* 2010). The best population estimate for Biscayne Bay is 157 individuals, which are based on SEFSC's most consistent survey effort conducted during the 2003 to 2007 photo-ID survey seasons (Waring *et al.,* 2010).

Table 4 (below) presents the estimated incidental take, by Level B harassment, for varying charge weight delays likely to be used during the blasting activities and the estimated impacts based on the population estimates used in this analysis. In all cases, less than one bottlenose dolphin is expected to be taken incidental to each blasting event (0.049 minimum to 0.162 maximum). This assumes that the distribution of bottlenose dolphins is equal throughout all of Biscayne Bay.

TABLE 4—THE ESTIMATED INCIDENTAL TAKE OF BOTTLENOSE DOLPHINS FROM THE BISCAYNE BAY STOCK, PER EACH BLASTING EVENT, BASED ON THE MAXIMUM CHARGE WEIGHT/DELAY AND POPULATION DENSITY

Maximum (lbs/delay)	Danger Zone (ft)	Estimated take based on minimum population estimate (69 animals)	Estimated take based on best population estimate (157 animals)	Estimated take based on maximum population estimate (229 animals)
450	1,992	0.072	0.164	0.239
200	1,518	0.042	0.095	0.139
119	1,277	0.030	0.067	0.098
50	957	0.017	0.038	0.055
17	668	0.008	0.018	0.027

The ACOE accessed the NMFS SEFSC photo-ID survey data from 1990 to 2004 in Biscayne Bay via the OBIS-Seamap database (*http://seamap.env.duke.edu/*) and downloaded the Google Earth overlay of the data. Figure 12 of the ACOE's IHA application shows the general area of the Port of Miami and hot spots of bottlenose dolphin sightings both north and south of Miami Harbor. The data were used to see if sightings across all parts of the Biscayne Bay were equal. This sighting frequency data was not used to calculate the potential take numbers of marine mammals incidental to the blasting activities.

Reviewing the data from the Miami Harbor Phase II project in 2005, the ACOE noted that for the 40 detonations, 28% of all animals sighted within the action area (Fisherman's Channel) were bottlenose dolphins (the other animals sighted were manatees and sea turtles). Bottlenose dolphins were sighted inside the exclusion zone 12 times with a total of 30 individuals, with an average of 2.5 animals per sighting out of the total 58 bottlenose dolphins recorded during the project; therefore, groups of dolphins entered the exclusion zone multiple times. Also, dolphins entered the exclusion zone during 30% of the blasting events. Not all of the incidents where dolphins entered the exclusion zone resulted in a project delay, it is dependent upon when during the countdown the animals cross the line demarcating the exclusion zone, and how long they stay in the exclusion zone.

During the Miami Harbor Phase II project in 2005, bottlenose dolphins in the exclusion zone triggered delays on four occasions during the 13 blasting events (31%). If the maximum 313 (365 calendar days/year minus 52 Sundays/year [no confined blasting would occur on Sundays]) potential detonations for the duration of the one year IHA have an equal percentage of delays as the 2005 project (assuming construction starts in June with blasting March 2014 to March 2015 timeframe, with no blasting on Sundays), 94 of the detonations would be delayed for some period of time due to the presence of protected species and 29 of those delays would specifically be for bottlenose dolphins.

As a worst-case scenario, using the area of the danger zone (i.e., the area where Level B harassment would potentially occur), and recognizing that the Port of Miami is within the boundaries of the northern area described in Litz (2007), and that the danger zone of any blasting event using equal to or less than 450 lbs/delay would be approximately 0.1% of Biscayne Bay, the ACOE assumes that because animals are not evenly distributed throughout Biscayne Bay, that they travel as single individuals or in groups (as documented in the OBIS-Seamap data and the monitoring data from the Miami Harbor Phase II project in 2005), up to three bottlenose dolphins from the Biscayne Bay stock may be taken, by Level B harassment, incidental to each blasting event. This estimate does not take into account the proposed monitoring and mitigation measures to minimize potential impacts.

Assuming that the delays would be spread equally across the action area and using the calculation of 29 delays, 15 of the delayed blasting events would take place in Biscayne Bay since it compromises 52% of the proposed action area. Three bottlenose dolphins times 15 detonations is equal to 45 bottlenose dolphins potentially harassed (Level B) over the 1-year period.

Western North Atlantic Central Florida Coastal Stock

The Western North Atlantic Central Florida Coastal stock of bottlenose dolphins is present in the coastal Atlantic waters shallower than 65.6 ft (20 m) in depth between latitude 29.4° North to the western end of Vaca Key (approximately 29.69° North to 81.11° West) where the stock boundary for the Florida Key stock begins, with an area of 3,007 mi² (7,789 km²). The outer entrance channel of the Port of Miami is approximately 15,500 ft long (4,724.4 m) by 500 ft wide, which is approximately 0.28 mi² (0.73 km²). The Port of Miami's channels consist of approximately 0.009% of the stocks boundaries.

The same calculations for assessing the potential impacts to bottlenose dolphins from the proposed blasting activities that were used for the Biscayne Bay stock were also applied to this stock. To determine the maximum area of the coastal Atlantic in which bottlenose dolphins may experience pressure levels greater than or equal to the 23 psi threshold for explosives less than 2,000 lb (907.2 kg), which has the potential to result in Level B harassment due to TTS and associated behavioral disruption, the ACOE may utilize a maximum charge weight of 450 lb (204.1 kg) with a calculated danger zone

of 1,995 ft (608.1 m). Using this radius, the total area of this zone is approximately 0.015% of coastal Atlantic where this stock is expected to occur).

For an open-water, unconfined blast, the pressure edge of the danger zone is expected to be 23 psi. For a fully confined blast, the pressure at the edge of the danger zone is expected to be 6 psi. Utilizing the pressure data collected the Miami Harbor Phase II project in 2005, for a maximum charge weight of 450 lbs in a fully confined blast, the pressure is expected to be 22 psi approximately 700 ft (213.4 m) from the blast, which is below the threshold for Level B harassment (i.e., 23 psi criteria for explosives less than 2,000 lb). However to ensure the protection of marine mammals, and in case of an incident where a detonation is not fully confined, the ACOE assumes that any animal within the boundaries of the danger zone would be taken by Level B harassment.

Waring *et al.* (2010) estimates the minimum population for the Western North Atlantic Central Florida stock to be 5,094 animals, and estimates the best population to be 6,318 animals.

Table 5 (below) presents the estimated incidental take, by Level B harassment, for varying charge weight delays likely to be used during the proposed blasting activities and the estimated impacts based on the population estimates used in this analysis. In all cases, less than one bottlenose dolphin is expected to be taken incidental to each blasting event (0.102 minimum to 0.948 maximum). This assumes that the distribution of bottlenose dolphins is equal throughout all of the stock's range.

TABLE 5—THE ESTIMATED INCIDENTAL TAKE OF BOTTLENOSE DOLPHINS FROM THE WESTERN NORTH ATLANTIC CENTRAL FLORIDA COASTAL STOCK, PER EACH BLASTING EVENT, BASED ON THE MAXIMUM CHARGE WEIGHT/DELAY AND POPULATION DENSITY

Maximum (lbs/delay)	Danger zone (ft)	Estimated take based on minimum population estimate (5,094)	Estimated take based on best population estimate (6,318)
450	1,992	0.758	0.940
200	1,520	0.441	0.547
119	1,279	0.312	0.387
50	958	0.175	0.217
17	668	0.085	0.106

Other than the aerial surveys conducted by NMFS used to develop the stock assessment report, the ACOE has not been able to locate any additional photo-ID or habitat usage analysis for this stock. As a result, the ACOE is unable to determine if animals are evenly distributed throughout the stock's range, particularly in the southernmost portion of the stock's range where the action area is located.

To be conservative, the ACOE would use the same assumptions for the Western North Atlantic Central Florida Coastal stock as was used for the Biscayne Bay stock. Reviewing the data from the Miami Harbor Phase II project in 2005, the ACOE noted that for the 40 detonations, 28% of all animals sighted within the action area (Fisherman's Channel) were bottlenose dolphins (the other animals sighted were manatees and sea turtles). Bottlenose dolphins were sighted inside the exclusion zone 12 times with a total of 30 individuals, with an average of 2.5 animals per sighting out of the total 58 bottlenose dolphins recorded during the project; therefore, groups of dolphins entered the exclusion zone multiple times. Also, dolphins entered the exclusion zone during 30% of the blasting events. Not all of the incidents where dolphins entered the exclusion zone resulted in a project delay, it is dependent upon when during the countdown the animals cross the line demarcating the exclusion zone, and how long they stay in the exclusion zone.

During the Miami Harbor Phase II project in 2005, bottlenose dolphins in the exclusion zone triggered delays on four occasions during the 13 blasting events (31%). If the maximum 313 planned detonations for the duration of the one year IHA (equal to 365 calendar days/year minus 52 Sundays/year [no confined blasting would occur on Sundays) have an equal percentage of delays as the 2005 project (assuming construction starts in June with blasting March 2014 to March 2015 timeframe, with no blasting on Sundays), 94 of the detonations would be delayed for some period of time due to the presence of protected species and 29 of those delays would specifically be for bottlenose dolphins.

As a worst-case scenario, using the area of the danger zone (i.e., the area where Level B harassment would potentially occur), and that the danger zone of any blasting event using equal to or less than 450 lbs/delay would be approximately 0.009% of the stock's range. The ACOE assumes that because animals are not evenly distributed throughout the stock's range, that they travel as single individuals or in groups (as documented in the monitoring data from the Miami Harbor Phase II project in 2005), up to three bottlenose dolphins from the Western North Atlantic Central Florida Coastal stock may be taken, by Level B harassment, incidental to each blasting event. This estimate does not take into account the proposed monitoring and mitigation measures to minimize potential impacts.

Assuming that delays would be spread equally across the action area and using the calculation of 29 delays, 14 of the delayed blasting events would take place in the Outer Entrance Channel since it compromises 48% of the proposed action area. Three bottlenose dolphins times 14 detonations is equal to 42 bottlenose dolphins potentially exposed to underwater sound and pressure over a one year period for an IHA incidental to the proposed confined blasting activities at the Port of Miami.

Summary of Requested Estimated Take

Without the implementation of the proposed monitoring and mitigation measures, the ACOE has calculated up to 87 bottlenose dolphins (45 from the Biscayne Bay stock, 42 of the Western North Atlantic Central Florida stock) may be potentially taken, by Level B harassment, incidental to the proposed blasting operations over the course of the one year IHA. Due to the protective measures of confined blasts, the implementation of the monitoring and mitigation measures (i.e., danger,

exclusion, safety, and watch zones, use of the confined blasting techniques, as well as PSOs), the ACOE is requesting the take, by Level B harassment only, of a total of 22 bottlenose dolphins (12 bottlenose dolphins from the Biscayne Bay stock and 10 bottlenose dolphins from the Western North Atlantic Central Florida Coastal stock). The ACOE believes that the implementation of the protective measures of confined blasts reduces the potential for take to approximately 25% of the calculated take without any monitoring and mitigation measures. Based on the previous project by the ACOE at Miami Harbor, with 40 blast events and no documented take, this estimated take is likely high.

Encouraging and Coordination Research

The ACOE would coordinate monitoring with the appropriate Federal and state resource agencies, including NMFS Office of Protected Resources and NMFS SERO Protected Resources Division, and would provide copies of any monitoring reports prepared by the contractors.

Negligible Impact and Small Numbers Analyses and Determinations

As a preliminary matter, NMFS typically includes our negligible impact and small numbers analyses and determinations under the same section heading of our **Federal Register** notices. Despite co-locating these terms, NMFS acknowledges that negligible impact and small numbers are distinct standards under the MMPA and treat them as such. The analyses presented below do not conflate the two standards; instead, each standard has been considered independently and NMFS has applied the relevant factors to inform our negligible impact and small numbers determinations.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''. . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited);

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to the baseline data);

(4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, and impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment or survival; and

(6) The effectiveness of monitoring and mitigation measures (i.e., the manner and degree in which the measure is likely to reduce adverse impacts to marine mammals, the likely effectiveness of the measures, and the practicability of implementation).

Tables 1, 4, and 5 in this document discloses the habitat, regional abundance, conservation status, density, and the number of individuals potentially exposed to sounds and pressure levels considered the threshold for Level B harassment. There are no known important reproductive or feeding areas in the proposed action area.

For reasons stated previously in this document, the specified activities associated with the ACOE's confined blasting operations are not likely to cause PTS, or other non-auditory injury, serious injury, or death to affected marine mammals. As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and would be minimized through the incorporation of the proposed monitoring and mitigation measures.

Tables 4 and Table 5 of this document outline the number of requested Level B harassment takes that are anticipated as a result of these proposed confined blasting activities. Approximately 22 Atlantic bottlenose dolphins (12 from the Biscayne Bay stock, 10 from the Western North Atlantic Central Florida Coastal stock) are anticipated to incur short-term, minor, hearing impairment (TTS) and associated behavioral disruption due to the instantaneous duration of the confined blasting events. While some other species of marine mammals may occur in the proposed project area, only Atlantic bottlenose dolphins are anticipated to be potentially impacted by the ACOE's proposed confined blasting operations.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24-hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). The ACOE's proposed action at Miami Harbor includes up to two planned blasting events per day over multiple days; however, they are very short in duration and in a relatively small area surrounding the blast holes (compared to the range of the animals), and are only expected to potentially result in momentary exposures and reactions by marine mammals in the proposed action area, which would not be expected to accumulate in a manner that would impact reproduction or survival.

Atlantic bottlenose dolphins are the only species of marine mammals under NMFS jurisdiction that are likely to occur in the proposed action area; they are not listed as threatened or endangered under the ESA, however both stocks are listed as depleted and considered strategic under the MMPA. To reduce impacts on these stocks (and other protected species in the proposed action area), the ACOE must delay operations if animals enter designated zones. Due to the nature, degree, and context of the Level B harassment anticipated and described in this notice (see ''Potential Effects on Marine Mammals'' section above), the activity is not expected to impact rates of recruitment or survival for any affected species or stock, particularly given NMFS's and the applicant's plan to implement mitigation, monitoring, and reporting measures to minimize impacts to marine mammals. Also, the proposed confined blasting activities are very short in duration and there are no known important areas in the ACOE's proposed action area. Additionally, the proposed confined blasting operations would not adversely impact marine mammal habitat.

As mentioned previously, NMFS estimates that one species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are estimated to be small (i.e., 22 Atlantic bottlenose dolphins, 12 from the Biscayne Bay stock [17% of the estimated minimum population, 7.6% of the estimated best population, and 5.2% of the estimated maximum population], and 10 from the Western North Atlantic Central Florida Coastal stock [0.19% of the estimated minimum population and 0.15% of the estimated best population]) when compared to the population of the stock and has been mitigated to the lowest level practicable

through the incorporation of the proposed monitoring and mitigation measures described in this document.

NMFS has preliminarily determined, provided that the aforementioned proposed mitigation and monitoring measures are implemented, that the impact of conducting the confined blasting activities in the Port of Miami from March 2014 through March 2015 may result at worst in a temporary modification in behavior and/or low level physiological effects (Level B harassment) of small numbers of Atlantic bottlenose dolphins.

While behavioral modifications, including temporarily vacating the area immediately after confined blasting operations, may be made by these species to avoid the resultant underwater acoustic disturbance, the availability of alternate areas within this area and the instantaneous and sporadic duration of the confined blasting activities, have led NMFS to determine that the taking by Level B harassment from the specified activity would have a negligible impact on the affected species in the specified geographic region. NMFS believes that the length of the proposed confined blasting operations, the requirement to implement mitigation measures, and the inclusion of the monitoring and reporting measures, would reduce the amount and severity of the potential impacts from the proposed confined blasting operations to the degree that it would have a negligible impact on the species or stocks of marine mammals in the proposed action area.

Impact on Availability of Affected Species for Taking for Subsistence Uses

Section 101(a)(5)(D) also requires NMFS to determine that the authorization would not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There is no subsistence hunting for marine mammals in the action area (waters off of the coast of southeast Florida) that implicates MMPA section 101(a)(5)(D).

Endangered Species Act

Under section 7 of the ESA, the ACOE requested formal consultation with the NMFS SERO, on the project to improve the Port of Miami on September 5, 2002, and reinitiated consultation on January 6, 2011. NMFS determined that the action is likely to adversely affect one ESA-listed species and prepared a Biological Opinion (BiOp) issued on September 8, 2011, that analyzes the project's effects on staghorn coral (*Acropora cervicornis*) and its designated critical habitat. It is NMFS's biological opinion that the ACOE's proposed action is likely to adversely affect staghorn coral, but is not likely to jeopardize its continued existence or destroy or adversely modify its designated critical habitat. Based upon NMFS SERO's updated analysis, NMFS no longer expects the project is likely to adversely affect Johnson's seagrass (*Halophila johnsonii*) or its designated critical habitat. NMFS SERO has determined that the ESA-listed marine mammals (blue, fin, sei, humpback, North Atlantic right, and sperm whales), smalltooth sawfish (*Pristis pectinata*), and leatherback sea turtles (*Dermochelys coriacea*) are not likely to be adversely affected by the proposed action. Previous NMFS BiOps have determined that hopper dredges may affect hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), and loggerhead (*Caretta caretta*) sea turtles through entrainment by the draghead. Any incidental take of loggerhead, green, Kemp's ridley, or hawksbill sea turtles due to hopper dredging has been previously authorized in NMFS's 1997 South Atlantic Regional BiOp on hopper dredging along the South Atlantic coast. The ACOE is currently in re-initiation of consultation with NMFS on the South Atlantic Regional BiOp. Should a new BiOp is issued by NMFS while construction is underway at Miami Harbor, the applicable Terms and Conditions of that South Atlantic Regional BiOp would be incorporated into the project.

National Environmental Policy Act

To meet National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requirements, the ACOE has prepared a ''Final General Reevaluation Report and Environmental Impact Statement on the Navigation Study for Miami Harbor, Miami-Dade County, Florida'' (FEIS) and a ''Record of Decision on the Navigation Study for Miami Harbor, Miami-Dade County, Florida'' (ROD) for the project was signed on May 22, 2006; however, this document does not analyze NMFS's action, the issuance of the IHA for the ACOE's activity. NMFS, after independently reviewing and evaluating the document for sufficiency and compliance with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216–6 § 5.09(d), has conducted a separate NEPA analysis and prepared an ''Environmental Assessment for Issuance of an Incidental Harassment Authorization for U.S. Army Corps of Engineers Confined Blasting Operations During the Port of Miami Construction Project in Miami, Florida,'' which analyzes the project's purpose and need, alternatives, affected environment, and environmental effects for the action prior to making a determination on the issuance of the IHA. Based on the analysis in the EA and the underlying information in the record, including the IHA application, proposed IHA, public comments, and formal ESA section 7 consultation, NMFS prepared and signed a Finding of No Significant Impact (FONSI) determining that preparation of an Environmental Impact Statement is not required. The FONSI was signed on July 31, 2012 prior to the issuance of the IHA for the ACOE's activities in March 2013 to March 2014. The currently proposed confined blasting operations that would be covered by the proposed IHA from March 2014 to March 2015 are similar to the confined blasting operations described in the NMFS EA and the ACOE's FEIS and the effects of the proposed IHA fall within the scope of those documents and do not require further supplementation. After considering public comments received in response to the publication in the **Federal Register** notice and proposed IHA, NMFS will decide whether to reaffirm its FONSI.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the ACOE for conducting confined blasting operations at the Port of Miami, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance. The proposed IHA language is provided below:

U.S. Army Corps of Engineers, Jacksonville District, P.O. Box 4970, Jacksonville, Florida (FL) 32232, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(D)), to harass small numbers of marine mammals incidental to blasting operations as part of the Miami Harbor Deepening Project in the Port of Miami in Miami-Dade County, Florida:

1. This Authorization is valid from March 15, 2014, through March 14, 2015.

2. This Authorization is valid only for the U.S. Army Corps of Engineers (ACOE) activities associated with the blasting of the Port of Miami in Miami-Dade County, Florida. The blasting operations shall be limited to waters shallower than 60 feet (ft) (18.3 meters [m]) and located entirely on the continental shelf and shall not take

place seaward of the outer reef. The four components to be conducted by the ACOE, as part of the project in Miami Harbor, are:

(a) Widening of Cut 1 and deepening of Cut 1 and Cut 2;

(b) Adding a turn widener and deepening at the southern intersection of Cut 3 within Fisherman's Channel;

(c) Widening and deepening the Fisher Island Turning Basin; and

(d) Expanding the Federal Channel and Port of Miami berthing areas in Fisherman's Channel and the Lummus Island Turning Basin.

3. *Species Authorized and Level of Takes*

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the waters of Biscayne Bay and the Atlantic Ocean:

(i) Odontocetes—12 animals from the Biscayne Bay Stock and 10 from the Western North Atlantic Central Florida Coastal Stock (22 total) of Atlantic bottlenose dolphin (*Tursiops truncatus*).

(ii) If any marine mammal species under NMFS jurisdiction are encountered during blasting operations that are not authorized taking and are likely to be exposed to sound thresholds greater than or equal to Level B harassment, then the Holder of this Authorization must delay or suspend blasting operations to avoid take.

(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) above or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

4. The methods authorized for taking by Level B harassment are limited to the following acoustic sources:

(a) Explosives with a maximum charge weight per delay of 450 lb (4.5 kg)

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Office of Protected Resources, National Marine Fisheries Service (NMFS), at 301–427–8401.

6. *Mitigation and Monitoring Requirements*

The Holder of this Authorization is required to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable impact on affected marine mammal species or stocks:

(a) The Florida Fish and Wildlife Conservation Commission (FWC), the U.S. Fish and Wildlife Service (USFWS), and NMFS must review the contractor's approved blasting plan prior to any blasting activities. This blasting proposal must include information concerning a watch program and details of the blasting events. This information must be submitted at least 30 days prior to the proposed date of the blast(s) to the following addresses:

(i) FWC–ISM, 620 South Meridian Street, Mail Stop 6A, Tallahassee, FL 32399–1600 or *ImperiledSpecies@myfwc.com* and Dr. Allen Foley *allen.foley@myfwc.com.*

(ii) NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(iii) NMFS Southeast Regional Office, Protected Species Management Branch, 263 13th Avenue South, St. Petersburg, FL 33701, and

(iv) USFWS, 1339 20th Street, Vero Beach, FL 32960–3559.

(b) The contractor's blasting plan shall include at least the following information:

(i) A list of Protected Species Observers (PSOs), their qualifications, and positions for the watch, including a map depicting the proposed locations for boat or land-based PSOs. NMFS-qualified PSOs must have prior on-the-job experience observing for marine mammals and other protected species during previous in-water blasting events where the blasting activities were similar in nature to the blasting project in the Port of Miami.

(ii) The amount of explosive charge proposed, the explosive charge's equivalency in TNT, how it will be executed (depth of drilling, stemming, in-water, etc.), a drawing depicting the placement of the charges, size of the exclusion zone, and how it will be marked (also depicted on a map), tide tables for the blasting event(s), and estimates of times and days for blasting events (with an understanding this is an estimate, and may change due to weather, equipment, etc.).

(c) A test blast program shall be completed prior to implementing a construction blasting program. The test blast program shall have all the same monitoring and mitigation measures in place for marine mammals and other protected species (see below).

(d) The weight of explosives to be used in each blast shall be limited to the lowest poundage of explosives that can adequately break the rock.

(e) The explosives shall be confined in a hole with drill patterns (i.e., holes in the array) that are restricted to a minimum of 8 ft (2.4 m) separation from a loaded hole.

(f) The hours of blasting shall be restricted from two hours after sunrise to one hour before sunset to ensure adequate observation of marine mammals in the project area.

(g) Select explosive products and their practical application method to address vibration and air blast (overpressure) control for protection of existing structures and marine wildlife.

(h) Loaded blast holes shall be individually delayed to reduce the maximum lbs per delay at point detonation (in order to spread the explosive's total pressure over time), which in turn will reduce the mortality radius. Delay timing adjustments with a minimum of eight milliseconds (ms) between delay detonations to stagger the blast pressures and prevent cumulative addition of pressures in the water.

(i) Cap the hole containing explosives with rock in order to spread the explosive's outward potential of the blast and total overpressure over time, thereby reducing the chance of injuring a marine mammal or other protected species.

(j) The blast design shall match, to the extent possible, the energy needed in the ''work effort'' of the borehole to the rock mass to minimize excess energy vented into the water column or hydraulic shock.

(k) If possible, avoid scheduling blasting operations during the period from November 1 through March 31(due to the increased likelihood of manatees [*Trichechus manatus latirostris*] being present within the project area).

(l) Calculate, establish, and monitor a danger (i.e., inner-most zone, located closest to the blast), exclusion (i.e., the danger zone plus 500 ft [152.4 m], safety (i.e., the third zone), and watch zone (i.e., the outer most zone) with the appropriate radius (R) based on the weight of explosives per delay. The danger zone has been determined to be larger than or equal to the threshold for Level B harassment, as defined by the MMPA. All of the zones will be noted by buoys for each of the blasts.

Danger Zone R (ft) = 260 (lbs/delay)$^{1/3}$

Exclusion Zone R (ft) = [260 (lbs/delay)$^{1/3}$] + 500 ft

Safety Zone R = 520 (lbs/delay)$^{1/3}$

Watch Zone R = 3 [260 (lbs/delay)$^{1/3}$]

(m) The watch program shall begin at least one hour prior to the schedule start of blasting to identify the possible presence of marine mammals and is continuous throughout the blast. The watch program shall continue for at least 30 minutes after detonations are complete.

(n) The watch program shall consists of a minimum of six NMFS-qualified PSOs (at least one aerial-based PSO, two boat-based PSOs, two drill barge-based

PSOs, and one PSO placed in the most optimal observation location on a day-by-day basis depending on the location of the blast and the placement of dredging equipment). NMFS-qualified PSOs must be approved in advance by NMFS's Office of Protected Resources, to record the effects of the blasting and dredging activities and the resulting noise on marine mammals. Each PSO shall be equipped with a two-way marine-band VHF radio that shall be dedicated exclusively to the watch. Extra radios shall be available in case of failures. All of the PSOs shall be in close communication with the blasting sub-contractor in order to half the blast event if the need arises. If all PSOs do not have working radios and cannot contact the primary PSO and the blasting sub-contractor during the pre-blast watch, the blast shall be postponed until all PSOs are in radio contact. PSOs shall be equipped with polarized sunglasses, binoculars, a red flag for back-up visual communication, and appropriate data sheets (i.e., a sighting log with a map) to record sightings and other pertinent data. All blasting events are weather dependent and conditions must be suitable for optimal viewing conditions to be determined by the PSOs.

(o) The watch program shall include a continuous aerial survey to be conducted by aircraft, as approved by the Federal Aviation Administration. The aerial-based PSO is in contact with vessel and drill barge-based PSOs and the drill barge with regular 15 minute radio checks through the watch period. The aerial PSO will fly in a turbine engine helicopter with the doors removed to provide maximum visibility of the zones.

(p) Boat-based PSOs are placed on one of two vessels, both of which have attached platforms that place the PSOs eyes at least 10 ft (3 m) above the water surface enabling optimal visibility of the water from the vessels. The boat-based PSOs cover the safety zone where waters are deep enough to safely operate the boats without any impacts to seagrass resources. At no time are any of the boats with PSOs allowed in shallow areas where propellers could potentially impact the seagrass.

(q) If any marine mammals are spotted during the watch, the PSO will notify the aerial-based PSO and/or other PSOs via radio. The animal(s) is located by the aerial-based PSO to determine its range and bearing from the blast array. Initial locations and all subsequent re-acquisitions are plotted on maps. Animals within or approaching the safety zone are tracked by the aerial and boat-based PSOs until they have exited the safety zone, the drill barge is alerted as to the animal's proximity and some indication of any potential delays it might cause.

(r) If any animal(s) is sighted inside the safety zone and not re-acquired, no blasting is authorized until at least 30 minutes has elapsed since the last sighting of that animal(s). The PSOs on watch will continue the countdown up until the T-minus five minutes point. At this time, the aerial-based PSO confirms that all animals are outside the safety zone and that all holds have expired prior to clearing the drill barge for the T-minus five minutes notice.

(s) The blasting event shall be halted if an animal(s) is sighted within the exclusion zone, within the five minutes before the explosives are scheduled to be detonated. An ''all clear'' signal must be obtained from the aerial PSO before the detonation can occur. The blasting event shall be halted immediately upon request of any of the PSOs. If animals are sighted, the blast event shall not take place until the animal(s) moves out of the exclusion zone under its own volition. Animals shall not be herded away or intentionally harassed into leaving. Specifically, the animals must not be intentionally approached by project watercraft or aircraft. If the animal(s) is not sighted a second time, the even may resume 30 minutes after the last sighting.

(t) Blasting shall be delayed when a marine mammal is detected within the exclusion zone at the point where the blast countdown reaches the T-minus five minutes. At that time, if an animal is in or near the safety zone, the countdown is put on hold until the zone is completely clear of marine mammals and all 30 minutes sighting holds have expired. Animal movements into the safety zone prior to that point are monitored closely, but do not necessarily stop the countdown. The exception to this would be stationary animals that do not appear to be moving out of the area or animals that do not appear to be moving out of the area or animals that begin moving into the safety zone late in the countdown. For these cases, holds on the T-minus 15 minutes may be called to keep the shipping channel open and minimize the impact on the Port of Miami operations.

(u) During times of high turbidity and reduced visibility through the water column that compromise the sightability of animals below the water surface, adjustments should be made to the monitoring and mitigation program so that all protected species can be confirmed outside of the safety zone prior to the T-minus five minutes, just as they are under normal visual conditions.

(v) After the blast, any animal(s) seen prior to the blast are visually relocated whenever possible.

(w) The PSOs and contractors shall evaluate any problems encountered during blasting events and logistical solutions shall be presented to the Contracting Officer. Corrections to the watch shall be made prior to the next blasting event. If any one of the aforementioned conditions is not met prior to or during the blasting, the watch PSOs shall have the authority to terminate the blasting event. If any one of the aforementioned conditions is not met prior to or during the blasting, the watch PSOs shall have the authority to terminate the blasting event, until resolution can be reached with the Contracting Officer.

(x) A fish scare charge shall be fired at T-minus five minutes and T-minus one minute to minimize effects of the blast on fish that may be in the same area of the blast array by scaring them from the blast area.

(y) A study on fish kill associated with confined underwater blasting shall be conducted to provide information on the effects of confined underwater blasting on prey species for dolphins. This study shall determine the minimum distance from the blast array, based on charge weight, that fish will not be killed, or injured, by confined underwater blasting.

(z) Water pressure monitoring shall be conducted of each blast at 140 ft (42.7 m) and 3,500 ft (1,066.8 m).

(aa) Conduct electronic surveillance by fish-finding sonar during the final 20 minutes before each confined blast event. If the sound source associated with the fish-finding sonar device is lower than 200 kHz, the ACOE shall shut-down the fish-finding sonar if marine mammals are sighted in the confined underwater blasting area (i.e., watch zone).

7. *Reporting Requirements.*

The Holder of this Authorization is required to:

(a) Submit a draft report on all activities and monitoring results to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, within 90 days after completion of the demolition and removal activities. This report must contain and summarize the following information:

(i) Dates, times, locations, weather, sea conditions during all blasting and dredging activities and marine mammal sightings;

(ii) Species, number, location, distance, and behavior of any marine mammals, as well as associated blasting

activities, observed before, during, and after blasting activities.

(iii) An estimate of the number (by species) of marine mammals that may have been taken by Level B harassment during the blasting activities with a discussion of the nature of the probably consequences of that exposure on the individuals that have been exposed. Describe any behavioral responses or modifications of behaviors that may be attributed to the blasting activities.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the Incidental Harassment Authorization as well as any additional conservation recommendations.

(b) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered to be the final report.

(c) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury, serious injury or mortality, ACOE will immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation, Office of Protected Resources, NMFS at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*) (Florida Marine Mammal Stranding Hotline at 888–404–3922). The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident; description of the incident; status of all noise-generating source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of all marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; fate of the animal(s); and photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ACOE to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ACOE may not resume their activities until notified by NMFS via letter or email, or telephone.

In the event that ACOE discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), ACOE will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299) and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*). The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ACOE to determine whether modifications in the activities are appropriate.

In the event that ACOE discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ACOE will report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401, and/or by email to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov,* and the NMFS Southeast Region Marine Mammal Stranding Network (877–433–8299), and/or by email to the Southeast Regional Stranding Coordinator (*Blair.Mase@noaa.gov*) and Southeast Regional Stranding Program Administrator (*Erin.Fougeres@noaa.gov*), within 24 hours of discovery. ACOE will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

8. To the greatest extent feasible, ACOE is encouraged to coordinate its monitoring studies on the distribution and abundance of marine mammals in the project area with the NMFS's Southeast Fisheries Science Center, USFWS, and any other state or Federal agency conducting research on marine mammals. Also, report to NMFS and USFWS any chance observations of marked or tag-bearing marine mammals or carcasses, as well as any rare or unusual species of marine mammals.

9. ACOE is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's project specific Biological Opinions (2003 and 2011).

10. A copy of this Authorization must be in the possession of all contractors and PSOs operating under the authority of this Incidental Harassment Authorization.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS's preliminary determinations of issuing an IHA (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: January 29, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–02281 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held on March 28, 2014, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington,

DC 20230 or emailed to *BWashington@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or *BWashington@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/csmac.*

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes their public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *http://www.ntia.doc.gov/other-publication/2013/csmac-2013-charter.* This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/csmac.*

Matters To Be Considered: The Committee will receive reports on the progress of the following subcommittees established to help NTIA develop new or revised strategies for responding more efficiently and effectively to fundamental technological, operational, and other trends to continue advancement of delivering spectrum products, services, and solutions that will support the ever-increasing demand for spectrum:

1. Enforcement
2. Transitional Sharing
3. General Occupancy Measurements and Quantification of Federal Spectrum Use
4. Spectrum Management via Databases
5. Federal Access to Non-federal Bands
6. Spectrum Sharing Cost Recovery Alternatives

NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov/category/csmac,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.doc.gov/category/csmac.*

Time and Date: The meeting will be held on March 28, 2014, from 1:00 p.m. to 4:00 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington, at (202) 482–6415 or *BWashington@ntia.doc.gov,* at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of a meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received five (5) business days before the scheduled meeting date, to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in Word or PDF format. CDs should be labeled with the name and organizational affiliation of the filer. Alternatively, comments may be submitted electronically to *BWashington@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/category/csmac.*

Dated: January 30, 2014.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2014–02272 Filed 2–3–14; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0086]

Submission for OMB Review; Comment Request

AGENCY: Office of the Inspector General (DoDIG), DoD.

ACTION: 30-day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of an effort to streamline the process to seek feedback from the public on service delivery, DoDIG has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et. seq.).

DATES: Comments must be submitted by March 6, 2014.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Generic Clearance for the DoD IG Digital Communications Outreach—Generic Survey Collection; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain customer satisfaction metrics from users of the organization's Web site, *www.dodig.mil* and those engaged by public affairs and social media initiatives. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. Specifically, this collection is necessary for DoD IG's compliance with *OMB Digital Strategy Milestone 8.2,* which requires agencies to implement customer satisfaction measurement tools on all government Web sites. This strategy identifies

specific customer satisfaction metrics that all agencies must measure, which will enable aggregation of this data at the federal level, providing a government-wide view of how well we serve our customers and opening up new possibilities for consolidating and improving the federal Web space. Compliance with the *Digital Strategy* will also allow DoD IG to make data-driven decisions on service performance and increase customer satisfaction. A 60-day Federal Reserve notice was published on April 22, 2013 (78 FR 23756). No public comments were received.

Type of Review: New.

Affected Public: Individuals or Households.

Respondent's Obligation: Voluntary.

Annual Estimates

Expected Annual Number of Activities/Collections: 2.

Annual Number of Respondents: 2,000.

Annual Number of Responses: 2,000.

Frequency of Response: On Occasion.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 333.

3-Year Estimates: The 3-Year Ceiling for This Generic Collection

Total Expected Number of Activities/Collections: 6.

Total Number of Respondents: 6,000.

Total Number of Responses: 6,000.

Frequency of Response: On Occasion.

Average Burden per Response: 10 minutes.

Total Burden Hours: 1,000.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

To request additional information please contact Ms. Toppings, DoD Clearance Officer, at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: January 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–02279 Filed 2–3–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–60]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–60 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: January 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JAN 23 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-60, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $270 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

For J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ 70 million
Other	$200 million
TOTAL	$270 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The United Arab Emirates (UAE) has requested a possible sale of equipment in support of its commercial purchase of 30 F–16 Block 61 aircraft and to support the upgrade of its existing F–16 Block 60 aircraft. Major Defense Equipment includes: 40 20mm M61A Guns; 40 Embedded Global Positioning System/Inertial Navigation Systems. Also included: Identification Friend or Foe Equipment; Joint Mission Planning System; night vision devices; Cartridge Activated Device/Propellant Activated Devices; Weapons Integration; spare and repair parts; tools and test equipment; personnel training and training equipment; publications and technical documentation; International Engine Management Program-Component Improvement Program; repair and return; aerial refueling support; ferry maintenance and services; site surveys; U.S. Government and contractor

engineering, technical and logistics support services; and other related elements of logistics and program support.

(iv) *Military Department:* Air Force (BAB)

(v) *Prior Related Cases, if any:* FMS case SAA-$114M—Aug 00

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 23 Jan 14

*As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates—Equipment in Support of a Direct Commercial Sale of F–16 Block 61 Aircraft

The United Arab Emirates (UAE) has requested a possible sale of equipment in support of its commercial purchase of 30 F–16 Block 61 aircraft and to support the upgrade of its existing F–16 Block 60 aircraft. Major Defense Equipment includes: 40 20mm M61A Guns; and 40 Embedded GPS Inertial Navigation Systems. Also included: Identification Friend or Foe Equipment; Joint Mission Planning System; night vision devices; Cartridge Activated Device/Propellant Activated Devices; Weapons Integration; spare and repair parts; tools and test equipment; personnel training and training equipment; publications and technical documentation; International Engine Management Program-Component Improvement Program; repair and return; aerial refueling support; ferry maintenance and services; site surveys; U.S. Government and contractor engineering, technical and logistics support services; and other related elements of logistics and program support. The estimated cost is $270 million.

This proposed sale will contribute to the foreign policy and national security of the United States by to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will improve the UAE's capability to meet current and future regional threats. The UAE continues host-nation support of vital U.S. forces stationed at Al Dhafra Air Base; plays a vital role in supporting U.S. regional interests; and has proven to be a valued partner and an active participant in overseas contingency operations.

The sale of additional F–16s to the UAE is consistent with U.S. foreign policy and national security objectives. The UAE will have no difficulty absorbing this additional equipment and support into its armed forces.

The proposed sale of equipment, services, and support will not alter the basic military balance in the region.

The principal contractor will be Lockheed Martin Aeronautics in Ft. Worth, Texas. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will require the assignment of additional U.S. Government or contractor representatives to the UAE. The actual number required to support the program will be determined in joint negotiations as the program proceeds through the development, production, and equipment installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 13–60

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The KIV–78 Identification Friend or Foe (IFF) combined transponder interrogator system is a COMSEC controlled Item and is Unclassified unless Mode 4 operational evaluator parameters, classified Secret, are loaded into the equipment.

2. The AN/AVS–9 Night Vision Goggles (NVG) are a 3rd generation aviation NVGs offering higher resolution, high gain, and photo response to near infrared. The hardware is Unclassified and technical data and documentation to be provided is Unclassified.

3. If a technologically-advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorize for release and export to the Government of the United Arab Emirates.

[FR Doc. 2014–02275 Filed 2–3–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–29]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–29 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: January 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JAN 27 2014

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-29, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $1.37 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

FOR J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

Major Defense Equipment ..	$ .095 billion
Other	$1.275 billion
TOTAL	$1.370 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 8 AN/AAR–57 Common Missile Warning System, 3 T–700–GE–701D engines, 3 AN/ASQ–170 Modernized Target Acquisition and Designation Sight (MTADS), 3 AN/AAQ–11 Modernized Pilot Night Vision Sensors (PNVS), 152 AGM–114 K–A HELLFIRE Missiles, 14 HELLFIRE M299 Launchers, 6 AN/APR–39A(V)4 Radar Warning Systems with training Universal Data Modems (UDM), 2 Embedded Global Positioning System Inertial Navigation System (EGI), 6 AN/AVR–2A/B Laser Warning Detectors, 12 M261 2.75 inch Rocket Launchers, M206 Infrared Countermeasure flares, M211 and M212 Advanced Infrared Countermeasure Munitions (AIRCM) flares, Internal Auxiliary Fuel Systems (IAFS), Aviator's Night Vision Goggles, Aviation Mission Planning System, training ammunition, helmets, transportation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. Government and contractor technical assistance, and other related elements of program and logistics support.

(iv) *Military Department:* U.S. Army (UAK)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached

(viii) *Date Report Delivered to Congress:* 27 January 2014

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq—Support for APACHE Lease

The Government of Iraq has requested a possible sale of 8 AN/AAR–57 Common Missile Warning System, 3 T–700–GE–701D engines, 3 AN/ASQ–170 Modernized Target Acquisition and Designation Sight (MTADS), 3 AN/AAQ–11 Modernized Pilot Night Vision Sensors (PNVS), 152 AGM–114 K–A HELLFIRE Missiles, 14 HELLFIRE M299 Launchers, 6 AN/APR–39A(V)4 Radar Warning Systems with training Universal Data Modems (UDM), 2 Embedded Global Positioning System Inertial Navigation System (EGI), 6 AN/AVR–2A/B Laser Warning Detectors, 12 M261 2.75 inch Rocket Launchers, M206 Infrared Countermeasure flares, M211 and M212 Advanced Infrared Countermeasure Munitions (AIRCM) flares, Internal Auxiliary Fuel Systems (IAFS), Aviator's Night Vision Goggles, Aviation Mission Planning System, training ammunition, helmets, transportation, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. Government and contractor technical assistance, and other related elements of program and logistics support. The estimated cost is $1.37 billion.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the United States.

The proposed sale supports the strategic interests of the United States by providing Iraq with a critical capability to protect itself from terrorist and conventional threats. This will allow Iraqi Security Forces to begin training on the operation and maintenance of six leased U.S. APACHE helicopters in preparation of their receipt of new-build aircraft.

This proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in Mesa, Arizona, Lockheed Martin Corporation in Orlando, Florida, General Electric Company in Cincinnati, Ohio, and Robertson Fuel Systems, LLC, Tempe, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of 1 U.S. Government and 67 contractor representatives to travel to Iraq on an as-needed basis provide support and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–29

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AH–64E APACHE Attack Helicopter weapon system contains communications and target identification equipment, navigation equipment, aircraft survivability equipment, displays, and sensors. The airframe itself does not contain sensitive technology; however, the pertinent equipment listed below will be either installed on the aircraft or included in the lease:

a. The AN/ASQ–170 Modernized Target Acquisition and Designation Sight/AN/AAQ–11 Modernized Pilot Night Vision Sensor (MTADS/MPNVS) provides day, night, limited adverse weather target information, as well as night navigation capabilities. The MPNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while MTADS provides the co-pilot gunner with search, detection, recognition, and designation by means of television and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified.

b. The AAR–57(V)7 Common Missile Warning System (CMWS) detects energy emitted by threat missile in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate countermeasures. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD). The ECU hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret.

c. The AN/APR–39A(V)4/APR–39C(V)2 Radar Signal Detecting Set is a system, that provides warning of a radar directed air defense threat and allow appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret.

d. The AN/AVR–2B Laser Detecting Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret.

e. The Embedded Global Positioning Systems Inertial Navigation (EGI) is an export controlled device containing a GEM III/IV GPS Receiver card with a Precise Positioning Service-Security Module (PPS–SM).

f. The highest level for release of the AGM–114 K–A HELLFIRE missile is Secret, based upon the software. This missile variant adds a blast fragmentation sleeve to the HEAT warhead's anti-tank capability, giving it added versatility against unarmored targets in the open. The highest level of classified information that could be disclosed by a proposed lease or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified Secret or Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2014–02266 Filed 2–3–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–18]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 13–18 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: January 30, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JAN 27 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-18, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Iraq for defense articles and services estimated to cost $4.8 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

For J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 13–18

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Iraq

(ii) *Total Estimated Value:*

Major Defense Equipment ..	$1.9 billion
Other	$2.9 billion
TOTAL	$4.8 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 24 AH–64E APACHE LONGBOW Attack Helicopters, 56 T700–GE–701D Engines, 27 AN/ASQ–170 Modernized Target Acquisition and Designation Sight, 27 AN/AAR–11 Modernized Pilot Night Vision Sensors, 12 AN/APG–78 Fire Control Radars with Radar Electronics Unit (LONGBOW component), 28 AN/AAR–57(V)7 Common Missile Warning Systems, 28 AN/AVR–2B Laser Detecting Sets, 28 AN/APR–39A(V)4 or APR–39C(V)2 Radar Signal Detecting Sets, 28 AN/ALQ–136A(V)5 Radar Jammers, 52 AN/AVS–6, 90 Apache Aviator Integrated Helmets, 60 HELLFIRE Missile Launchers, and 480 AGM–114R HELLFIRE Missiles. Also included are AN/APR–48 Modernized Radar Frequency Interferometers, AN/APX–117 Identification Friend-or-Foe Transponders, Embedded Global Positioning Systems with Inertial Navigation with Multi Mode Receiver, MXF–4027 UHF/VHF Radios, 30mm Automatic Chain Guns, Aircraft Ground Power Units, 2.75 in Hydra Rockets, 30mm rounds, M211 and M212 Advanced Infrared Countermeasure Munitions flares, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. government and contractor engineering, technical, and logistics support services, design and construction, and other related elements of logistics support.

(iv) *Military Department:* U.S. Army (WAQ)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense*

Services Proposed to be Sold: See Annex attached

(viii) *Date Report Delivered to Congress:* 27 January 2014

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Iraq—AH–64E APACHE LONGBOW Attack Helicopters

The Government of Iraq has requested a possible sale of 24 AH–64E APACHE LONGBOW Attack Helicopters, 56 T700–GE–701D Engines, 27 AN/ASQ–170 Modernized Target Acquisition and Designation Sight, 27 AN/AAR–11 Modernized Pilot Night Vision Sensors, 12 AN/APG–78 Fire Control Radars with Radar Electronics Unit (LONGBOW component), 28 AN/AAR–57(V)7 Common Missile Warning Systems, 28 AN/AVR–2B Laser Detecting Sets, 28 AN/APR–39A(V)4 or APR–39C(V)2 Radar Signal Detecting Sets, 28 AN/ALQ–136A(V)5 Radar Jammers, 52 AN/AVS–6, 90 Apache Aviator Integrated Helmets, 60 HELLFIRE Missile Launchers, and 480 AGM–114R HELLFIRE Missiles. Also included are AN/APR–48 Modernized Radar Frequency Interferometers, AN/APX–117 Identification Friend-or-Foe Transponders, Embedded Global Positioning Systems with Inertial Navigation with Multi Mode Receiver, MXF–4027 UHF/VHF Radios, 30mm Automatic Chain Guns, Aircraft Ground Power Units, 2.75 in Hydra Rockets, 30mm rounds, M211 and M212 Advanced Infrared Countermeasure Munitions flares, spare and repair parts, support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. government and contractor engineering, technical, and logistics support services, design and construction, and other related elements of logistics support. The estimated cost is $4.8 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. This proposed sale directly supports the Iraq government and serves the interests of the Iraqi people and the United States.

This proposed sale supports the strategic interests of the United States by providing Iraq with a critical capability to protect itself from terrorist and conventional threats, to enhance the protection of key oil infrastructure and platforms, and to reinforce Iraqi sovereignty. This proposed sale of AH–64E APACHE helicopters will support Iraq's efforts to establish a fleet of multi-mission attack helicopters capable of meeting its requirements for close air support, armed reconnaissance and anti-tank warfare missions.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors will be The Boeing Company in Mesa, Arizona; Lockheed Martin Corporation in Orlando, Florida; General Electric Company in Cincinnati, Ohio; Lockheed Martin Mission Systems and Sensors in Owego, New York; Longbow Limited Liability Corporation in Orlando, Florida; and Raytheon Corporation in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of three U.S. Government and two hundred contractor representatives to Iraq to support delivery of the Apache helicopters and provide support and equipment familiarization. In addition, Iraq has expressed an interest in a Technical Assistance Fielding Team for in-country pilot and maintenance training. To support the requirement a team of 12 personnel (one military team leader and 11 contractors) would be deployed to Iraq for approximately three years. Also, this program will require multiple trips involving U.S. Government and contractor personnel to participate in program and technical reviews, training and installation.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–18

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The AH–64E APACHE Attack Helicopter weapon system contains communications and target identification equipment, navigation equipment, aircraft survivability equipment, displays, and sensors. The airframe itself does not contain sensitive technology; however, the pertinent equipment listed below will be either installed on the aircraft or included in the sale:

a. The AN/APG–78 Fire Control Radar (FCR) is an active, low-probability of intercept, millimeter-wave radar, combined with a passive AN/APR–48A Modernized Radar Frequency Interferometer (M–RFI) mounted on top of the helicopter mast. The FCR Ground Targeting Mode detects, locates, classifies and prioritizes stationary or moving armored vehicles, tanks and mobile air defense systems as well as hovering helicopters as well as helicopters and fixed wing aircraft in normal flight. The M–RFI detects threat radar emissions and determines the type

of radar and mode of operation. The FCR data and M–RFI data are fused for maximum synergism. The content of these items are classified Secret.

b. The AN/ASQ–170 Modernized Target Acquisition and Designation Sight/AN/AAQ–11 Modernized Pilot Night Vision Sensor (MTADS/MPNVS) provides day, night, limited adverse weather target information, as well as night navigation capabilities. The MPNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while MTADS provides the co-pilot gunner with search, detection, recognition, and designation by means of television and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified.

c. The AAR–57(V)7 Common Missile Warning System (CMWS) detects energy emitted by threat missile in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate counter-measures. The CMWS consists of an Electronic Control Unit (ECU), Electro-Optic Missile Sensors (EOMSs), and Sequencer and Improved Countermeasures Dispenser (ICMD). The ECU hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret.

d. The AN/APR–39A(V)4/APR–39C(V)2 Radar Signal Detecting Set provides warning of a radar directed air defense threat and allow appropriate countermeasures. This is the 1553 databus compatible configuration. The hardware is classified Confidential when programmed with U.S. threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret.

e. The AN/AVR–2B Laser Detecting Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret.

f. The AN/ALQ–136A(V)5 Radar Jammer, or equivalent, is an automatic radar jammer that analyzes various incoming radar signals. When threat signals are identified and verified, jamming automatically begins and continues until the threat radar breaks lock. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret; releasable technical data (technical performance) is classified Secret.

g. The highest level for release of the AGM–114R HELLFIRE II missile is Secret, based upon the software. The highest level of classified information that could be disclosed by a proposed sale or by testing of the end item is Secret; the highest level that must be disclosed for production, maintenance, or training is Confidential. Reverse engineering could reveal Confidential information. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified Secret or Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2014–02265 Filed 2–3–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0010]

Agency Information Collection Activities; Comment Request; Section 704 Annual Performance Report (Parts I and II)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 7, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0010 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Tomakie Washington, 202–401–1097 or electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here. We will ONLY accept comments in this mailbox when the regulations.gov site is not available to the public for any reason.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Section 704 Annual Performance Report (Parts I and II).

OMB Control Number: 1820–0606.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector, State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 412.

Total Estimated Number of Annual Burden Hours: 14,420.

Abstract: These data collection instruments are the annual performance reports for State Independent Living Services (SILS) and Centers for Independent Living (CIL) programs.

These are known as the 704 Report Part I and the 704 Report Part II, respectively. These reports are required by sections 704(m)(4)(D), 706(d), 721(b)(3) and 725(c) of the Rehabilitation Act of 1973, as amended (the Act) and the corresponding regulations in 34 CFR parts 364, 365, and 366. Approval of grantees' annual performance reports (704 Report) is a prerequisite for the Rehabilitation Services Administration (RSA) approval of the annual SILS grant awards (part B funds) and CILs continuation grant awards (part C funds).

Dated: January 29, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–02215 Filed 2–3–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0142]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Implementation Study of the Ramp Up to Readiness Program

AGENCY: Institute of Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 6, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0142 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105,Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For questions related to collection activities or burden, please call Katrina Ingalls, 703–620–3655 or electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here. We will ONLY accept comments in this mailbox when the regulations.gov site is not available to the public for any reason.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Implementation Study of the Ramp Up to Readiness Program.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 6,086.

Total Estimated Number of Annual Burden Hours: 1,212.

Abstract: This study will examine the implementation of Ramp-Up to Readiness, a schoolwide guidance intervention aimed at increasing the college readiness of students. The intervention is at present being implemented in 34 high schools in Minnesota, and the developers intend to make the intervention available to a much larger set of Minnesota schools. No independently gathered high-quality evidence exists, however, on whether schools are able to implement this comprehensive intervention as intended or how its core components compare to the college-readiness supports in other high schools. The project for which OMB clearance is requested will attempt to gather such evidence from 22 public Minnesota high schools through the least burdensome means. The school-level implementation study will focus on assessing whether Ramp-Up school staff implement the program as intended, on identifying the extent to which the Ramp-Up program differs from the college-readiness supports offered in schools without Ramp-Up, and on the validity of a measure of personal college readiness, which the developers hypothesize is a key mechanism through which the program impacts later outcomes. The study will collect data from school staff in the following activities: Administrative data collection, focus groups in January and June, extant document collection, instructional logs, student and staff surveys, and student personal readiness assessment. The findings produced through analysis of these data will help (1) state education agencies seeking strategies and programs to endorse as a potential means of improving students college readiness and college enrollment, (2) local education agencies that are considering the challenges of implementing Ramp-Up, (3) the developer of this intervention (the College Readiness Consortium at the University of Minnesota) and developers of other college readiness interventions who continually seek to improve their programs by using information from studies like this, and (4) a group of education stakeholders in the Midwest interested in considering whether to conduct a study of the impacts of the Ramp-Up intervention on student outcomes.

Dated: January 29, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–02254 Filed 2–3–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: U.S. Department of Education, President's Board of Advisors on Historically Black Colleges and Universities (Board).

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. The notice also describes the functions of the Board. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend.

DATES: Tuesday, February 25, 2014.

Time: 9:00 a.m.–2:00 p.m. (CST).

ADDRESSES: J.F. Drake State Community and Technical College, S.C. O'Neal, Sr. Library and Technology Center, 3421 Meridian Street, North Huntsville, AL 35811, 256–551–3117.

FOR FURTHER INFORMATION CONTACT: Sedika Franklin, Program Specialist, White House Initiative on Historically Black Colleges and Universities, 400 Maryland Avenue SW., Washington, DC 20204; telephone: (202) 453–5634 or (202) 453–5630, fax: (202) 453–5632.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities (the Board) is established by Executive Order 13532 (February 26, 2010). The Board is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Board is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to strengthening the educational capacity of Historically Black Colleges and Universities (HBCUs).

The Board shall advise the President and the Secretary in the following areas: (i) Improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs; (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives; (iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the nation in reaching its goal of having the highest proportion of college graduates by 2020; (iv) elevating the public awareness of HBCUs; and (v) encouraging public-private investments in HBCUs.

Agenda

The Board will receive updates from the Chairman of the President's Board of Advisors on HBCUs, the Board's subcommittees (Black Males, Strategy, Science Technology Engineering and Mathematics (STEM), Community Colleges and Aspirational Support) and the Executive Director of the White House Initiative on HBCUs on their respective activities, thus far, during Fiscal Year 2014 including activities that have occurred since the Board's last meeting, which was held on September 25, 2013. In addition, the Board will discuss possible strategies to meet its duties under its charter, Ivory Toldson, Deputy Director of the White House Initiative on HBCUs will discuss federal initiatives supporting the educational pipeline from high school to college, and a representative from the U.S. Department of Health and Human Services will present on health disparities among students at HBCUs.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Sedika Franklin, White House Initiative on HBCUs, at (202) 453–5630, no later than Friday, February 7, 2014. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Tuesday, February 25, 2014, from 1:30 p.m.–2:00 p.m. Individuals who wish to provide comments will be allowed three to five minutes to speak. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Sedika Franklin, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202, by Friday, February 21, 2014.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC, 20202, Monday through Friday (excluding federal holidays) during the hours of 9:00 a.m. to 5:00 p.m.

Electronic Access to the Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/fedregister/index.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at 202–512–0000.

Dated: January 17, 2014.

Jamienne S. Studley,

Acting Under Secretary, U.S. Department of Education.

[FR Doc. 2014–02264 Filed 2–3–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Demonstration and Deployment Bioenergy Workshop

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of Open Meeting: Demonstration and Deployment Bioenergy Workshop.

SUMMARY: The Department of Energy (DOE) today gives notice of a workshop hosted by the Bioenergy Technologies Office's (BETO's) Demonstration and Deployment Program to discuss the current state of technology and efforts needed to achieve affordable, scalable, and sustainable drop-in hydrocarbon biofuels.

DATES: March 12–13, 2014.

ADDRESSES: Argonne National Laboratory, 9700 S. Cass Avenue, Bldg. 402, APS (Advanced Photon Source) Auditorium, Lemont, IL.

FOR FURTHER INFORMATION CONTACT: Questions may be directed to—Stephanie Nimmagadda at (720) 356–1279 or by email at *Stephanie.Nimmagadda@go.doe.gov.*

SUPPLEMENTARY INFORMATION: As the bioenergy industry begins to advance commercial-scale cellulosic ethanol technologies, BETO wants to identify the next step(s) in drop-in hydrocarbon biofuel production. This workshop is intended to discuss, reassess, and prioritize demonstration and deployment efforts needed to realize affordable, scalable, and sustainable hydrocarbon biofuels. The workshop will convene university, national laboratory, industry, advocacy, government and other stakeholders to consider the following questions:

- What is the state of technology regarding the deployment of hydrocarbon biofuels, as well as supportive bioproducts and biopower?
- What are the current technical, conversion, feedstock and logistics, and market barriers to deploying hydrocarbon biofuels?
- What are priority strategies for overcoming such technical barriers?

These discussions will inform DOE's demonstration and deployment strategy,

and the results will be presented at a breakout session during the annual Biomass 2014 conference July 29–30th. The workshop will include sessions on past demonstration and deployment successes, lessons learned, goals, research strategies, and facilitated breakout sessions.

Dated: Issued in Golden, CO, on January 17, 2014.

Nicole Blackstone,

Contracting Officer.

[FR Doc. 2014–02268 Filed 2–3–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1836–006; ER10–2005–006; ER11–26–006; ER10–1838–005; ER10–2551–005; ER10–1915–005; ER12–569–006; ER10–1841–006; ER13–712–005; ER10–1843–006; ER10–1844–006; ER10–1845–006; ER10–1846–005; ER13–1991–003; ER13–1992–003; ER10–1847–006; ER10–1849–005; ER11–2037–005; ER13–752–004; ER12–2227–005; ER10–1851–005; ER10–1852–006; ER10–1855–005; ER10–1856–006; ER10–1857–005; ER10–1887–005; ER10–1890–006; ER10–1897–006; ER10–1899–005; ER10–1902–005; ER10–1903–005; ER11–2160–006; ER10–1905–006; ER10–1906–005; ER10–1907–006; ER10–1918–006; ER10–1920–007; ER10–1925–006; ER10–1927–006; ER10–1928–007; ER11–2642–006; ER10–1930–005; ER10–1931–006; ER10–1932–005; ER10–1935–005; ER10–1950–006; ER13–2112–002; ER10–1952005; ER11–3635–006; ER10–2006–007; ER10–1961–005; ER12–1228–006; ER10–1962–006; ER10–1963–005; ER10–1964–006; ER10–1965–006; ER12–2226–005; ER12–2225–005; ER10–1966–006; ER10–1967–005; ER10–1968–005; ER10–2720–007; ER11–4428–007; ER12–1880–006; ER12–895–005; ER14–21–003; ER11–4462–008; ER10–1970–006; ER11–4677–007; ER10–1971–015; ER10–1972–006; ER10–1973–005; ER10–1951–006; ER10–1974–013; ER10–1975–013; ER12–2444–006; ER10–1976–006; ER10–1983–006; ER10–1984–006; ER11–2365–006; ER10–1985–006; ER10–1986–005; ER12–676–006; ER13–2461–001; ER13–2462–001; ER11–2192–007; ER10–1989–006; ER10–1990–005; ER10–1991–006; ER12–1660–006; ER13–2458–001; ER11–4678–007; ER10–1992–006; ER10–1993–005; ER10–1994–005; ER10–2078–007; ER10–1995–005; ER12–631–007.

Applicants: Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Backbone Mountain Windpower LLC, Baldwin Wind, LLC, Bayswater Peaking Facility, LLC, Blackwell Wind, LLC, Butler Ridge Wind Energy Center, LLC, Cimarron Wind Energy, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, Diablo Winds, LLC, Elk City Wind, LLC, Elk City II Wind, LLC, Energy Storage Holdings, LLC, Ensign Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Burleigh County Wind, LLC, FPL Energy Cabazon Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Marcus Hook, L.P., FPL Energy MH50 L.P., FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy New Mexico Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle L.L.C., FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Garden Wind, LLC, Genesis Solar, LLC, Gray County Wind Energy, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, High Winds, LLC, Jamaica Bay Peaking Facility, LLC, Lake Benton Power Partners II, LLC, Langdon Wind, LLC, Limon Wind, LLC, Limon Wind II, LLC, Logan Wind Energy LLC, Meyersdale Windpower LLC, Mill Run Windpower, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco Wind Interconnection Services, LLC, Mountain View Solar, LLC, NEPM II, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Power Marketing, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited Partnership, North Jersey Energy Associates, A Limited Partnership, North Sky River Energy, LLC, Northern Colorado Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Paradise Solar Urban Renewal, L.L.C., Peetz Table Wind Energy, LLC, Pennsylvania Windfarms, Inc., Perrin Ranch Wind, LLC, Pheasant Run Wind, LLC, Pheasant Run Wind II, LLC, Red Mesa Wind, LLC, Sky River LLC, Somerset Windpower, LLC, Story Wind, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, Vasco Winds, LLC, Victory Garden Phase IV, LLC, Waymart Wind Farm, L.P., Wessington Wind Energy Center, LLC, White Oak Energy LLC, Wilton Wind II, LLC, Windpower Partners 1993, LLC.

Description: NextEra Resources Entities Notification of Non-Material Change in Status under ER10–1836, et al.

Filed Date: 12/23/13.

Accession Number: 20131223–5284.

Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER10–3160–001.

Applicants: The United Illuminating Company.

Description: Triennial Market Power Analysis of The United Illuminating Company.

Filed Date: 1/27/14.

Accession Number: 20140127–5129.

Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–207–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing per 12/26/2013 Order in ER14–207 to be effective 12/28/2013.

Filed Date: 1/27/14.

Accession Number: 20140127–5134.

Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–974–001.

Applicants: Northern Indiana Public Service Company.

Description: Amendment Filing of NIPSCO to be effective 3/12/2014.

Filed Date: 1/27/14.

Accession Number: 20140127–5165.

Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1160–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 2014–01–27_SA 2407_FibroMinn-GRE GIA G034 to be effective 1/28/2014.

Filed Date: 1/27/14.

Accession Number: 20140127–5116.

Comments Due: 5 p.m. ET 2/18/14.

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: January 27, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02237 Filed 2–3–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–41–001.
Applicants: Varde Management, L.P., Granite Ridge Holding, LLC 2, Granite Ridge Energy, LLC.
Description: Application of Granite Ridge Energy, LLC et al for Extension of Blanket Authorization.
Filed Date: 1/28/14.
Accession Number: 20140128–5068.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: EC14–48–000.
Applicants: Verso Androscoggin LLC, Verso Androscoggin Power LLC, Verso Bucksport LLC, Verso Bucksport Power LLC.
Description: Application For Authorization to Section 203 of the Federal Power Act and Requests for Confidential Treatment, Expedited Consideration and Waivers of Verso Androscoggin LLC, et al.
Filed Date: 1/28/14.
Accession Number: 20140128–5023.
Comments Due: 5 p.m. ET 2/18/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4613–002.
Applicants: DB Energy Trading LLC.
Description: Notice of Non-Material Change in Status of DB Energy Trading LLC.
Filed Date: 1/27/14.
Accession Number: 20140127–5209.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER13–483–001.
Applicants: Pacific Gas and Electric Company.
Description: Western WDT Settlement Compliance Filing to be effective 2/1/2013.
Filed Date: 12/20/13.
Accession Number: 20131220–5188.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–25–003.
Applicants: Prairie Breeze Wind Energy LLC.
Description: Compliance Filing of Prairie Breeze Wind Energy LLC.
Filed Date: 1/28/14.
Accession Number: 20140128–5111.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–630–001.
Applicants: AlphaGen Power LLC.
Description: Supplement to market-based rate application to be effective 2/15/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5003.
Comments Due: 5 p.m. ET 2/11/14.

Docket Numbers: ER14–1161–000.
Applicants: Milford Power Limited Partnership.
Description: Notice of Succession and Non-Material Change in Status to be effective 1/28/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5196.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1162–000.
Applicants: Virginia Electric and Power Company.
Description: Petition of Virginia Electric and Power Company for Limited Waiver of the PJM Interconnection LLC Open Access Transmission Tariff and Request for Action by March 28, 2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5213.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1163–000.
Applicants: Southwest Power Pool, Inc.
Description: 2660 AEP Energy Partners Market Participant Agreement to be effective 3/1/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5036.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1164–000.
Applicants: Southwest Power Pool, Inc.
Description: 2661 AEP Service Corporation Market Participant Agreement to be effective 3/1/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5039.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1165–000.
Applicants: Southwest Power Pool, Inc.
Description: 2742 Oklahoma Gas & Electric Co Market Participant Agreement to be effective 3/1/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5044.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1166–000.
Applicants: Southwest Power Pool, Inc.
Description: 2757 SPS Market Participant Agreement to be effective 3/1/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5062.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1167–000.
Applicants: Josco Energy Corp.
Description: Josco Energy Corp. Cancellation of MBR Tariff to be effective 1/28/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5073.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1168–000.
Applicants: Southwest Power Pool, Inc.
Description: 2778 Westar Energy, Inc. Market Participant Agreement to be effective 3/1/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5088.
Comments Due: 5 p.m. ET 2/18/14.

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: January 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02283 Filed 2–3–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP11–1711–000.

Applicants: Texas Gas Transmission, LLC.
Description: 2014 Cash Out Report Filing.
Filed Date: 1/24/14.
Accession Number: 20140124–5040.
Comments Due: 5 p.m. ET 2/5/14.

Docket Numbers: RP14–385–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Index Price Name Change to be effective 2/24/2014.
Filed Date: 1/23/14.
Accession Number: 20140123–5034.
Comments Due: 5 p.m. ET 2/4/14.

Docket Numbers: RP14–386–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 01/23/14 Negotiated Rates—Tenaska Gas Storage, LLC (HUB) 1175–89 to be effective 1/22/2014.
Filed Date: 1/23/14.
Accession Number: 20140123–5054.
Comments Due: 5 p.m. ET 2/4/14.

Docket Numbers: RP14–387–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 01/23/14 Negotiated Rates—United Energy Trading, LLC (HUB) 5095–89 to be effective 1/22/2014.
Filed Date: 1/23/14.
Accession Number: 20140123–5059.
Comments Due: 5 p.m. ET 2/4/14.

Docket Numbers: RP14–388–000.
Applicants: Chandeleur Pipe Line, LLC.
Description: Chandeleur Pipe Line Company name changed to Chandeleur Pipe Line, LLC to be effective 1/24/2014.
Filed Date: 1/23/14.
Accession Number: 20140123–5101.
Comments Due: 5 p.m. ET 2/4/14.

Docket Numbers: RP14–389–000.
Applicants: Dominion Transmission, Inc.
Description: DTI—January 23, 2014 Negotiated Rate Agreement & Nonconforming SA to be effective 3/1/2014.
Filed Date: 1/23/14.
Accession Number: 20140123–5107.
Comments Due: 5 p.m. ET 2/4/14.

Docket Numbers: RP14–390–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Neg Rate Agmts (Macquarie 41858 and Wells Fargo 41865) to be effective 1/24/2014.
Filed Date: 1/24/14.
Accession Number: 20140124–5041.
Comments Due: 5 p.m. ET 2/5/14.

Docket Numbers: RP14–391–000.
Applicants: Kinder Morgan Louisiana Pipeline Company.
Description: Penalty Revenue Crediting Report of Kinder Morgan Louisiana Pipeline LLC.
Filed Date: 1/23/14.
Accession Number: 20140123–5195.
Comments Due: 5 p.m. ET 2/4/14.

Docket Numbers: RP14–392–000.
Applicants: Northern Natural Gas Company.
Description: Petition for a Limited Waiver of Northern Natural Gas Company.
Filed Date: 1/24/14.
Accession Number: 20140124–5124.
Comments Due: 5 p.m. ET 2/5/14.

Docket Numbers: RP14–393–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Commonwealth Settlement (Pro-Forma) to be effective 12/31/9998.
Filed Date: 1/24/14.
Accession Number: 20140124–5126.
Comments Due: 5 p.m. ET 2/5/14.

Docket Numbers: RP14–394–000.
Applicants: Kinder Morgan Illinois Pipeline LLC.
Description: Penalty Revenue Crediting Report for 2013 of Kinder Morgan Illinois Pipeline LLC.
Filed Date: 1/24/14.
Accession Number: 20140124–5206.
Comments Due: 5 p.m. ET 2/5/14.

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.

Filings in Existing Proceedings

Docket Numbers: RP13–1031–004.
Applicants: Trailblazer Pipeline Company LLC.
Description: Interim Rates to be effective 2/1/2014.
Filed Date: 1/24/14.
Accession Number: 20140124–5185.
Comments Due: 5 p.m. ET 2/5/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, 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 January 27, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02235 Filed 2–3–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Part 284 Natural Gas Pipeline Rate filings:

Filings Instituting Proceedings

Docket Numbers: PR14–15–000.
Applicants: NorthWestern Corporation.
Description: Tariff filing per 284.123(b)(1): Revised Rate Schedules for Transportation and Storage Service—Tax Tracker to be effective 1/1/2014; TOFC 980.
Filed Date: 1/22/14.
Accession Number: 20140122–5013.
Comments Due: 5 p.m. ET 2/12/14.
284.123(g) Protests Due:

Docket Numbers: PR14–16–000.
Applicants: Washington Gas Light Company.
Description: Tariff filing per 284.123(b)(2): General Rate Increase and Compliance Filing to be effective 2/1/2014; TOFC 760.
Filed Date: 1/23/14.
Accession Number: 20140123–5053.
Comments Due: 5 p.m. ET 2/13/14.
284.123(g) Protests Due:

Docket Numbers: PR13–61–001.
Applicants: Houston Pipe Line Company LP.
Description: Tariff filing per 284.123(b)(1): Revised HPL Petition for Firm Rate Approval & SOC Changes to be effective 9/1/2013 under PR13–61 TOFC: 1000.
Filed Date: 1/24/14.
Accession Number: 20140124–5133.
Comments Due: 5 p.m. ET 1/31/14.
284.123(g) Protests Due:

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 date(s). 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: January 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02238 Filed 2–3–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–46–000.
Applicants: MACH Gen, LLC, Millennium Power Partners, L.P., New Athens Generating Company, LLC, New Harquahala Generating Company, LLC.
Description: Application for Section 203 Authorization of MACH Gen, LLC, et al.
Filed Date: 1/24/14.
Accession Number: 20140124–5223.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: EC14–47–000.
Applicants: Verso Paper Corp., Verso Merger Sub Inc., NewPage Corporation, NewPage Public Utilities.
Description: Joint Application for Approval under Section 203 of the Federal Power Act of Verso Paper Corp., et al.
Filed Date: 1/24/14.
Accession Number: 20140124–5225.
Comments Due: 5 p.m. ET 2/14/14.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG14–23–000.
Applicants: Maine GenLead, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Maine GenLead, LLC.
Filed Date: 1/24/14.
Accession Number: 20140124–5175.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: EG14–24–000.
Applicants: Evergreen Wind Power II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Evergreen Wind Power II, LLC.
Filed Date: 1/24/14.
Accession Number: 20140124–5176.
Comments Due: 5 p.m. ET 2/14/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3319–012.
Applicants: Astoria Energy II LLC.
Description: Notice of Non-Material Change in Status of Astoria Energy II LLC.
Filed Date: 1/24/14.
Accession Number: 20140124–5210.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: ER13–1896–004; ER14–870–000; ER14–871–000; ER14–872–000; ER14–869–000; ER14–868–000; ER14–867–000; ER14–594–001.
Applicants: AEP Generation Resources Inc., AEP Operating Companies, AEP Energy Partners, Inc., CSW Energy Services, Inc., CSW Operating Companies, AEP Retail Energy Partners LLC, AEP Energy, Inc., Ohio Power Company.
Description: American Electric Power Service Corporation (AEP Operating companies) submits work papers of Julie Carey and Ben Ullman prepared in support of the Notice of Material Change in Status and Amended Market Based Rate Tariffs.
Filed Date: 1/23/14.
Accession Number: 20140124–0022.
Comments Due: 5 p.m. ET 2/13/14.

Docket Numbers: ER14–281–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 11–12–13 Credit Clean-up Amendment Att L to be effective 2/1/2014.
Filed Date: 11/12/13.
Accession Number: 20131112–5245.
Comments Due: 5 p.m. ET 2/6/14.

Docket Numbers: ER14–829–002.
Applicants: KCP&L Greater Missouri Operations Company.
Description: Errata to Amendment to SPP Tariff Filing to be effective 3/1/2014.
Filed Date: 1/24/14.
Accession Number: 20140124–5110.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: ER14–1151–000.
Applicants: Maine GenLead, LLC.
Description: Filing of Facilities Use Agreement and Request for Waivers and Blanket Approval to be effective 3/26/2014.
Filed Date: 1/24/14.
Accession Number: 20140124–5152.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: ER14–1152–000.
Applicants: Trans-Allegheny Interstate Line Company, Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: TrAILCo and Penelec submit Original SA No. 3743 and Request Expedited Review to be effective 2/10/2014.
Filed Date: 1/24/14.
Accession Number: 20140124–5168.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: ER14–1153–000.
Applicants: Verso Androscoggin Power LLC.
Description: Androscoggin Power—Application for MBR Authority to be effective 2/27/2014.
Filed Date: 1/24/14.
Accession Number: 20140124–5183.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: ER14–1154–000.
Applicants: Verso Bucksport Power LLC.
Description: Bucksport Power—Application for MBR Authority to be effective 2/27/2014.
Filed Date: 1/24/14.
Accession Number: 20140124–5192.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: ER14–1155–000.
Applicants: PJM Interconnection, L.L.C.
Description: Request for Limited Tariff Waiver and Expedited Commission Action of PJM Interconnection, L.L.C.
Filed Date: 1/24/14.
Accession Number: 20140124–5215.
Comments Due: 5 p.m. ET 2/7/14.

Docket Numbers: ER14–1156–000.
Applicants: Wisconsin Public Service Corporation.
Description: WPSC and Marshfield Letter Agreement to be effective 1/24/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5039.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1157–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Normal filing schedule no 17 to be effective 3/28/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5085.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1158–000.
Applicants: Wyoming Colorado Intertie, LLC.
Description: Order No. 764 Compliance Filing to be effective 1/28/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5091.
Comments Due: 5 p.m. ET 2/18/14.

Docket Numbers: ER14–1159–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014_01_27_SA 2524 ITC–DTE ELECTRIC AMENDED GIA (J235) to be effective 1/28/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5113.
Comments Due: 5 p.m. ET 2/18/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–24–000.
Applicants: Southwestern Electric Power Company.
Description: Application of Southwestern Electric Power Company under Section 204 of the Federal Power Act for Authorization to Issue Securities.
Filed Date: 1/24/14.
Accession Number: 20140124–5217.
Comments Due: 5 p.m. ET 2/14/14.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–4–000.
Applicants: Alabama Electric Marketing, LLC, Astoria Generating Company, L.P., Big Sandy Peaker Plant, LLC, California Electric Marketing, LLC, Crete Energy Venture, LLC, CSOLAR IV South, LLC, High Desert Power Project, LLC, Kiowa Power Partners, LLC, Lincoln Generating Facility, LLC, New Covert Generating Company, LLC, New Mexico Electric Marketing, LLC, Rolling Hills Generating, L.L.C., Tenaska Alabama Partners, L.P., Tenaska Alabama II Partners, L.P., Tenaska Frontier Partners, Ltd., Tenaska Gateway Partners, Ltd., Tenaska Georgia Partners, L.P., Tenaska Power Management, LLC, Tenaska Power Services Co., Tenaska Virginia Partners, L.P., Texas Electric Marketing, LLC, TPF Generation Holdings, LLC, Wolf Hills Energy, LLC.
Description: Quarterly Land Acquisition Report of the Tenaska MBR Sellers.
Filed Date: 1/24/14.
Accession Number: 20140124–5207.
Comments Due: 5 p.m. ET 2/14/14.

Docket Numbers: LA13–4–000.
Applicants: Brayton Point Energy, LLC, Broad River Energy LLC, Dighton Power, LLC, Elwood Energy LLC, Empire Generating Co, LLC, EquiPower Resources Management, LLC, Kincaid Generation, L.L.C., Lake Road Generating Company, L.P., Liberty Electric Power, LLC, MASSPOWER, Milford Power Company, LLC, Richland-Stryker Generation LLC.
Description: Quarterly Land Acquisition Report of the ECP MBR Sellers.
Filed Date: 1/27/14.
Accession Number: 20140127–5087.
Comments Due: 5 p.m. ET 2/18/14.

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: January 27, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02239 Filed 2–3–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–398–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 01/28/14 Negotiated Rates—JP Morgan Ventures Energy Corp (HUB) 6025–89 to be effective 1/27/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5239.
Comments Due: 5 p.m. ET 2/10/14.

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.

Filings in Existing Proceedings

Docket Numbers: PR10–30–001.
Applicants: EasTrans, LLC.
Description: Tariff filing per 284.123(b)(1) +: 311 Transportation Rate State Approval Filing; TOFC: 1260.
Filed Date: 1/24/14.
Accession Number: 20140124–5186.
Comments Due: 5 p.m. ET 2/14/14.
284.123(g) Protests Due: 5 p.m. ET 3/25/14.

Docket Numbers: RP14–223–001.
Applicants: Wyoming Interstate Company, L.L.C.
Description: Agreement Update Compliance Filing to be effective 3/1/2014.
Filed Date: 1/28/14.
Accession Number: 20140128–5208.
Comments Due: 5 p.m. ET 2/10/14.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified date(s).

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, 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: January 29, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02284 Filed 2–3–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–395–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Retainage Clean Up Filing to be effective 3/1/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5115.
Comments Due: 5 p.m. ET 2/10/14.

Docket Numbers: RP14–396–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 01/27/14 Negotiated Rates—Trafigura (HUB) 7445–89 to be effective 1/25/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5121.
Comments Due: 5 p.m. ET 2/10/14.

Docket Numbers: RP14–397–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 01/27/14 Negotiated Rates—JP Morgan Ventures Energy Corp (HUB) 6025–89 to be effective 1/25/2014.
Filed Date: 1/27/14.
Accession Number: 20140127–5123.
Comments Due: 5 p.m. ET 2/10/14.

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: January 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–02236 Filed 2–3–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2012–0742; FRL 9906–14–OAR]

California State Nonroad Engine Pollution Control Standards; Off-Highway Recreational Vehicles and Engines; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (EPA) is granting the California Air Resources Board's (CARB's) request for authorization of amendments to California's Off-Highway Recreational Vehicles and Engines (OHRV) regulations, confirming that certain OHRV amendments are within-the-scope of prior EPA authorizations, and confirming that certain OHRV amendments are not preempted by Clean Air Act. CARB's OHRV regulations apply to all off-highway recreational vehicles (and to engines manufactured for use in such vehicles) produced on or after January 1, 1997, for sale, lease, use and introduction into commerce in California. This decision is issued under the authority of the Clean Air Act (CAA or Act).

DATES: Petitions for review must be filed by April 7, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2012–0742. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open to the public on all federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *www.regulations.gov* Web site, enter EPA–HQ–OAR–2012–0742 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Suzanne Bessette, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105. Telephone: (734) 214–4703. Fax: (734) 214–4053. Email: *bessette.suzanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1994, CARB adopted emission standards and test procedures for OHRVs. At that time, there were no analogous federal standards regulating emissions from the vehicles and engines covered by California's OHRV regulations. EPA authorized CARB's 1994 OHRV regulations in 1996.[1] California subsequently adopted three rounds of amendments to these regulations, the first in 1999, the second in 2003, and the third in 2006. CARB requested that EPA authorize each of these three amendment packages in letters dated March 24, 2000, November 19, 2004, and March 24, 2010, respectively.[2] The March 24, 2010 request explicitly incorporates the previous two requests, and EPA here considers all three requests concurrently.

A. California's Authorization Requests

The 1999 OHRV amendments did not change the numerical exhaust emission standards for OHRVs, but added a new compliance category that allowed OHRVs not meeting the applicable emissions standards to be certified subject to use restrictions (i.e., use in specified areas during specified times of the year). Such non-emissions-compliant OHRVs would be identified with a red sticker or ''red tag,'' while emissions-compliant OHRVs would be identified with a green sticker or ''green tag.'' The amendments also removed a competition vehicle exemption provision and added all-terrain vehicles (ATVs) over 600 pounds (lbs) to the existing definition of ATV. CARB requested that EPA confirm a within-the-scope determination for the red tag program and for the removal of the competition exemption, and grant a full authorization for the addition of ATVs over 600 lbs.

According to CARB, the goal of the 1999 amendments was to provide economic relief to vehicle dealers in California who were contractually bound to sell products that did not meet the emission standards California established in 1994.[3] Prior to the 1999 amendments, two-stroke off-highway motorcycles could only be sold as competition models, and their use was limited to closed-course competitions. Following the amendments, such competition vehicles would be red tagged and allowed to operate during certain times of the year in certain geographic areas. The amendments provided for red tagged vehicles to be certified and sold in California and to be

[1] ''California State Nonroad Engine and Vehicle Pollution Control Standards; Authorization of State Standards; Notice of Decision,'' 61 FR 69093 (December 31, 1996).

[2] CARB Request for Authorization Letter, March 24, 2000 (''2000 Request''), EPA–HQ–OAR–2012–0742–0002; CARB Request for Authorization Letter, February 19, 2004 (''2004 Request''), EPA–HQ–OAR–2012–0742–0008; CARB Request for Authorization Letter, March 24, 2010 (''2010 Request''), EPA–HQ–OAR–2012–0742–0014.

[3] 2000 Request, *supra* note 2, at 2.

operated in two situations. First, in ''unlimited use areas,'' which are certain recreational use areas located in regions in attainment with the National Ambient Air Quality Standard (NAAQS) for ozone, red-tagged vehicles could be used without restriction, year-round. Second, in ''limited use areas,'' which are certain recreational use areas located in regions classified as nonattainment for the ozone NAAQS, red-tagged vehicles could be used only during ''riding seasons'' specified for each area. The riding seasons in limited use areas restricted the operation of red-tagged vehicles during peak ozone periods, when the area was typically not in attainment with the ozone standard, usually the summer months. Out of more than 100 designated riding areas, approximately one-third were unlimited use areas and two-thirds were limited use areas.[4] The vast majority of the riding areas were established on public lands managed by the California Department of Parks and Recreation, the United States Forest Service, or the United States Bureau of Land Management. CARB predicted that the red tag program would result in lower emissions from OHRVs in limited use areas during peak ozone periods, but higher emissions and a ''possible minor impact on PM or toxics'' in unlimited use areas, limited use areas during non-peak seasons, and on a state-wide average.[5] However, these predicted increases in emissions from OHRVs were expected to increase pollutants of concern only negligibly, and to have no impact on ozone air quality since exceedances of the ozone standard would not occur during the period in which riding was allowed.[6]

The 2003 amendment modified the OHRV regulations to change and clarify the start date of the red tag program. California's authorization request stated that the regulatory change was needed to correct the ''practical delay'' in enforcement of the 1999 red tag program and to confirm that the riding season use restrictions would begin with the 2003 model year.[7] CARB sought a within-the-scope determination for this amendment.[8]

The 2006 amendments made three further changes to California's OHRV regulations. First, California added evaporative emission standards for OHRVs that aligned with federal standards for 2008 and later model year vehicles. Second, the amendments reclassified sand cars, off-road utility vehicles and off-road sport vehicles as OHRVs, to align with the federal classification of these vehicles. Each of these vehicle categories had previously been regulated under other federally-authorized California regulations as small off-road or large off-road spark-ignition engines. The 2006 amendments set new emission standards for these three additional classes of vehicles that aligned with or exceeded the stringency of federal standards.[9] Third, the list of riding areas and riding seasons was amended to add a few new attainment areas.

CARB's 2010 request regarding the 2006 amendments sought (1) a full authorization for the evaporative emissions standard, (2) a within-the-scope determination for the reclassification of sand cars, off-road sport vehicles and off-road utility vehicles, and (3) a declaration that the riding areas and riding seasons amendment does not require EPA authorization because the designation of seasonal and geographical use specifications is an operational control and is accordingly not preempted by section 209 of the Act.[10] California also requested, in the alternative, that the riding season amendments be considered within the scope of EPA's 1996 authorization of CARB's 1994 OHRV regulations. Finally, CARB requested that EPA concurrently consider and render a decision on the pending authorization requests for the 1999 and 2003 amendments.

B. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any state, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain *new* nonroad engines or vehicles.[11] For all other nonroad engines (including ''non-new'' engines), states generally are preempted from adopting and enforcing standards and other requirements relating to the control of emissions, except that section 209(e)(2)(A) of the Act requires EPA, after notice and opportunity for public hearing, to authorize California to adopt and enforce such regulations unless EPA makes one of three enumerated findings. Specifically, EPA must deny authorization if the Administrator finds that (1) California's protectiveness determination (i.e., that California standards will be, in the aggregate, as protective of public health and welfare as applicable federal standards) is arbitrary and capricious, (2) California does not need such standards to meet compelling and extraordinary conditions, or (3) the California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

On July 20, 1994, EPA promulgated a rule interpreting the three criteria set forth in section 209(e)(2)(A) that EPA must consider before granting any California authorization request for nonroad engine or vehicle emission standards.[12] EPA revised these regulations in 1997.[13] As stated in the preamble to the 1994 rule, EPA historically has interpreted the consistency inquiry under the third criterion, outlined above and set forth in section 209(e)(2)(A)(iii), to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) of the Act.[14]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate

[4] ''Initial Statement of Reasons, Public Hearing to Consider Amendments to the California Regulations for New 1997 and Later Off-Highway Recreational Vehicles and Engines,'' October 23, 1999, EPA–HQ–OAR–2012–0742–0030, at 6.

[5] *Id.* at 8.CARB predicted lower emissions in limited use areas because red tag vehicles would be prohibited there during peak ozone seasons, whereas prior to the amendments these vehicles would have been covered by the competition exemption and their use would have been allowed year round.

[6] *Id.* at 7.

[7] 2004 Request, *supra* note 2, at 1.

[8] At the same time, CARB argued that future amendments of riding seasons and riding areas should not be subject to EPA approval, because they should be treated as ''operational controls'' not preempted under section 209(d) of the Clean Air Act. *Id.* at note 1.

[9] 2010 Request, *supra* note 2, at 4–6.

[10] *Id.* at 1–2.

[11] States are expressly preempted from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from new nonroad engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower. Such express preemption under section 209(e)(1) of the Act also applies to new locomotives or new engines used in locomotives.

[12] *See* ''Air Pollution Control; Preemption of State Regulation for Nonroad Engine and Vehicle Standards,'' 59 FR 36969 (July 20, 1994).

[13] *See* ''Control of Air Pollution: Emission Standards for New Nonroad Compression-Ignition Engines at or Above 37 Kilowatts; Preemption of State Regulation for Nonroad Engine and Vehicle Standards; Amendments to Rules,'' 62 FR 67733 (December 30, 1997). The applicable regulations are now found in 40 CFR part 1074, subpart B, section 1074.105.

[14] *See supra* note 12. EPA has interpreted 209(b)(1)(C) in the context of section 209(b) motor vehicle waivers.

engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests under section 209(b)(1)(C). That provision provides that the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures will be found to be inconsistent with section 202(a) if (1) there is inadequate lead time to permit the development of the necessary technology, giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

In light of the similar language of sections 209(b) and 209(e)(2)(A), EPA has reviewed California's requests for authorization of nonroad vehicle or engine standards under section 209(e)(2)(A) using the same principles that it has historically applied in reviewing requests for waivers of preemption for new motor vehicle or new motor vehicle engine standards under section 209(b).[15] These principles include, among other things, that EPA should limit its inquiry to the three specific authorization criteria identified in section 209(e)(2)(A),[16] and that EPA should give substantial deference to the policy judgments California has made in adopting its regulations. In previous waiver decisions, EPA has stated that Congress intended EPA's review of California's decision-making be narrow. EPA has rejected arguments that are not specified in the statute as grounds for denying a waiver:

> The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in California air quality not commensurate with its costs or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California.[17]

This principle of narrow EPA review has been upheld by the U.S. Court of Appeals for the District of Columbia Circuit.[18] Thus, EPA's consideration of all the evidence submitted concerning an authorization decision is circumscribed by its relevance to those questions that may be considered under section 209(e)(2)(A).

C. Within-the-Scope Determinations

If California amends regulations that were previously authorized by EPA, California may ask EPA to determine that the amendments are within the scope of the earlier authorization. A within-the-scope determination for such amendments is permissible without a full authorization review if three conditions are met. First, the amended regulations must not undermine California's previous determination that its standards, in the aggregate, are as protective of public health and welfare as applicable federal standards. Second, the amended regulations must not affect consistency with section 209 of the Act, following the same criteria discussed above in the context of full authorizations. Third, the amended regulations must not raise any ''new issues'' affecting EPA's prior waivers.[19]

D. Burden and Standard of Proof

As the U.S. Court of Appeals for the D.C. Circuit has made clear in *MEMA I,* opponents of a waiver request by California bear the burden of showing that the statutory criteria for a denial of the request have been met:

> [T]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[20]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [21] Therefore, the Administrator's burden is to act ''reasonably.'' [22]

With regard to the standard of proof, the court in *MEMA I* explained that the Administrator's role in a section 209 proceeding is to:

> [. . .]consider all evidence that passes the threshold test of materiality and * * * thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[23]

In that decision, the court considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure.'' Those findings involve: (1) Whether the enforcement procedures impact California's prior protectiveness determination for the associated standards, and (2) whether the procedures are consistent with section 202(a). The principles set forth by the court, however, are similarly applicable to an EPA review of a request for a waiver of preemption for a standard. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [24]

With regard to the protectiveness finding, the court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed enforcement procedures undermine the protectiveness of California's standards.[25] The court noted that this standard of proof also accords with the congressional intent to

[15] *See Engine Manufacturers Association* v. *EPA,* 88 F.3d 1075, 1087 (D.C. Cir. 1996): ''. . . EPA was within the bounds of permissible construction in analogizing § 209(e) on nonroad sources to § 209(a) on motor vehicles.''

[16] *See supra* note 12, at 36983.

[17] ''Waiver of Application of Clean Air Act to California State Standards,'' 36 FR 17458 (Aug. 31, 1971). Note that the more stringent standard expressed here, in 1971, was superseded by the 1977 amendments to section 209, which established that California must determine that its standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. In the 1990 amendments to section 209, Congress established section 209(e) and similar language in section 209(e)(1)(i) pertaining to California's nonroad emission standards which California must determine to be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.

[18] *See, e.g., Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (''*MEMA I*'').

[19] *See* ''California State Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waiver of Federal Preemption,'' 46 FR 36742 (July 15, 1981).

[20] *MEMA I, supra* note 19, at 1121.

[21] *Id.* at 1126.

[22] *Id.* at 1126.

[23] *Id.* at 1122.

[24] *Id.*

[25] *Id.*

provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[26]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' '' as compared to a waiver request for accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [27]

E. EPA's Administrative Process in Consideration of California's OHRV Amendment Requests for Authorization

On January 4, 2013, EPA published a **Federal Register** notice announcing its receipt of California's authorization request. In that notice, EPA invited public comment on each of the 2006 amendments, as well as on the prior authorization requests for amendments California adopted in 1999 and 2003.[28] The request for comments specifically referred, but was not limited, to the following issues.

First, EPA requested comment on the 1999 amendments, as follows: (1) Should California's 1999 OHRV amendments, specifically the provision for certification of OHRVs that do not meet the emissions criteria (the red tag amendment) and the removal of the competition exemption, be considered under the within-the-scope analysis, or should they be considered under the full authorization criteria? (2) If those amendments should be considered as a within-the-scope request, do they meet the criteria for EPA to grant a within-the-scope confirmation? (3) Alternatively, if the red tag amendment and removal of the competition exemption should not be considered under the within-the-scope analysis, or in the event that EPA determines they are not within the scope of the previous authorization, do they meet the criteria for making a full authorization determination? (4) Does the removal of the 600 lb weight limitation in the definition of ATV meet the criteria for making a full authorization determination?

Second, regarding the 2003 amendment, EPA requested comment on the following questions: (1) Whether the amendment limiting the red tag program to model years 2003 and later should be evaluated under the within-the-scope criteria, and if so, whether it meets the within-the-scope criteria for authorization? (2) To the extent that the 2003 amendment should be treated as a full authorization request, does the amendment meet the criteria for a full authorization?

Third, regarding the 2006 amendments, we requested comment on the following: (1) Does the amendment setting evaporative emissions standards for OHRVs meet the criteria for a full authorization? (2) Does the amendment reclassifying sand cars, off-road sport vehicles and off-road utility vehicles as OHRVs fall within the scope of the original (1996) authorization? (3) Does the amendment altering the list of riding areas and riding seasons require federal authorization review, or is it not federally preempted, pursuant to CAA section 209(d)? (4) If it is preempted and therefore requires federal authorization, does the amended list of riding areas and seasons fall within the scope of the original (1996) authorization?

In response to these requests for comment, EPA received an additional submission from CARB.[29] EPA received no written comments from parties other than CARB and received no requests for a public hearing. Consequently, EPA did not hold a public hearing.

CARB's July 23, 2013 submission provided additional and updated information in support of its protectiveness determination for the red tag program amendment, contained in the 1999 amendment package. CARB compared its exemption for red-tagged vehicles to an analogous feature in the federal regulations, which exempts competition model OHRVs from federal emissions standards. After a detailed analysis comparing the projected emissions effects of the federally exempted competition model vehicles to California's red tagged vehicles, CARB concluded that its OHRV program ''remains as protective in the aggregate as the federal program.'' [30]

II. Discussion

A. California's 1999 Amendments

The 1999 amendment package contains three amendments, each briefly described above: the removal of the competition exemption, the addition of the red tag program, and the addition of vehicles over 600 lb to the ATV vehicle category.

1. Removal of the Competition Exemption and Addition of the Red Tag Program

California's request for authorization of the amendments (1) removing the exemption from emission standard controls for competition models, and (2) introducing the red tag certification program and regional/seasonal restrictions for red-tagged vehicles are interrelated, and therefore will be treated together in this discussion. As explained by CARB in its 2000 authorization request, ''[s]ince all off-highway vehicles must now be certified as either emissions-compliant with no use restrictions, or non-emissions-compliant with use restrictions, the superfluous competition vehicle definition was deleted.'' [31] CARB asserted that the competition vehicle designation and associated restrictions on the use of such vehicles were made superfluous because such vehicles would be subsumed in the non-emissions-compliant red tagged category of vehicles, and their use would be limited to the newly designated riding areas and seasons.

a. Within-the-Scope Analysis

California requested that the amendments establishing the red tag program and removing the competition exemption both be treated as within the scope of the original EPA authorization of the OHRV program. California asserted that the amendments met all three within-the-scope criteria, i.e. that the amendments: (1) Do not undermine the original protectiveness determination underlying California's OHRV regulations, (2) do not affect the consistency of the OHRV regulations with section 202(a), and (3) do not raise any new issues affecting the prior authorization.[32]

[26] *Id.*

[27] *See, e.g.,* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption,'' 40 FR 23102 (May 28, 1975), at 23103.

[28] ''California State Nonroad Engine Pollution Control Standards; Off-Highway Recreational Vehicles and Engines; Request for Authorization; Opportunity for Public Hearing and Comment,'' 78 FR 724, (January 4, 2013).

[29] Comment submitted by Richard W. Corey (CARB), July 23, 2013, EPA–HQ–OAR–2012–0742–0029.

[30] *Id.* at 2.

[31] 2000 Request, *supra* note 2, at 4.

[32] *Id.* at 8–11.

Beginning with the third criterion, CARB asserted that ''[t]he regional/seasonal approach, while establishing a new regulatory section, does not force any change in technology to warrant revisiting conclusions reached in granting the existing authorization.'' [33] CARB further stated that it was not aware of any new issues presented by the red tag program or the removal of the competition exemption. EPA appreciates that the regional/seasonal approach does not change the numeric emissions standards or test procedures approved in the original authorization of California's OHRV regulations. However, the shift from exempting one class of vehicles (competition models) from those standards to certifying and allowing a potentially different class of vehicles (non-emissions-compliant vehicles) to operate regionally/seasonally is a major change in the application and meaning of those standards, the practical effects of which could have a significant impact on the aggregate emissions of OHRVs in California. Furthermore, while at the time of the request there were no comparable federal regulations for OHRVs against which to compare California's regulations, there are such federal regulations now.[34] The analogous federal program regulating OHRVs stands in stark contrast to California's program, insofar as the federal program exempts competition-only models from regulation (allowing their full and unrestricted use) and does not allow non-competition, red-tagged vehicles to be certified at all. Indeed, California's approach of certifying red-tagged vehicles to operate in limited areas and/or during limited seasons is without parallel in the field of federal mobile source emissions regulations across all classes of vehicles.

EPA finds that the regional/seasonal program and removal of the competition exemption fundamentally change California's previously authorized OHRV program. First, they present a shift in the application and potential practical effects of the previously authorized emission standards. They also represent a significant departure from the standard regulatory structure used in the parallel federal OHRV emissions regulations. EPA consequently views these changes, collectively, as a new issue that precludes a within-the-scope determination. Since the ''new issue'' prong of the within-the-scope criteria is not met, EPA must treat these amendments as full authorization requests, and will analyze them as such.[35]

b. Full Authorization Analysis

The first prong of the full authorization analysis is whether California's protectiveness determination (that the standards including the red tag program are, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards) is arbitrary or capricious. California's original protectiveness determination for these amendments was made at a time when no comparable federal standards existed; therefore CARB's determination that its standards were, in the aggregate, at least as protective as the (non-existent) federal standards was relatively straightforward. California's subsequent requests for authorization (2004 and 2010) generally referred back to the original analysis and did not substantively update the protectiveness determination. Regardless of whether CARB's original protectiveness determination was or was not arbitrary or capricious at the time it was made, EPA must now evaluate California's determination in light of the current federal standards, not those in place at the time California's regulations were promulgated.[36] For this reason, CARB submitted additional information in response to our request for public comments to update its protectiveness determination for the red tag program, considering current federal OHRV standards.[37]

In its comments dated July 23, 2013, CARB presented a detailed analysis and argument that the inclusion of the red tag program renders its standards, in the aggregate, at least as protective as the current federal standards. CARB's analysis was based on an ''apples-to-apples'' comparison of whether and how the federal and California regulations would allow the sale of OHRVs, by referencing the list of competition models exempted by federal standards to the list of red-tagged vehicle models authorized for restricted use in California. CARB concluded that ''the provisions for allowing noncompliant vehicle certifications and their accompanying usage restrictions provide a level of protection in California that remains, at the minimum, no worse than afforded under federal provisions as demonstrated by the established correlation between equally configured federally exempted vehicles and California noncompliant vehicles.'' [38]

We received no contrary evidence or arguments to refute California's original or supplemental protectiveness determinations. In light of CARB's detailed analysis and reasoned conclusions, and the lack of any evidence to the contrary, we cannot find that California's protectiveness determination regarding the red tag program is arbitrary or capricious.

Second, the Section 209(e)(2)(ii) inquiry into whether California needs such standards to meet compelling and extraordinary conditions in the state is restricted to a consideration of whether California needs its own emission standards program to meet compelling and extraordinary conditions, not whether any particular standards are necessary to meet such conditions.[39] In resolving to amend its OHRV regulations with the red tag program, California reaffirmed its longstanding determination that its emission standards program is necessary to meet the state's compelling and extraordinary conditions.[40] We received no contrary evidence or comments challenging California's determination that its emission standards program is necessary to meet these conditions. Therefore, there is no evidence that the state's emissions standards program is not still necessary to address the ''compelling and extraordinary conditions'' underlying the state's air pollution problems.

Third and finally, we evaluate the red tag program for consistency with section 209 of the Act, which, as discussed above, requires evaluation of consistency with sections 209(a),

[33] *Id.* at 10.

[34] *See* 40 CFR Part 1051, ''Control of Emissions From Recreational Engines and Vehicles''.

[35] EPA cannot find that these amendments are within the scope of the previous authorization because they failed to satisfy the ''new issue'' criterion. We must therefore proceed with a full authorization analysis; there is no need to analyze whether the other two prongs of the within-the-scope analysis are met.

[36] This does not mean that the original protectiveness determination is arbitrary or capricious. *See* ''California State Motor Vehicle Pollution Control Standards; Notice of Decision granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within-the-scope Confirmation for California's Zero Emission Vehicle Amendments for 2017 and Earlier Model Years,'' 78 FR 2112 (January 9, 2013), at 2124.

[37] *See supra* note 29.

[38] *Id.* at 4–5.

[39] *See* California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles,'' 74 FR 32744 (July 8, 2009), at 32761; *see also* ''California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption Notice of Decision,'' 49 FR 18887 (May 3, 1984), at 18889–188890.

[40] ''State of California Air Resources Board, Resolution 98–66,'' December 10, 1998, EPA–HQ–OAR–2012–0742–0007.

209(e)(1), and 209(b)(1)(C). First, to be consistent with section 209(a), the amendments must not apply to new motor vehicles or motor vehicle engines. The Act defines ''motor vehicle'' as ''any self-propelled vehicle designed for transporting persons or property on a street or highway.'' [41] As already determined in EPA's authorization of the original OHRV regulations, OHRVs and OHRV engines (as defined by California) are not motor vehicles or motor vehicle engines.[42] The definition of OHRV has not changed since that time. While OHRVs are not explicitly defined in California's regulations, the OHRV engines subject to California's OHRV regulations and the red tag amendments at issue here are defined as engines ''[. . .] designed for powering off-road recreational vehicles . . .'' [43] They are not designed for on-highway use and we received no evidence that any OHRVs or OHRV engines are designed as motor vehicles or motor vehicle engines. We therefore find that the vehicles and engines subject to the red tag program are not motor vehicles and that the regulations therefore are consistent with section 209(a) of the Act. Second, to be consistent with section 209(e)(1) of the Act, the regulations must not attempt to regulate those vehicles and engines explicitly preempted from state regulation by section 209(e)(1), including farm and construction equipment and engines, vehicles and engines below 175 horsepower, and new locomotives or locomotive engines. None of the vehicles or engines covered by California's OHRV regulations fall in these categories and we received no evidence to the contrary. We therefore find the red tag amendments are consistent with section 209(e)(1). Third and finally, to be consistent with section 209(b)(1)(c), there must be adequate lead time to permit technological development for compliance with the amendment, and the state test procedures must not be made inconsistent with federal test procedures. In this case, there is no evidence that the red tag program would require any technological development, or that it would affect the consistency of federal and state test procedures. We therefore find no evidence that the standards and accompanying enforcement procedures of the red tag program and the removal of the competition exemption are inconsistent with section 209 of the Act.

After a review of the information submitted by CARB, and the record for this authorization request, EPA finds that no basis exists to demonstrate that authorization for California's amendments establishing the red tag program and removing the competition exemption from its OHRV regulations should be denied based on any of the statutory criteria of section 209(e)(2)(A). For this reason, EPA finds that an authorization for such amendments should be granted.

2. Addition of ATVs Over 600 lbs

California requested a full authorization for the addition of vehicles over 600 lbs to the existing class of ATVs covered by the OHRV regulations. California asserted that while most ATVs fall under the 600 lb mark, a small number of vehicles used for work applications are greater than 600 lb and do not warrant separate treatment under an additional regulatory scheme.[44] CARB further clarified that ATVs used in farm or construction applications are not to be included in the definition, as they are permanently preempted by section 209(e)(1) of the CAA and its implementing regulations.

As noted above, when CARB requested authorization in 2000 for the 1999 amendment expanding the ATV category to include vehicles over 600 lb, no comparable federal standards existed against which to assess the protectiveness of the California regulations. However, California's request must be judged in light of the current comparable federal regulations. Emissions from ATVs are federally regulated in 40 CFR Part 1051 as part of the nonroad emission standards program.[45] There are no weight limits on the class of ATVs regulated under Part 1051. The federal standards in 40 CFR 1051.107 therefore apply to the expanded class of vehicles described in California's revised definition of ATVs and are the ''comparable standards'' against which California's request for authorization for its expanded class of vehicles should be judged.

First, regarding the protectiveness of California's regulation of ATVs greater than 600 lbs, when CARB submitted its petition for authorization of additional amendments in 2004, it re-evaluated its OHRV standards (including the standards applicable to vehicles greater than 600 lb) in light of the newly promulgated federal Part 1051 standards. Citing EPA's own analysis of the comparative emission standards for ATVs detailed in the preamble to the 2002 federal rulemaking, CARB found that the California and federal standards were roughly equivalent with the main difference being the federal inclusion of the competition exemption versus California's red tag program.[46] Taken as a whole, CARB concluded that California's program for ATVs, including those over 600 lb, remained at least as protective as the federal program. We received no comments or evidence contradicting this determination, and therefore we cannot find that California's protectiveness determination is arbitrary or capricious.

Second, and as noted above with regard to the red tag amendments that CARB adopted concurrently, California maintained that its mobile source pollution program is still necessary to meet compelling and extraordinary conditions in the state. We received no contrary evidence or comments challenging this assertion. We therefore find that there is no evidence that the state's emission standards program is not still necessary to address the ''compelling and extraordinary conditions'' underlying the state's air pollution problems.

Third and finally, the removal of the 600 lb weight limit must be found consistent with section 209 of the Act if it: (1) Does not regulate new motor vehicles or motor vehicle engines per section 209(a) or any of the vehicles or engines specified in section 209(e)(1), (2) is not technologically infeasible for manufacturers to meet the standards within the lead time provided, or (3) does not establish test procedures inconsistent with federal test procedures for the same vehicle class, per section 209(b)(1)(C). First, ATVs are defined as being designed for off-highway use,[47] so the regulation does not seek to regulate ''motor vehicles'' and is consistent with section 209(a). Second, ATVs are not among the classes of vehicles permanently preempted by federal regulations and so this amendment is consistent with section 209(e)(1). Third and finally, there is no evidence of inadequate lead time to permit technological development for compliance with the amendment, nor are the CARB test procedures regarding ATVs made inconsistent with federal test procedures by this amendment. We therefore find no evidence that the amendment is inconsistent with section 209 of the Act.

[41] CAA section 216(2), 42 U.S.C. § 7550(a).

[42] *See* Decision Document supporting 61 FR 69093, December 31, 1996, Docket A–95–17, at 30.

[43] 13 CA ADC § 2411(a)(13).

[44] 2000 Request, *supra* note 2, at 5.

[45] 40 CFR 1051.1(a)(3)

[46] 2004 Request, *supra* note 2, at 3.

[47] 13 CA ADC § 2411(a)(1).

Having met the three criteria for full authorization, the amendment to add vehicles over 600 lb gross weight to California's OHRV emission standards must be authorized.

B. California's 2003 Amendment

The sole 2003 amendment presented for authorization is a change in the effective date of the riding season use restrictions for red-tagged vehicles from 1999 (the date of the original amendments) to 2003. California requested that EPA evaluate this amendment as within the scope of the earlier authorization.

Following the passage of the 1999 amendments, California's Department of Motor Vehicles (DMV) and Department of Parks and Recreation (DPR) were unable to properly enforce the new regulations as written, due to a lack of institutional resources and problems with DMV's registration system. This resulted in inconsistencies in the labeling and certification of some OHRVs. For example, some non-emissions-compliant OHRVs, which should have been red-tagged, were registered with green tags, and some emissions-compliant OHRVs, which should have been green-tagged, were registered with red stickers.[48] As of 2003, however, the implementing agencies, DMV and DPR, committed to automate the OHRV registration system and enforce the riding season limitations. The amendment to change the riding season use restrictions to apply only to 2003 MY and later vehicles was intended to ''simply reflect the delay in riding season enforcement that occurred in the field by the land management agencies.'' [49]

California asserted that the amendment met all three within-the-scope criteria, i.e. that it: (1) Does not undermine the original protectiveness determination underlying California's OHRV regulations, (2) does not affect the consistency of the OHRV regulations with section 202(a), and (3) does not raise any new issues affecting the prior authorization.[50] We received no adverse comments or evidence suggesting a within-the-scope analysis is inappropriate, or that the 2003 amendment fails to meet any of the three criteria for within-the-scope confirmation.

First, California asserted that the amendment to the effective start date of the red tag program clearly did not undermine the original protectiveness determination underlying California's OHRV regulations because it does not change any of the substantive criteria or parameters of that program, but rather is an administrative date change. Furthermore, at the time the request was made (2004), the federal standards were not yet effective until MY 2006, so California's program remained without a federal parallel even during the period between the intended start date and the amended start date.[51] We therefore cannot find that the delay in the effective date of the red tag program undermines the protectiveness determination made with regard to the original red tag program.

Second, this amendment did not attempt to regulate new motor vehicles or motor vehicle engines and so is consistent with section 209(a). It likewise did not attempt to regulate any of the permanently preempted engines or vehicles, and so is consistent with section 209(e)(1). Finally, it did not cause any technological feasibility issues for manufacturers or cause inconsistency between state and federal test procedures, per section 209(b)(1)(C). The difficulties in implementing the red tag program as written in 1999 were not due to technological difficulties for manufacturers but rather to the state's administrative difficulties. There were therefore no lead-time or technological problems created by the delayed start date amendment. In fact, to the extent that there were problems at all relevant to the red tag program, these were administrative problems that were relieved by the delayed start date. The delayed start date had no bearing on the consistency between the California and federal certification requirements. We therefore find no evidence that the delayed start date amendment is inconsistent with section 209 of the Act.

Third, California stated that the delayed start date raised no new issues, and we have received no evidence to the contrary. The change in date was a purely ministerial change, especially considering that at the time the amendment was promulgated, the comparable federal standards had not yet come into effect. We therefore do not find any new issues raised by the delayed start date amendment.

Having received no contrary evidence or comments regarding this amendment, we find that California has met the three criteria for a within-the-scope authorization approval. Therefore, the amendment delaying the start date for California's red tag program must be confirmed as within the scope of the previous authorization of California's OHRV regulations.

C. California's 2006 Amendments

1. Evaporative Emission Standards

In 2006, California added evaporative emission standards for 2008 and later model year OHRVs to align with federal evaporative emission standards that also began with the 2008 model year, and in 2010 requested a full authorization for the inclusion of these standards. The California standards (1.5 g/m^2/day for fuel tank permeation and 15.0 g/m^2/day for fuel hose permeation) were exactly the same as the federal standards,[52] with identical test procedures. Both the California and federal standards remain the same as of this date. We received no evidence or comments contradicting or challenging authorization of this amendment.

First, CARB stated that these standards are at least as protective of public health and welfare, in the aggregate, as the federal standards, because they are identical with the federal standards.[53] Considering the equivalence of the federal and California evaporative emission standards and having received no evidence to the contrary, we cannot find that California's protectiveness determination regarding the OHRV evaporative emission standards is arbitrary or capricious.

Second, California reiterated its longstanding position that compelling and extraordinary conditions in the state still need to be addressed through separate California nonroad engine and vehicle regulations.[54] We find no evidence to contradict California's determination that the new evaporative standards are part of an overall approach to reducing the state's air pollution problems, and that the state still needs its own program to address the ''compelling and extraordinary conditions'' that continue to exist in California.

Third, California stated that the evaporative emission standards are consistent with CAA section 209 because they apply to classes of vehicles that EPA already evaluated and found to be consistent in previous authorizations.[55] In those decisions, EPA found that these vehicle categories are not ''new motor vehicles'' preempted under CAA section 209(a)

[48] ''State of California Air Resources Board, Initial Statement of Reasons,'' June 6, 2003, EPA–HQ–OAR–2012–0742–0010, at 4.

[49] *Id.*

[50] 2004 Request, *supra* note 2, at 2.

[51] *Id.*

[52] 40 CFR 1051.110.

[53] 2010 Request, *supra* note 2, at 7.

[54] *Id.* at 8.

[55] For references to EPA authorizations of these standards under Large Spark Ignition (LSI) and Small Off-Road Engines (SORE) regulations, *see* 2010 Request, *supra* note 2, at fn 9, fn 10.

nor are they engines specifically preempted by CAA section 209(e)(1). California stated that the amendment is consistent with section 209(b)(1)(C) because the evaporative standards are identical to the federal standards that EPA already found to provide adequate lead time for technological development, and because manufacturers could use the same test vehicle to demonstrate emissions compliance with both the federal and California standards. Having received no evidence to contradict these statements, we do not find that the evaporative emissions standards are inconsistent with section 209 of the Act.

Having found the request meets the three criteria for a full authorization, EPA must authorize the amendment of California's evaporative emissions standard.

2. Reclassification of Sand Cars, Off-Road Utility Vehicles and Off-Road Sport Vehicles as OHRVs

The 2006 amendments reclassified sand cars, off-road utility vehicles and off-road sport vehicles (also known as ''Class II and Class III'' ATV-like vehicles) as OHRVs. The reclassification aligned California's regulations with the federal classification of these vehicle categories.[56] Each of these vehicle categories had previously been regulated under other federally-authorized California regulations as small off-road or large off-road spark-ignition engines.[57] The amendments also harmonized the carbon monoxide (CO) emission standard with the federal CO ATV emission standard (400 g/kW-hr) and maintained the existing CO + nitrogen oxides (NO_X) emission standard (12 g/kW-hr), which is more strict than the parallel federal standard (13.4 g/kW).[58] California requested a within-the-scope determination for these amendments. EPA received no adverse comments or evidence contradicting California's request to consider these amendments as within the scope of the previous authorization.

First, California found that the reclassification amendment does not undermine the original protectiveness determination regarding its OHRV regulations because it further aligns them with the federal classification system for OHRVs. California asserted that the amended regulation therefore remains at least as protective as the federal standards.[59] Also, as noted above, the emission standards for ATVs in California are clearly at least as protective as the federal standards, mirroring the federal CO standard and exceeding the stringency of the federal CO + NO_X standard. Based on the record before us and in the absence of any evidence to the contrary, we cannot find that California's protectiveness determination regarding the reclassification of these vehicles as OHRVs is arbitrary or capricious.

Second, California found that the amendment does not affect consistency with section 209 of the Act. The vehicle categories to which this amendment applies have already been deemed consistent with sections 209(a) and 209(e)(1) by EPA when they were considered as part of the large spark ignition and small off-road engine regulation authorizations.[60] Further, California found that application of the OHRV standards to the new vehicle classes is consistent with section 209(b)(1)(C) because manufacturers had already been complying with the standards for more than two years at the time of California's request. The exhaust standards were phased in by model year 2007 and evaporative standards were phased in by model year 2008. Also, the test procedures authorized by California are identical to those adopted federally, so a single test vehicle could be used for both state and federal testing.[61] We conclude that the amendment has no bearing on the consistency between the California and federal certification requirements, and no evidence contradicting California's determination that the amendment is consistent with section 209(b)(1)(C). We therefore do not find the amendment is inconsistent with section 209 of the Act.

Third, California was unaware of any new issues that would arise from the inclusion of these three new classes of vehicles under their OHRV regulations and standards.[62] EPA similarly finds no new issues arising from the amendment.

Having received no evidence or comments to the contrary, we find that California's 2006 amendment to reclassify off-road sport vehicles, off-road utility vehicles, and sand cars as OHRVs meets the three criteria for a within-the-scope determination. We therefore find that this amendment is within the scope of the previous authorization of the OHRV program.

3. Amendment of Riding Seasons and Areas List

Third, the list of riding areas and riding seasons was amended. California asserted that this amendment does not require EPA authorization because it pertains to an operational control that cannot be federally preempted, pursuant to section 209(d) of the Act.[63] Under section 209(d), nothing in Subchapter II, Part A of the Act restricts states' ability to ''control, regulate, or restrict the use, operation or movement of registered or licensed motor vehicles.'' California therefore requested that EPA confirm that the riding season restriction amendment was and is enforceable without further action by the EPA Administrator. Amendments to the times and places where certain vehicles are allowed to operate is the very essence of an ''operational control.'' EPA received no comments challenging or denying California's proposed treatment. Therefore, EPA confirms that the amended list of riding seasons and areas does not require authorization by the Administrator because it is not federally preempted by the Act.

III. Decision

The Administrator has delegated the authority to grant California section 209(e) authorizations to the Assistant Administrator for Air and Radiation. After evaluating CARB's amendments to its OHRV regulations described above and CARB's submissions for EPA review, EPA is taking the following actions.

First, EPA is granting an authorization for both the red tag certification program and the removal of the exemption for competition models from California's OHRV regulations. Second, EPA is granting an authorization for the removal of the 600 lb weight limit from the definition of ATV in California's OHRV regulations. Third, EPA confirms that California's 2003 amendment to delay the start date of the red tag program is within the scope of the previous authorization. Fourth, EPA is granting an authorization for the addition of evaporative emission standards to California's OHRV regulations, starting with the 2008 model year. Fifth, EPA confirms that California's 2006 amendment to reclassify sand cars, off-road utility vehicles, and off-road sports vehicles as OHRVs is within the scope of the previous authorization. Finally, EPA confirms that amendments to the list of riding areas and seasons for California's red-tagged OHRVs are not preempted by the Act and do not require EPA authorization.

[56] *See* 40 CFR 1051.1(a)(4).

[57] *See supra* note 55.

[58] *See* 40 CFR 1051.107(a)(1).

[59] 2010 Request, *supra* note 2, at 8.

[60] *See supra* note 55.

[61] 2010 Request, *supra* note 2, at 9.

[62] *Id.*

[63] *See Id.* California also requested that in the alternative, the riding areas/seasons amendment be considered within the scope of the 1996 authorization.

My decision will affect not only persons in California, but also manufacturers outside the state who must comply with California's requirements in order to produce vehicles for sale in California. For this reason, I determine and find that this is a final action of national applicability, and also a final action of nationwide scope and effect, for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 7, 2014. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: January 27, 2014.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2014–02297 Filed 2–3–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–NN06–15–OAR]

Notification of a Public Webinar for the Clean Air Act Advisory Committee (CAAAC)

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) announces a public webinar for the Clean Air Act Advisory Committee (CAAAC) on EPA's greenhouse gas standards (i.e., the Clean Air Act 111(d) standards). The EPA established the CAAAC on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific and enforcement policy issues.

DATES & ADDRESSES: Pursuant to 5 U.S.C. App. 2 Section 10(a) (2), notice is hereby given that the CAAAC will hold a webinar on EPA's greenhouse gas standards (i.e., the Clean Air Act 111(d) standards) on February 20, 2014, from 2:00 p.m. to 4:00 p.m. (Eastern Time).

Inspection of Committee Documents: Documents prepared for the meeting will be publicly available on the CAAAC Web site at *http://www.epa.gov/oar/caaac/* prior to the meeting. Thereafter, these documents will be available by contacting the Office of Air and Radiation Docket and requesting information under docket EPA–HQ–OAR–2004–0075. The Docket office can be reached by email at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the CAAAC's public webinar may contact Jeneva Craig, Designated Federal Officer (DFO), Office of Air and Radiation, U.S. EPA by telephone at (202) 564–1674 or by email at *craig.jeneva@epa.gov*. Additional information on these meetings can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/*.

For information on access or services for individuals with disabilities, please contact Ms. Jeneva Craig at (202) 564–1674 or *craig.jeneva@epa.gov*, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: January 28, 2014.

Jeneva Craig,

Designated Federal Officer, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. 2014–02301 Filed 2–3–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Division of Consumer and Business Education, Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to renew its PRA clearance to participate in the OMB program ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' This program was created to facilitate federal agencies' efforts to streamline the process to seek public feedback on service delivery. Current FTC clearance under this program expires May 31, 2014.

DATES: Comments must be submitted by April 7, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''FTC Generic Clearance ICR, Project No. P035201'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/genericclearance* 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: To request additional information, please contact Nicole Vincent Fleming at 202–326–2372.

SUPPLEMENTARY INFORMATION: Executive Order 12862 (1993) (''Setting Customer Service Standards'') directs all Federal executive departments and agencies and requests independent Federal agencies' to provide service to ''customers'' that matches or exceeds the best service available in the private sector. *See* also Executive Order 13571 (2011) (''Streamlining Service Delivery and Improving Customer Service''). For purposes of these orders, ''customer'' means an individual who or entity that is directly served by a department or agency.

To the above ends, and to work continuously to ensure that the FTC's programs are effective and meet our customers' needs, we seek renewed OMB approval of a generic clearance to collect qualitative feedback on our service delivery (i.e., the products and services that the FTC creates to help consumers and businesses understand their rights and responsibilities, including Web sites, blogs, videos, print publications, and other content).

''Qualitative feedback'' denotes information that provides useful insights on public perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The solicitation of feedback on service delivery will target areas such as timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery.

The FTC will collect, analyze, and interpret information it gathers through this generic clearance program to identify strengths and weaknesses of current services and make improvements in service delivery based on feedback.

The types of collections that the proposed generic clearance covers include, but are not limited to:

- Customer comment cards/complaint forms
- Small discussion groups
- Focus Groups of customers, potential customers, delivery partners, or other stakeholders
- Cognitive laboratory studies, such as those used to refine questions or assess usability of a Web site
- Qualitative customer satisfaction surveys (e.g., post-transaction surveys; opt-out web surveys)
- In-person observation testing (e.g., Web site or software usability tests).

The FTC's use of this program contemplates a range of information collections that focus on the awareness, understanding, attitudes, preferences, or experiences of customers or other stakeholders (e.g., visitors to FTC Web sites) relating to existing or future agency services or communication materials. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with agency service, or focus attention on areas where communication, training or changes in operations might improve delivery of services or communication materials. These collections will allow for ongoing, collaborative and actionable communications between the FTC and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Through these various types of information collections, the FTC's Division of Consumer and Business Education (''DCBE'') has, for example, created and tested *www.consumer.gov*, an easy-to-use Web site to better reach underserved populations with simple and direct consumer information, written for people who have trouble reading. ''Stakeholders'' or ''customers'' included legal services attorneys, English for Speakers of Other Languages teachers, and community leaders. In another instance, DCBE conducted usability tests of *www.ftc.gov* to assess the organization of that site's content by asking respondents to complete an online card sort. Respondents included, among others, a mix of professions and professional interests, such as economists, attorneys, and consumer advocates. Other past examples include requesting feedback on the design of the FTC's Bulk Order Web site (*www.bulkorder.ftc.gov*), the FTC's Business Center Web site (*www.business.ftc.gov*), and OnGuardOnline.gov (*www.onguardonline.gov*), the federal government's Web site to help people be safe, secure, and responsible online. The DCBE has also conducted in-depth interviews of respondents (e.g., active institutional decision-makers in assisted living facilities, senior residence communities, local community centers, public libraries, among others) to inform the design of a consumer education program to reach older consumers with messages about fraud.

Consistent with OMB requirements, the FTC will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary [1] and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency.[2]
- Information gathered will not be used for the purpose of substantially informing influential policy decisions [3]; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Under this generic clearance program, agency submissions of information collection requests to OMB obtain automatic approval, unless OMB identifies issues within 5 business days of receipt.

Generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study.

Below is a description of the affected public and the FTC's projected average annual estimates for the next three years:

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 3.

Respondents: 1,680.[4]

[1] For example, collections that collect PII in order to provide renumeration for participants of focus groups and cognitive laboratory studies will be submitted under this request. All privacy act requirements will be met.

[2] Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. Findings will be used for general service improvement, but are not for publication or other public release. Although the FTC does not intend to publish its findings, it may receive requests to release the information (e.g., congressional inquiry, Freedom of Information Act requests). The FTC will disseminate the findings when appropriate, strictly following the agency's ''Guidelines for Ensuring the Quality of Information Disseminated to the Public,''and will include specific discussion of the limitation of the qualitative results discussed above.

[3] As defined in OMB and FTC Information Quality Guidelines, ''influential'' means that ''an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

[4] Projected activities: (1) Three customer satisfaction surveys per year, 500 respondents each (surveys to get feedback about major campaigns, publications, Web sites, branding and other consumer and business education products to test their appeal and effectiveness), 25 hours per

Continued

Frequency of Response: Once per request.

Annual Responses: 1,680.

Average Minutes Per Response: 22 (rounded to nearest whole minute).

Burden Hours: 615.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number assigned to the FTC to conduct past activities under this program is 3084–0159.

Request for Comment: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the proposed information collection is necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before April 7, 2014.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before April 7, 2014. Write ''FTC Generic Clearance ICR, Project No. P035201'' 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). 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).[5] 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, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/genericclearance* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write ''FTC Generic Clearance ICR, Project No. P035201'' 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 April 7, 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.*

David C. Shonka,

Principal Deputy General Counsel.

[FR Doc. 2014–02216 Filed 2–3–14; 8:45 am]

BILLING CODE 6750–01–P

response; (2) Six focus groups per year, 10 respondents each (to test education products and Web sites), 2 hours per response; and (3) Ten usability sessions per year, 12 respondents per Web site (to test the usability of FTC Web sites by inviting people to complete common tasks on those sites), 1 hour per response.

[5] 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).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5511–N]

Medicare and Medicaid Programs; Solicitation for Proposals for the Frontier Community Health Integration Project Demonstration

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice provides eligible entities with the information necessary to apply for participation in the Frontier Community Health Integration Project (FCHIP) demonstration. The demonstration is designed to better integrate the delivery of acute care, extended care and other health care services, and improve access to care for Medicare and Medicaid beneficiaries residing in very sparsely populated areas. A competitive application process will be used to select eligible entities for participation in this demonstration. The demonstration is planned for up to 3 years.

DATES: Applications will be considered timely if we receive them on or before 5 p.m., eastern standard time (E.S.T.) on May 5, 2014.

ADDRESSES: Mail one unbound original and two copies to: Centers for Medicare & Medicaid Services, Attention: Steven Johnson, 7500 Security Boulevard, Mail Stop: WB–06–05, Baltimore, Maryland 21244–1850.

In addition, an email copy in MS Word or PDF must be sent to: *FCHIP@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Johnson, (410) 786–3332 or *FCHIP@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Please refer to file code CMS–5511–N on the application. Applicants are required to submit one unbound original and two copies to the address listed in the **ADDRESSES** section of this notice. In addition, an email copy in MS Word or PDF must be sent to: *FCHIP@cms.hhs.gov.* Because of staffing and resource limitations, we cannot accept applications by facsimile (FAX) transmission. Applications postmarked after the closing date, or postmarked on or before the closing date but not received in time, will be considered late.

I. Background

A. Legislative Authority

Section 123 of the Medicare Improvements for Patients and Providers Act of 2008, (MIPPA) (Pub. L. 110–275) as amended by section 3126 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), authorizes a demonstration project on community health integration models in certain rural counties to develop and test new models for the delivery of health care services to better integrate the delivery of acute care, extended care and other health care services, and improve access to care for Medicare and Medicaid beneficiaries residing in very sparsely populated areas.

The authorizing legislation defines distinct roles for this demonstration for the Centers for Medicare & Medicaid Services (CMS) and the Health Resources and Services Administration (HRSA) in developing and implementing this project. HRSA was charged with awarding grants to eligible entities for the purpose of technical assistance and informing the Secretary of the Department of Health and Human Services (Secretary) on the specific needs of frontier communities, while CMS is to conduct a demonstration testing alternative reimbursement and administrative strategies.

This demonstration is commonly known as the Frontier Community Health Integration Project (FCHIP). CMS is hereby requesting applications for participation in this demonstration from eligible entities as defined in Section 123(d)(1)(B) of MIPPA. CMS interprets the eligible entity definition as meaning critical access hospitals (CAHs) that receive funding through the Rural Hospital Flexibility Program. The statute limits the Demonstration to no more than 4 States; it also restricts eligibility to CAHs within States with at least 65 percent of counties with 6 or less persons per square mile. With respect to these requirements, CMS is limiting applications to CAHs in Alaska, Montana, Nevada, North Dakota, and Wyoming.

The authorizing legislation mandates that the project last for 3 years. The law authorizes waiver of such provisions of the Medicare and Medicaid programs as are necessary to conduct the demonstration project. The authorizing legislation also requires the demonstration to be budget neutral, that is, to be structured such that Medicare expenditures under the demonstration do not to exceed the amount which the Secretary estimates would have been paid if the demonstration project were not implemented. This notice references CMS's request for proposals for the FCHIP demonstration, which sets forth project guidelines, conditions of participation, payment methodology, and application instructions.

The FCHIP demonstration is designed to improve access to certain services, the delivery of which is often not feasible at low volumes under current Medicare reimbursement but if integrated into the local delivery system, would lead to improved outcomes and greater efficiency in health care service delivery. Integration of services is intended as an intervention that is directed by the various providers serving the community so that the specific health care needs of residents are addressed in appropriate settings—either inpatient, outpatient, or at home. The desired outcome is to increase access to health care services, with the objective of supporting certain services so as to allow them to be financially feasible given the low patient volumes of a remote and sparsely populated area. Another objective is to decrease the number of avoidable hospital admissions, readmissions, and avoidable transfers to tertiary facilities, such that there is no net increase in Medicare spending for the affected population. To address the goal of increasing access with no net cost increase, we have identified four types of services for which this demonstration will provide financial support, and promote community health integration—these are: Nursing facility care within the CAH, telemedicine, ambulance, and home health. We have selected these services on the basis of research and literature review. Applicants should identify additional services of one or more of these types, beyond what is currently available. Applicants must address the need for these services, including how they enhance patient care options and the ability of beneficiaries to remain in their communities; and how quality of these services will be maintained, to assure care can safely be provided locally. We will also work in the development process of this project with State Medicaid agencies on their proposals for Medicaid-specific reimbursement mechanisms to support access to community-based health care services.

B. FCHIP Applications

In keeping with the authorizing legislation in section 123 of MIPPA, entities that meet the eligibility requirements will be able to apply for the demonstration. Specifically, an eligible entity must be located in either Alaska, Montana, Nevada, North Dakota, or Wyoming although CMS will select no more than 4 States to participate in the demonstration. Each entity in its application will be required to describe a proposal to enhance health-related services so as to complement those currently provided within the community and reimbursed by Medicare, Medicaid, or other third-party payers. The applicant must describe an integrated system of services and explain how these will better serve the community's health-related needs.

An entity applying for the demonstration will be required to demonstrate linkages (either ownership or contractual) with the providers of the identified additional services, such as nursing home, telemedicine, home health agency, or ambulance service. Specifically, to be approved for payment of telemedicine services under the demonstration's payment methodology, the applicant must demonstrate effective arrangements with distant site specialists who will participate in telemedicine linkages with providers within the communities. In addition, to be approved for ambulance services, the applicants must show transfer arrangements with essential providers.

Each applicant will be asked to submit an analysis of how its proposed project will be budget neutral and/or achieve cost savings. This will include projections of the number of patients that will gain access to services within the community that are supported by the demonstration, the cost of these services, and the resulting cost savings from averting transfers to out-of-area hospitals and/or avoidable hospitalizations. The applicant will be evaluated on the plausibility of this analysis, the ability to support projections with clinical evidence and the sensitivity of cost outcomes to the stated assumptions of change in services and patient behavior.

Interested and eligible parties can obtain complete solicitation and supporting information on the CMS

Web site at: *http://innovation.cms.gov/initiatives/index.html.* Paper copies can be obtained by writing to Steven Johnson at the address listed in the **ADDRESSES** section of this notice.

II. Collection of Information Requirements

The information collection requirements associated with this notice are subject to the Paperwork Reduction Act of 1995; however, the information collection requirements are currently approved under the information collection request associated with OMB control number 0938–0880 entitled ''Medicare Waiver Demonstration Applicant.'' Applicants must submit the Medicare Waiver Demonstration Application to be considered for this program.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 20, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–02062 Filed 1–31–14; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0053]

Designation of High-Risk Foods for Tracing; Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (''FDA'' or ''we'') is announcing the opening of a docket to obtain comments and scientific data and information that will help us to implement the section of the FDA Food Safety Modernization Act (FSMA) that requires FDA to designate high-risk foods. We are providing an opportunity for interested parties to submit comments and scientific data and information that will help us develop our process for implementing this provision.

DATES: Submit electronic or written comments and scientific data and information by April 7, 2014.

ADDRESSES: You may submit comments and scientific data and information, identified by Docket No. FDA–2014–N–0053, by any of the following methods:

Electronic Submissions

Submit electronic comments and scientific data and information in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments and scientific data and information.

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2014–N–0053 for this notice. All comments and scientific data and information received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments and scientific data and information, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments and scientific data and information received, go to *http://www.regulations.gov* and insert the docket number found in brackets in the heading of this document into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sherri Dennis, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1914.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA Food Safety Modernization Act Provision Requiring Designation of High-Risk Foods

On January 4, 2011, the President signed the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) into law. Section 204 of FSMA requires, among other things, the designation of high-risk foods. Specifically, section 204(d)(2)(A) of FSMA requires FDA to designate high-risk foods for which additional recordkeeping requirements are appropriate and necessary to protect the public health, and to do so not later than 1 year after the date of enactment of FSMA (and thereafter, if necessary). Section 204(d)(2)(B) requires FDA to publish the list of high-risk foods on the Internet Web site of FDA at the time when FDA issues final rules to establish the additional recordkeeping requirements for high-risk foods.

Section 204(d)(2)(A) of FSMA specifically states that the designation of high-risk foods must be based on the: (1) Known safety risks of a particular food, including the history and severity of foodborne illness outbreaks attributed to such food, taking into consideration foodborne illness data collected by the Centers for Disease Control and Prevention; (2) likelihood that a particular food has a high potential risk for microbiological or chemical contamination or would support the growth of pathogenic microorganisms due to the nature of the food or the processes used to produce such food; (3) point in the manufacturing process of the food where contamination is most likely to occur; (4) likelihood of contamination and steps taken during the manufacturing process to reduce the possibility of contamination; (5) likelihood that consuming a particular food will result in a foodborne illness due to contamination of the food; and (6) likely or known severity, including health and economic impacts, of a foodborne illness attributed to a particular food.

Through this notice, we are establishing a docket to provide an opportunity for interested parties to provide comments and scientific data and information that will help us refine our draft approach to identifying high-risk foods, as required by section 204(d)(2) of FSMA. Section I.B summarizes our tentative draft approach for the review and evaluation of data to designate high-risk foods. Attached as a reference to this notice is a draft approach document in which we describe the process and methodology we are considering using for designating high-risk foods. After reviewing comments received in response to this notice on the draft approach described here, we plan to further revise the approach as necessary. We also anticipate that the approach will be reviewed by scientific experts (''peer reviewed'').

While section 204(d)(2)(A) of FSMA includes a statutory deadline within 1 year of the enactment of FSMA, FDA is issuing this notice to solicit comments and scientific data and information that will help us refine our draft approach to identifying high-risk foods. In section II.B, there are a number of specific

topics on which we think various stakeholders and the public at large could provide valuable comments and scientific data and information to assist us in implementing section 204 of FSMA. We anticipate that this input will be critical to our effective implementation of section 204 of FSMA.

B. Draft Approach To Implement Section 204(d)(2) of FSMA—Designation of High-Risk Foods

Data and information developed to identify the most significant foodborne contaminants, including data and information regarding the number, severity, and related costs of illnesses, may be used as data inputs for the high-risk foods approach, where applicable and appropriate.

The draft approach would use a multicriteria decision analysis approach, similar to that of Anderson et al., 2011 (Ref. 1), to identify those foods which should be designated as high-risk. This approach would use the specific criteria identified in section 204(d)(2)(A) of FSMA and would implement those criteria within a risk model. For each of the food and hazard pairs identified, we would determine a total risk score by the weighted sum of the score for each of the defined criteria. For foods that have multiple risk scores because they appear in the list associated with more than one hazard, we would determine the total score for that food using each of the individual food-hazard pair total risk scores. Inclusion on the high-risk food list would be based on the total risk score for foods or food categories. We describe our draft approach, criteria, and scoring system, and provide examples, in the document entitled ''FDA's Draft Approach for Designating High-Risk Foods as Required by Section 204 of FSMA'' (Ref. 2). Although the analysis would encompass food-hazard pairs, we do not anticipate this to be a food-hazard list but rather a food list. This draft approach may be further refined pending stakeholder input in response to this notice.

II. Request for Comments and Scientific Data and Information

We invite comments on the draft approach outlined in section I.B and the submission of scientific data and information relevant to high-risk food designation. We anticipate that this general input, along with the more specific input we solicit below, will significantly assist the Agency in fulfilling the requirements of section 204 of FSMA. In particular, we invite comment, scientific data, and information on the following topics:

- Considering available data, uncertainty with the data, and the intended methods, what alternative approaches should we consider to identify high-risk foods?
- What additional criteria should we consider, within the bounds of the factors Congress mandated in section 204(d)(2)(A) of FSMA, to develop the list of high-risk foods? For example, in addition to the public health related economic impact of foodborne illnesses, which the draft approach takes into account, should the approach include nonpublic health economic impact factors, such as costs related to disruption in the food supply following a foodborne illness outbreak? If so, how should we determine these costs given the variety of foods and different market values for various foods?
- What changes should we consider making to the scoring system to ensure the range of possibilities for the foods and hazards is comprehensive and to enhance the scoring?
- What changes should we consider making to the approach to better evaluate risk associated with animal food?
- The draft approach would equally weight the criteria. Should individual weights be assigned to each criterion? If so, which criteria should receive more weight and how should those weights be assigned?
- The draft approach would utilize the food categorization scheme used for the Reportable Food Registry (Ref. 3). What other practical alternatives to this food categorization scheme should we consider in light of the practical constraints of evaluating individual commodities?
- Adverse reactions may occur when allergic consumers are exposed to foods that contain undeclared allergens. Undeclared allergens may be present in a food through either mislabeling or cross-contact during processing and handling. Both situations present a risk to allergic consumers because they lead to incomplete or inaccurate product labels. How should food allergens, including the major food allergens defined in the Food Allergen Labeling and Consumer Protection Act of 2004 (Pub. L. 108–282, Title II) (milk, eggs, fish, Crustacean shellfish, tree nuts, peanuts, wheat, and soybeans), be considered in the development of the high-risk food list?

C. Additional Information and Data Requested

We also are interested in the following types of information and data:

- Scientific data and methods that can be used to assess the public health impact of acute or chronic exposures to pathogens and chemical contaminants in human food or animal food. In particular, scientific data and methods related to chronic exposures to chemical contaminants in food.
- For representative foods in each food category or commodity group to be evaluated:
  - A list of the pathogens and chemical contaminants likely to be found in the food;
  - The percentage prevalence of contaminants in the food;
  - The levels of contaminants in the food;
  - The point in the manufacturing process where the contaminants are likely to be introduced in the food; and
  - The typical steps and control measures taken in the manufacturing process to reduce the possibility of contamination of the food with the pathogen or chemical contaminant.

III. Comments

Interested persons may submit either electronic comments and scientific data and information 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 and scientific data and information. Identify comments and scientific data and information with the docket number found in brackets in the heading of this document. Received comments and scientific data and information 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.*

IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**).

1. Anderson, M., Jaykus, L.-A., Beaulieu, S. et al. ''Pathogen-produce pair attribution risk ranking tool to prioritize fresh produce commodity and pathogen combinations for further evaluation (P^3ARRT).'' *Food Control* 22, (2011): 1865–1872. 10.1016/j.foodcont.2011.04.028.

2. Food and Drug Administration. ''FDA's Draft Approach for Designating High-Risk Foods as Required by Section 204 of FSMA.'' 2013. Available at *http://www.fda.gov/*

downloads/Food/GuidanceRegulation/FSMA/UCM380212.pdf.

3. Food and Drug Administration. ''U.S. Food and Drug Administration, Reportable Food Summary Report, Definitions.'' Available at *http://www.fda.gov/downloads/Food/FoodSafety/FoodSafetyPrograms/RFR/UCM211534.pdf.* Last Modified April 2012.

Dated: January 29, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–02255 Filed 2–3–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Nucleic Acid-based Compositions and Methods for the Species-Specific Detection of Pathogenic Candida Fungi

Description of Technology: This invention pertains to the development of oligonucleotides for the rapid nucleic acid-based identification of the Candida fungi species *C. haemulonii, C. kefyr, C. lambica, C. lusitaniae, C. norvegensis, C. norvegica, C. rugosa, C. utilis, C. viswanathii, C. zeylanoides, C. dubliniensis,* and *C. pelliculosa* within biological samples. This identification is accomplished by targeting the internally transcribed spacer-2 (ITS2) region that is specific for each species. The assay is sensitive, specific and rapid. Implementation of the technology will facilitate earlier specific diagnoses, and lead to better antifungal therapy implementation for infected patients.

Potential Commercial Applications:

- Directing antifungal drug therapy for improved patient outcomes
- Detection, discrimination of Candida species from biological samples
- Addressing secondary infections of immunosuppressed individuals

Competitive Advantages:

- Easily adapted for use in kits
- High-throughput capable
- Rapid and cost-effective

Development Stage: In vitro data available

Inventors: Christine J. Morrison, Errol Reiss, Cheryl M. Elie, Timothy J. Lott (all of CDC)

Publication: Shin JH, et al. Rapid identification of up to three Candida species in a single reaction tube by a 5' exonuclease assay using fluorescent DNA probes. J Clin Microbiol. 1999 Jan;37(1):165–70. [PMID 9854084]

Intellectual Property: HHS Reference No. E–340–2013/0—

- PCT Application No. PCT/US1998/015840 filed 30 Jul 1998, which published as WO 1999/006596 on 11 Feb 1999
- US Patent No. 6,242,178 issued 05 Jun 2001
- Various international issued patents

Related Technologies:

- HHS Reference No. E–293–2013/0
- HHS Reference No. E–332–2013/0
- HHS Reference No. E–232–2013/0
- HHS Reference No. E–335–2013/0
- HHS Reference No. E–339–2013/0

Licensing Contact: Whitney Blair, J.D. M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Nucleic Acid-based Compositions and Methods for the Detection of Pathogenic Candida or Aspergillus Fungi Species

Description of Technology: This invention pertains to the development of oligonucleotides for the rapid nucleic acid-based identification of Candida or Aspergillus fungi species in biological samples. This identification is accomplished by the targeting the internally transcribed spacer-2 (ITS2) region that are unique to various Candida species. The assay is sensitive, specific and rapid. Implementation of the technology will facilitate earlier specific diagnoses, and lead to better antifungal therapy implementation for infected patients.

Potential Commercial Applications:

- Directing antifungal drug therapy for improved patient outcomes
- Detection, discrimination of Candida and Aspergillus species from biological samples
- Addressing secondary infections of immunosuppressed individuals

Competitive Advantages:

- Easily adapted for use in kits
- High-throughput capable
- Rapid and cost-effective

Development Stage: In vitro data available

Inventors: Christine J. Morrison, Errol Reiss, Brian Holloway, Jong Hee Shin (all of CDC)

Publication: Shin JH, et al. Rapid identification of up to three Candida species in a single reaction tube by a 5' exonuclease assay using fluorescent DNA probes. J Clin Microbiol. 1999 Jan;37(1):165–70. [PMID 9854084]

Intellectual Property: HHS Reference No. E–339–2013/0—

- PCT Application No. PCT/US1997/016423 filed 15 Sep 1997, which published as WO 1998/011257 on 19 Mar 1998
- US Patent No. 6,235,890 issued 22 May 2001
- Various international issued patents

Related Technologies:

- HHS Reference No. E–293–2013/0
- HHS Reference No. E–332–2013/0
- HHS Reference No. E–232–2013/0
- HHS Reference No. E–335–2013/0

Licensing Contact: Whitney Blair, J.D. M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Nucleic Acid Assays for the Detection and Discrimination of Aspergillus Fungi Species within Biological Samples

Description of Technology: This invention relates to assays for the detection and species-specific identification of Aspergillus fungi. Accurate clinical diagnosis of Aspergillus species has become increasingly important as certain species, such as *A. terreus* and *A. fumigatus,* are resistant to specific commonly employed antifungal compounds. Most contemporary fungal diagnostic methods are time-consuming and inaccurate. This invention directly addresses those inadequacies by providing a method to rapidly and accurately differentiate all medically important species of Aspergillus based on differences in the DNA sequences of the internal transcribed spacer 1 region of ribosomal DNA.

Potential Commercial Applications:

- Directing antifungal drug therapy for improved patient outcomes
- Detection, discrimination of Aspergillus species from biological samples
- Addressing secondary infections of immunosuppressed individuals or asthmatics

Competitive Advantages:

• Easily adapted for use in kits
• Assay may be used in real-time PCR, in enzyme immunoassays and/or in microarrays
• High-throughput capable

Development Stage: In vitro data available

Inventors: Christine J. Morrison and Hans Peter Hinrikson (CDC)

Publications:

1. Hinrikson HP, et al. Assessment of ribosomal large-subunit D1–D2, internal transcribed spacer 1, and internal transcribed spacer 2 regions as targets for molecular identification of medically important Aspergillus species. J Clin Microbiol. 2005 May;43(5):2092–103. [PMID 15872227]
2. CDC Fact Sheet: Aspergillosis [*http://www.cdc.gov/fungal/aspergillosis/*]

Intellectual Property: HHS Reference No. E–335–2013/0—
• PCT Application No. PCT/US2003/016076 filed 16 May 2003, which published as WO 2003/097815 on 27 Nov 2003
• US Patent No. 7,384,741 issued 10 Jun 2008
• US Patent No. 7,871,779 issued 18 Jan 2011
• Various international patents issued or pending

Related Technologies:
• HHS Reference No. E–293–2013/0
• HHS Reference No. E–332–2013/0
• HHS Reference No. E–232–2013/0

Licensing Contact: Whitney Blair, J.D. M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Nucleic Acid-based Differentiation and Identification of Medically Important Fungi

Description of Technology: This invention entails nucleic acid-based assays for detecting the presence of pathogenic fungi such as *Histoplasma capsulatum, Blastomyces dermatitidis, Coccidioides immitis, Pneumocystis brasiliensis,* and/or *Penicillium marneffei* within a sample. Within a healthcare setting, this particular approach can greatly reduce pathogen identification time, better direct treatments and ultimately improve patient outcomes. Further, this technology provides improved diagnostic specificity compared to serologic tests for circulating antibodies using patient serum samples- an approach that may give particularly aberrant results for immunosuppressed individuals, and who are frequently afflicted with opportunistic fungi. This technology is readily adaptable as kits used for species-specific identification of fungal pathogen infections and environmental contamination.

Potential Commercial Applications:
• Directing antifungal drug therapy for improved patient outcomes
• Detection, discrimination of fungal pathogens
• Addressing secondary infections of immunosuppressed individuals or asthmatics

Competitive Advantages:
• Rapid, sensitive, simple and specific
• Potential for automation and high-throughput screening
• Easily adaptable to kit form

Development Stage: In vitro data available

Inventors: Mark D. Lindsley, Zhenyu Qin, Christine J. Morrison, Jong S. Choi (all of CDC)

Publication: Lindsley MD, et al. Rapid identification of dimorphic and yeast-like fungal pathogens using specific DNA probes. J Clin Microbiol. 2001 Oct;39(10):3505–11. [PMID 11574564]

Intellectual Property: HHS Reference No. E–332–2013/0—
• PCT Application No. PCT/US2002/030605 filed 25 Sep 2002, which published as WO 2003/027329 on 03 Apr 2003
• US Patent No. 7,427,472 issued 23 Sep 2008
• Various international patents issued or pending

Related Technologies:
• HHS Reference No. E–293–2013/0
• HHS Reference No. E–232–2013/0
• HHS Reference No. E–335–2013/0

Licensing Contact: Whitney Blair, J.D. M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Nucleic Acid Detection of the Fungal Pathogen Histoplasma capsulatum from Clinical and Environmental Samples

Description of Technology: This invention relates to detecting *Histoplasma capsulatum* by PCR using oligonucleotide probes specific for the fungus. Histoplasmosis is a mycotic infection of varying severity, usually localized in the lungs. Caused by *H. capsulatum,* infections are usually symptomatic but can develop into chronic disease, especially in immunocompromised individuals.

Test samples may originate from the environment (soil, for example), where *H. capsulatum* spores are found or from clinical samples obtained from patients. Furthermore, the invention also provides for methods that detect the presence of *H. capsulatum* in a sample using a nested, or two-stage, PCR assay.

Potential Commercial Applications:
• Directing antifungal drug therapy for improved patient outcomes
• Occupational health and safety screening for workers who may encounter bird or bat waste
• Screening biological or soil samples for the presence of fungal pathogens
• Environment testing for immunocompromised patients

Competitive Advantages:
• Rapid and precise
• Cost-effective
• Easily adapted for *H. capsulatum* detection kits
• Can positively identify small sample sizes of as few as 10 spores
• High-throughput capable

Development Stage: In vitro data available

Inventors: Millie Schafer and Thomas Reid (CDC)

Publications:

1. Reid TM, Schafer MP. Direct detection of Histoplasma capsulatum in soil suspensions by two-stage PCR. Mol Cell Probes. 1999 Aug;13(4):269–73. [PMID 10441199]
2. CDC Fact Sheet: Histoplasmosis [*http://www.cdc.gov/fungal/histoplasmosis/*]

Intellectual Property: HHS Reference No. E–313–2013/0—US Patent No. 6,469,156 issued 22 Oct 2002

Related Technologies:
• HHS Reference No. E–293–2013/0
• HHS Reference No. E–332–2013/0
• HHS Reference No. E–232–2013/0
• HHS Reference No. E–335–2013/0

Licensing Contact: Whitney Blair, J.D. M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Multiplexed Immunoassay for Rapid Serological Diagnosis of a Specific Viral Infection in Clinical Samples

Description of Technology: CDC researchers have developed a multiplexed diagnostic assay for sensitive detection and distinction between viral group members based on the presence/absence of infection-generated antibodies within a clinical serum sample. For example, this assay can be used for rapid discrimination of a clinical unknown as specifically a West Nile or St. Louis encephalitis viral infection. This is particularly beneficial as these two viruses are typically difficult to distinguish by standard serological assays.

This new technique uses microsphere/microbead-based flow-analysis as a platform. Because of a basis in a pre-existing technology, the technique can be easily incorporated into current state and health department diagnostic testing protocols. The method is particularly unique because the assay-generated data can be standardized and then classified via discriminant analysis to determine the presence or absence of antibodies of interest within the clinical sample tested.

Furthermore, along with allowances for single-result generation, data manipulation and classification algorithms allow for assay output comparisons to the original large data set references used in development. In this way, results from different laboratories can now be directly compared to one another, provided that the same controls are used.

Potential Commercial Applications:

- Clinical diagnostics for specific identification and discrimination of viral infections
- Research tool for evaluation of vaccine candidates
- Assay standardization and quality control
- Public health and viral outbreak surveillance programs

Competitive Advantages:

- Increased efficiency compared to single-antibody diagnostic approaches
- Easily implemented and integrated into present protocols and techniques, as this technology is based on current, widely used flow-analysis platforms
- Can be formatted as customizable kits for detection of viral group antibodies
- Rapid and precise
- Ideal for high-throughput analyses

Development Stage: In vitro data available

Inventors: Alison J. Basile and Bradley J. Biggerstaff (CDC)

Publications:

1. Basile AJ, et al. Removal of species constraints in antibody detection. Clin Vaccine Immunol. 2010 Jan;17(1):56–61. [PMID 19923570]
2. Basile AJ, et al. Multiplex microsphere immunoassays for the detection of IgM and IgG to arboviral diseases. PLoS One. 2013 Sep 25;8(9):e75670. [PMID 24086608]

Intellectual Property: HHS Reference No. E–302–2013/0—

- US Patent No. 7,933,721 issued 26 Apr 2011
- US Patent No. 8,433,523 issued 30 Apr 2013
- Various international patent applications pending or issued

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4927; *whitney.blair@nih.gov*

Detection and Differentiation of Pathogenic Fungi in Clinical Samples Using a Multi-Analyte Profiling System

Description of Technology: This invention provides a rapid, sensitive and specific diagnostic tool for the detection of pathogenic fungi and subsequent species-specific discrimination. CDC scientists have developed nucleic acid probes to identify the six most medically important *Candida* species and endemic mycoses, and to differentiate them from other medically important fungi in a multi-analyte profiling system. *Candida* fungi are one of the leading causes of clinically-acquired bloodstream infections and, although improved antifungal compounds have been recently introduced, they have unique, species-specific treatment responses.

This multi-analyte approach has the potential to simultaneously identify up to 100 different fungi in one assay. Additionally, the assay is quite cost effective in terms of resource input, time invested and technician labor. Used in conjunction with contemporary antifungal medications, this assay provides a very rapid and specific diagnosis allowing for the selective administration of appropriate compounds and ultimately improved patient outcomes.

Potential Commercial Applications:

- Directing antifungal drug therapy for improved patient outcomes
- Detection, discrimination of Candida species from biological samples
- High-throughput screening
- Liquid or solid phase microarray development to detect medically important fungi

Competitive Advantages:

- Rapid, sensitive, simple and specific
- Multi-analyte nature provides cost-efficiency
- Easily adaptable to kit form
- Permits the multiplexing of up to 100 different hybridization reactions in a single sample

Development Stage:

- Early-stage
- In vitro data available

Inventors: Christine J. Morrison, Sanchita Das, Teresa Brown, Brian F. Holloway (all of CDC)

Publication: Das, S. et al. DNA probes for the rapid identification of medically important Candida species using a multianalyte profiling system. FEMS Immunol Med Microbiol. 2006 Mar;46(2):244–50. [PMID 16487306]

Intellectual Property: HHS Reference No. E–293–2013/0—

- PCT Application No. PCT/US2006/037640 filed 26 Sep 2006, which published as WO 2007/038578 on 05 Apr 2007
- US Patent No. 8,119,788 issued 21 Feb 2012
- Several international filings issued or pending

Related Technologies:

- HHS Reference No. E–232–2013/0
- HHS Reference No. E–332–2013/0
- HHS Reference No. E–335–2013/0
- HHS Reference No. E–339–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Novel Primate T-cell Lymphotropic Viruses (HTLV, STLV) for Development of Diagnostics, Therapeutics, Research Tools, and Vaccines

Description of Technology: CDC researchers have isolated and characterized the novel primate T-lymphotropic viruses denoted human T-lymphotropic viruses 3 and 4 (HTLV–3 and HTLV4), that are believed to have resulted from cross-species transmission at some point in the past. It has been previously established that HTLV–1 causes adult T cell leukemia and other inflammatory diseases; HTLV–2 is considered less pathogenic than HTLV–1 and has been associated with a neurologic disease similar to HTLV–1-associated myelopathy. At present, the human pathologies of HTLV–3 and HTLV–4 are yet uncharacterized, but have been identified as infecting rural Central African hunters who have much greater risk of contact with non-human primates, sometimes infected with simian T-lymphotropic viruses (STLVs). As HTLV infected individuals from rural, isolated populations have increasing contact with their urban brethren, there is increased potential for the rapid spread of new viral zoonotic-originating pathogens, much like the theorized ''bushmeat'' origins of HIV. There is a present and unmet need for increased surveillance, study, and preventative therapeutics directed towards mitigating the public health impact of these viruses. This CDC developed technology provides methods and tools to that end.

Potential Commercial Applications:

- Development of HTLV diagnostics
- Simian/human T-cell lymphotropic virus research
- Zoonosis surveillance
- Vaccine design and development

Competitive Advantages:

- Provides tremendous opportunity for phylogenetic, clinical and epidemiological investigations of HTLV and STLV
- Facilitates monitoring of viral diversity and study of zoonotic disease transmission
- Provides tools needed to address and mitigate a newly emergent blood-borne disease before widespread, regional/global viral dissemination occurs

Development Stage:

- Early-stage
- In vitro data available

Inventors: Donald S. Burke (Johns Hopkins Univ), Thomas M. Folks (CDC), Walid Heneine (CDC), Eitel Mpoudi

Ngole (CDC), William M. Switzer (CDC), Nathan D. Wolfe (Johns Hopkins Univ)

Publications:

1. Wolfe ND, et al. Emergence of unique primate T-lymphotropic viruses among central African bushmeat hunters. Proc Natl Acad Sci U S A. 2005 May 31;102(22):7994–9. [PMID 15911757]

2. Switzer WM, et al. Ancient, independent evolution and distinct molecular features of the novel human T-lymphotropic virus type 4. Retrovirology. 2009 Feb 2;6:9. [PMID 19187529]

Intellectual Property:

• HHS Reference No. E–281–2013/0—

—PCT Application No. PCT/US2006/005869 filed 21 Feb 2006, which published as WO 2006/091511 on 31 Aug 2006

—Various international patents granted and pending

• HHS Reference No. E–281–2013/1—

—US Patent No. 7,794,998 issued 14 Sep 2010

—US Patent No. 8,541,221 issued 24 Sep 2013

Related Technologies: HHS Reference No. E–303–2013/2—

• PCT Application No. PCT/US2008/064270 20 May 2008, which published as WO 2008/144700 on 27 Nov 2008

• U.S. Patent Application No. 12/600,995 filed 19 Nov 2009

• U.S. Patent Application No. 14/013,947 filed 29 Aug 2013

• Various international patents granted and pending

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Method for Finding Usable Portion of Sigmoid Curve (the Taylor Method), Improved Assay Readouts, and Enhanced Quality Control/Assurance

Description of Technology: CDC researchers have developed algorithmic methods for determining sigmoid curve optimums and calculating component concentrations. Sigmoid curves are commonly generated in bioassays and used to calculate results. Various techniques have been used to define the curve, analyze the observations, and calculate a concentration. This technology is an algorithmic approach to identifying the usable portion of a sigmoid curve. This approach is more objective than other methods, reducing the variability introduced by individuals and/or by repetition and allows substantially higher throughput in a situation where a lot of samples are being analyzed using the same assay.

Potential Commercial Applications:

• Observation and data analysis

• Determining concentrations

• Improving calculations and estimations

• Enhancing consistency and reproducibility of outcomes for bio and chem assays

Competitive Advantages:

• Less output-data subjectivity than alternate methods

• Rapid, accurate and simple to implement

• Quality control and assurance for a number of assays such as PCR, ELISA, toxin neutralization assays (TNA), flow cytometry, cell death assays, titrations, etc.

• Reduces data variability due to errant input

• Easily adapted to high-throughput analyses

• Demonstrated efficacy quantifying anthrax lethal toxin neutralization activity

Development Stage: In vitro data available

Inventor: Thomas H. Taylor (CDC)

Publication: Li H, et al. Standardized, mathematical model-based and validated in vitro analysis of anthrax lethal toxin neutralization. J Immunol Methods. 2008 Apr 20;333(1–2):89–106. [PMID 18304568]

Intellectual Property: HHS Reference No. E–270–2013/0—

• PCT Application No. PCT/US2004/008566 filed 19 Mar 2004, which published as WO 2004/084708 on 07 Oct 2004

• US Patent No. 7,469,186 issued 23 Dec 2008

• Australia Patent No. 2004224317 issued 25 Feb 2010

• Various international patent applications pending or issued

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Real-time PCR and High Resolution Melt Analysis for Genotyping of *Chlamydophila psittaci*

Description of Technology: This nucleic acid assay employs Light Upon Extension (LUX) chemistry and High Resolution Melt (HRM) analysis to detect and distinguish the different genotypes of *Chlamydophila psittaci. C. psittaci* is an atypical pathogen which may result in severe pneumonia upon infection of birds, mammals and humans (depending on inter-relationships between host and pathogen genotypes). Presently, *C. psittaci* clinical identification is achieved by a cumbersome and time-intensive mix of *ompA* gene sequencing, microarray analysis, RFLP and/or serological testing. Accurate and timely molecular *C. psittaci* diagnosis techniques are not generally available in most clinical facilities, leading to improper treatment of patients.

To that end, this robust CDC developed assay should be useful for epidemiological studies and may provide valuable information for best implementing public health measures in the event of outbreaks. This tool may also offer greater insight into the heterogeneity and dissemination of *C. psittaci* genotypes. Additionally, the assay can serve as a veterinary diagnostic and/or pre-screening tool for companion birds. Such applications would provide further benefit by resulting in reduced transmission of the disease to humans.

Potential Commercial Applications:

• Validation studies, proficiency testing

• Public health and veterinary/zoonotic disease monitoring programs

• Diagnostic testing, especially within the poultry industry

• Disease screening of companion birds

Competitive Advantages:

• Rapid and simple

• Simultaneous detection and discrimination of *C. psittaci* genotypes

• Improved efficiency in time and cost

• Easily adapted for use in kits

Development Stage: In vitro data available

Inventors: Stephanie L. Mitchell and Jonas M. Winchell (CDC)

Publication: Mitchell SL, et al. Genotyping of Chlamydophila psittaci by real-time PCR and high-resolution melt analysis. J Clin Microbiol. 2009 Jan;47(1):175–81. [PMID 19005152]

Intellectual Property: HHS Reference No. E–266–2013/0–US Patent Application No. 13/322,787 filed 28 Nov 2011

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Universal Diagnostic Assay for Detection and Identification of Poxviruses in Clinical Samples

Description of Technology: CDC researchers have developed an assay for detection and diagnosis of poxviruses within clinical samples or from lab culture-systems. The assay specifically targets chordopoxviruses (except avipoxviruses) for PCR-based identification; an improvement upon the current standard of cell culturing methodologies. Individual chordopoxvirus species can cause disease in humans (e.g., vaccinia, cowpox, monkeypox/Molluscum contagiosum) and animals (e.g., sheeppox, myxoma, swinepox, mule

deer pox, tanapox/Orf virus, Bovine popular stomatitis virus). Some poxvirus species impart unique and obvious symptoms making them easy to diagnose, while many others are clinically ambiguous. For instance, parapoxvirus infections are often misdiagnosed as cutaneous anthrax, which unnecessarily contributes to overuse of antibacterial agents. There is therefore a demonstrated need to develop better diagnostic tools to detect and properly identify the agent of poxvirus infections. Regardless of the symptoms, this universal assay can quickly and reliably detect chordopoxvirus presence in clinical samples, allowing for proper identification, diagnosis, treatment, and improved patient outcomes.

Potential Commercial Applications:

- Nucleic acid-based diagnostic for 'unknown rash' illnesses and identifying novel poxviruses
- Disease surveillance programs, including public health and veterinary (livestock, domestic, wild/exotic)

Competitive Advantages:

- Rapid and simple
- Allows for high-throughput, simultaneous sample screening
- Detects, identifies all low-G/C content non-avipox chordopoxviruses and most known high-G/C content chordopoxviruses

Development Stage: In vitro data available

Inventors: Yu Li, Inger K. Damon, Hui Zhao (all of CDC)

Publication: Li Y, et al. GC content-based pan-pox universal PCR assays for poxvirus detection. J Clin Microbiol. 2010 Jan;48(1):268–76. [PMID 19906902]

Intellectual Property: HHS Reference No. E–265–2013/0—

- PCT Application No. PCT/US2010/055061 filed 02 Nov 2010, which published as WO 2011/056771 on 12 May 2011
- US Patent Application No. 13/505,719 filed 02 May 2012
- Various international patent applications pending

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Novel Rift Valley Fever Virus Vaccines

Description of Technology: This invention relates to recombinant Rift Valley fever (RVF) viruses containing deletions in one or more virulence genes. The recombinant RVF viruses, generated using a plasmid-based reverse genetics system, can be used as vaccines to prevent RVF infection in livestock and humans. The recombinant RVF viruses grow to high titers, provide protective immunity following a single injection, and allow for the differentiation between vaccinated animals and animals infected with wild-type RVF virus. Additionally, this technology relates to a method of using reverse genetics to generate recombinant RVF viruses.

Potential Commercial Applications:

- Rift Valley fever (RVF) virus vaccine development or improvement
- Prevention of RVF virus infection in livestock and humans
- Biodefense, biosecurity

Competitive Advantages:

- In vivo evidence shows single-dose protection
- Allows for discrimination between vaccinated and naturally-infected subjects
- Useful for controlled screening of therapeutic compounds

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventors: Brian H. Bird, Cesar G. Albarino, Stuart T. Nichol, Thomas G. Ksiazek (all of CDC)

Publications:

1. Bird BH, et al. Rift valley fever virus lacking the NSs and NSm genes is highly attenuated, confers protective immunity from virulent virus challenge, and allows for differential identification of infected and vaccinated animals. J Virol. 2008 Mar;82(6):2681–91. [PMID 18199647]
2. CDC Fact Sheet: Rift Valley Fever [*http://www.cdc.gov/vhf/rvf/*]

Intellectual Property: HHS Reference No. E–254–2013/2—

- PCT Application No. PCT/US2008/087023 filed 16 Dec 2008, which published as WO 2009/082647 on 02 Jul 2009
- US Patent Application No. 12/809,561 filed 18 Jun 2008 (select claims allowed as of 24 Oct 2013)
- Additional applications granted and pending

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Personal Air Sampler for Collecting Airborne Aerosol Particulates for Molecular Analysis

Description of Technology: This invention consists of a sampling apparatus that utilizes one or more cyclone separators to collect airborne particles from the atmosphere. The apparatus not only separates out aerosols from the atmosphere, but also serves as a collection tube for aerosol particles. Through its unique design, this CDC-developed apparatus is able to use the centrifugal force of the air flow on aerosolized particles forcing them to separate. Since the sample is collected directly in a microcentrifuge tube, in situ analysis of the ambient particulates can be performed. Analysis may include, but is not limited to, PCR, immunoassay analysis, microscopic spore counting, and counting colony-forming units. The device should also have many additional uses for environmental surveillance and occupational health applications.

Potential Commercial Applications:

- Analysis of ambient air particulates
- Environmental surveillance
- Occupational safety monitoring
- Biodefense
- Long-term exposure assessment

Competitive Advantages:

- Rapid, on-site sampling and analysis
- Alternative to surface-sampling and culturing for aerosolized biological agents
- Superior extraction efficiency compared to filters, impingers, and impactors
- Real-world testing demonstrated device's ability to collect airborne mold and mycotoxins, pollen and pollen fragments, airborne dust particulates, as well as airborne influenza virus in a hospital environment.

Development Stage:

- In situ data available (on-site)
- Prototype

Inventors: Teh-Hsun R. Chen, Gregory Feature, Jyoti Keswani, Herbert D. Edgell (all of CDC)

Publications:

1. Lindsley WG, et al. A two-stage cyclone using microcentrifuge tubes for personal bioaerosol sampling. J Environ Monit. 2006 Nov;8(11):1136–42. [PMID 17075620]
2. Blachere FM, et al. Bioaerosol sampling for the detection of aerosolized influenza virus. Influenza Other Respir Viruses. 2007 May;1(3):113–20. [PMID 19453416]
3. Lindsley WG, et al. Measurements of airborne influenza virus in aerosol particles from human coughs. PLoS One. 2010 Nov 30;5(11):e15100. [PMID 21152051]
4. Cao G, et al. Development of an improved methodology to detect infectious airborne influenza virus using the NIOSH bioaerosol sampler. J Environ Monit. 2011 Dec;13(12):3321–8. [PMID 21975583]
5. CDC-NIOSH Cyclone Bioaerosol Sampler Web page: *http://www.cdc.gov/niosh/topics/aerosols/biosampler.html*

Intellectual Property: HHS Reference No. E–244–2013/0—

- US Patent No. 7,370,543 issued 13 May 2008
- US Patent No. 8,205,511 issued 26 June 2012

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Warning System for Mobile Machinery Hazardous Zones

Description of Technology: This invention relates to a warning system designed to protect individuals working near hazardous machinery. The system consists of a proximity-warning transmitter mounted to hazardous machinery and a receiver, worn by a worker, capable of detecting the transmitter signal. This worker-safety system can incorporate visual alerts and audible alerts. It also allows automatic shutdown of machinery upon receiver activation and may be particularly useful in the mining industry.

Potential Commercial Applications:

- Auxiliary safety equipment for heavy machinery
- Occupational health and safety
- Mining worker safety

Competitive Advantages:

- Easy transmitter installation
- Signal can be adjusted for an audio or visual ''warning zone alert'' and a proximal ''imminent danger zone alert''

Development Stage:

- In situ data available (on-site)
- Prototype

Inventors: William H. Schiffbauer and Carl W. Ganoe (CDC)

Publication: Schiffbauer WH. A workplace safety device for operators of remote-controlled continuous mining machines. Am J Ind Med. 1999 Sep;Suppl 1:69–71. [PMID 10519790]

Intellectual Property: HHS Reference No. E–239–2013/0—US Patent No. 5,939,986 issued 17 Aug 1999

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Species-specific Nucleic Acid Detection Assay for Fungi

Description of Technology: This invention pertains to nucleic acid-based assays for the detection of *Aspergillus* and other filamentous fungi. Assays cover the species-specific detection and diagnosis of infection by *Aspergillus, Fusarium, Mucor, Penecillium, Rhizomucor, Absidia, Cunninghamella, Pseudallescheria* or *Sporthrix* in a subject. This can reduce identification time from several days by conventional culture methods to a matter of hours. Furthermore, genus-specific probes are also provided for *Aspergillus, Fusarium* and *Mucor,* in addition to an ''all-fungus'' nucleic acid probe. This technology is readily adaptable as kits used for species-specific identification of opportunistic pathogen infections or possible work/home contamination.

Potential Commercial Applications:

- Directing antifungal drug therapy for improved patient outcomes
- Detection, discrimination of fungal species from biological samples
- Addressing secondary infections of immunosuppressed individuals or asthmatics

Competitive Advantages:

- Rapid, sensitive, simple and specific
- Cost-efficiency compared to culture or sero-diagnostic methods
- Easily adaptable to kit form
- High-throughput screening

Development Stage: In vitro data available

Inventors: Christine J. Morrison, Errol Reiss, Jong Soo Choi, Liliana Aidorevich (all of CDC)

Intellectual Property: HHS Reference No. E–232–2013/0—

- US Patent No. 6,372,430 issued 16 Apr 2002
- US Patent No. 7,052,836 issued 30 May 2006

Related Technologies:

- HHS Reference No. E–293–2013/0
- HHS Reference No. E–332–2013/0
- HHS Reference No. E–335–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Improved Protein Quantification Process and Vaccine Quality Control Production

Description of Technology: This CDC invention is a method for identifying and quantifying a group of proteins in a complex mixture by a liquid chromatography-tandem mass spectrometry assay. The technology was developed for influenza although it can be used for a wide variety of protein quantification applications. As specifically developed, conserved peptides from the proteins of influenza (hemagglutinin, neuramidase, matrix 1 and 2, and nucleoprotein) have been synthesized and labeled to be used as internal standards for the quantification of those proteins in a complex (biological or manufactured) matrix. One or more of these peptides can be used to simultaneously detect and quantify the target proteins by establishing mass ratios and calibration curve comparison. This method for quantifying influenza proteins and peptides in samples has potential for improving vaccine production quality control and therefore, the effectiveness and overall cost-efficiency of influenza vaccines.

Potential Commercial Applications:

- Vaccine production, especially influenza-related
- Quality assurance, quality control
- Influenza surveillance programs

Competitive Advantages:

- Simultaneous, precise protein detection and quantification for complex mixtures
- Rapid; method cuts investigation/research time needed to formulate and optimize novel vaccines for emergent influenza strains
- Improved vaccine cost and production efficiency

Development Stage:

- Early-stage
- In vitro data available

Inventors: Tracie L. Williams, John R. Barr, Zhu Guo, Leah G. Luna, Ruben O. Donis, James L. Pirkle (all of CDC)

Publications:

1. Williams TL, et al. Quantification of influenza virus hemagglutinins in complex mixtures using isotope dilution tandem mass spectrometry. Vaccine. 2008 May 12;26(20):2510–20. [PMID 18440105]
2. Pierce CL, et al. Quantification of immunoreactive viral influenza proteins by immunoaffinity capture and isotope-dilution liquid chromatography-tandem mass spectrometry. Anal Chem. 2011 Jun 15;83(12):4729–37. [PMID 21591780]
3. Williams TL, et al. Simultaneous quantification of hemagglutinin and neuraminidase of influenza virus using isotope dilution mass spectrometry. Vaccine. 2012 Mar 23;30(14):2475–82. [PMID 22197963]
4. Woolfitt AR, et al. Amino acid analysis of peptides using isobaric-tagged isotope dilution LC–MS/MS. Anal Chem. 2009 May 15;81(10):3979–85. [PMID 19364092]

Intellectual Property: HHS Reference No. E–212–2013/0—

- PCT Application No. PCT/US2008/013396 filed 05 Dec 2008, which published as WO 2009/110873 on 11 Sep 2009
- US Patent No. 8,530,182 issued 10 Sep 2013

Licensing Contact: Whitney Blair, J.D. M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Novel Epitopes of *Bacillus anthracis* Lethal Factor for Development of Diagnostics and Therapeutics

Description of Technology: CDC researchers have characterized epitopes of *Bacillus anthracis* Lethal Factor (LF), a critical component of the *B. anthracis* lethal toxin. These epitopes may allow for development of therapeutics for the treatment or prevention of *B. anthracis* infection. They may also allow screening for *B. anthracis* LF in a sample and development of a peptide anthrax vaccine.

Potential Commercial Applications:

• Diagnostic tests assessing active Lethal Factor in a sample
• Anthrax neutralizing therapeutics and vaccines for *B. anthracis*
• Biodefense, biosecurity

Competitive Advantages:
• Potentially faster, lower-input assay compared to current Edema Factor detection methods
• Easily adaptable for high-throughput screening of numerous specimens

Development Stage:
• Early-stage
• In vitro data available

Inventors: Jason Goldstein, Conrad Quinn, Dennis Bagarozzi, Anne Boyer (all of CDC)

Publication: Boyer AE, et al. Detection and quantification of anthrax lethal factor in serum by mass spectrometry. Anal Chem. 2007 Nov 15;79(22):8463–70. [PMID 17929949]

Intellectual Property: HHS Reference No. E–210–2013/0—
• US Provisional Application No. 61/699,738 filed 11 Sep 2012
• PCT Application No. PCT/US2013/059179 filed 11 Sep 2013

Related Technologies:
• HHS Reference No. E–158–2013/2
• HHS Reference No. E–167–2013/0
• HHS Reference No. E–196–2013/0
• HHS Reference No. E–203–2013/0
• HHS Reference No. E–474–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Respiratory Syncytial Virus Immunogens for Vaccine and Therapeutics Development

Description of Technology: CDC researchers have developed specific Respiratory Syncytial Virus (RSV) immunogens for use in the development of RSV-directed vaccines and therapeutics. RSV is the most common cause of serious respiratory disease in infants and young children and an important cause of disease in the elderly. To date, efforts to make a mutually safe and effective vaccine have been largely unsuccessful. This invention addresses both problems.

CDC and collaborative researchers have demonstrated that a vaccine based on amino acid sequences corresponding to group-specific regions of the RSV G-protein can effectively induce antibodies, facilitate virus clearance, decrease the virus-induced inflammatory response to RSV challenge, and also decrease the enhanced disease following RSV challenge. This composition may be used alone as a vaccine to safely protect infants, children, and adults from RSV, as a booster with other RSV proteins or with inactivated virus as a vaccine to ensure that it can be given safely and effectively improve protection from RSV.

Potential Commercial Applications:
• Prophylactic and therapeutic for the prevention and treatment of RSV infections
• Single or multi-component vaccine against RSV
• Improvements to currently developed/developing vaccines
• Developed antibodies may be employed for use in passive immunity or RSV research

Competitive Advantages:
• Increased safety, effectiveness compared to current vaccines
• Findings suggest likely prevention or mitigation of RSV-related pulmonary disease for previously established infections

Development Stage:
• In vitro data available
• In vivo data available (animal)

Inventors: Larry J. Anderson (CDC), Lia M. Haynes (CDC), Ralph A. Tripp (University of Georgia)

Publications:
1. Haynes LM, et al. Therapeutic monoclonal antibody treatment targeting respiratory syncytial virus (RSV) G protein mediates viral clearance and reduces the pathogenesis of RSV infection in BALB/c mice. J Infect Dis. 2009 Aug 1;200(3):439–47. [PMID 19545210]
2. Miao C, et al. Treatment with respiratory syncytial virus G glycoprotein monoclonal antibody or F(ab')2 components mediates reduced pulmonary inflammation in mice. J Gen Virol. 2009 May;90(Pt 5):1119–23. [PMID 19264600]

Intellectual Property:
• HHS Reference No. E–197–2013/0—
—US Patent Application No. 13/763,822 filed 11 Feb 2013
• HHS Reference No. E–197–2013/2—
—PCT Application No. PCT/US2010/044434 filed 04 Aug 2010, which published as WO 2011/017442 on 10 Feb 2011
—Several international patent applications pending

Related Technologies:
• HHS Reference No. E–699–2013/0
• HHS Reference No. E–694–2013/0
• HHS Reference No. E–151–2013/0
• HHS Reference No. E–233–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Controlled Expression and Assembly of Human Group-C Rotavirus-like Particles for Creation of Rotavirus Diagnostic Assays and Improved Vaccine Formulations

Description of Technology: CDC researchers have developed methods of producing unlimited quantities of Group-C (GpC) rotavirus antigens. GpC rotaviruses are a major, worldwide cause of acute gastroenteritis in children and adults that is distinct from Group-A rotavirus. However, GpC rotaviruses cannot be grown in culture, resulting in a lack of tools for detection and treatment of GpC rotavirus disease. Consequently, the true clinical burden of GpC rotavirus disease has not been clearly established.

This technology allows for the expression of the three major capsid proteins (VP2, VP6 and VP7) of GpC rotavirus by recombinant baculovirus and assembly of virus-like particles (2–6–7 and/or 6–7) within insect cells. Further, this CDC generated technology allows for the large-scale access to GpC rotavirus antigens, previously infeasible, and will permit use of these novel virus-like particles for the development of rotavirus diagnostic assays and improved vaccine formulations.

Potential Commercial Applications:
• Development or improvement of rotavirus vaccines
• Rotavirus vaccine composition research
• Childhood illness vaccination programs and rotavirus monitoring endeavors
• Development of novel rotavirus diagnostic tools

Competitive Advantages:
• Permits large-scale production of Group-C rotavirus antigens, previously impractical
• Produced virus-like particles/antigens can be used for rotavirus vaccines, other immunogenic uses and/or sero-diagnostic assay development
• Diagnostic tools for Group-C rotavirus are currently unavailable; this technology fulfills an unmet need for accurate assessment of the Group-C rotaviral global health burden

Development Stage: In vitro data available

Inventor: Baoming Jiang (CDC)

Publication: Clark KB, et al. Expression and characterization of human group C rotavirus virus-like particles in insect cells. Virology. 2009 May 10;387(2):267–72. [PMID 19285329]

Intellectual Property: HHS Reference No. E–191–2013/2—
• PCT Application No. PCT/US09/045688 filed 29 May 2009, which

published as WO 2009/148964 on 10 Dec 2009

• US Patent Application No. 12/995,024 filed 26 Jan 2011

• Various international filings pending and/or deferred

Related Technologies:

• HHS Reference No. E–122–2013/0

• HHS Reference No. E–150–2013/0

• HHS Reference No. E–153–2013/0

• HHS Reference No. E–521–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Diisocyanate Specific Monoclonal Antibodies for Occupational and Environmental Monitoring of Polyurethane Production Exposure-related Asthma and Allergy and Clinical Diagnosis

Description of Technology: CDC researchers have developed monoclonal antibodies useful as diagnostics for diisocyanate (dNCO) exposure and for toxicity characterization of specific dNCOs. Currently, dNCOs are used in the production of all polyurethane products and are the most commonly reported cause of occupational-induced asthma and also linked to allergic contact dermatitis. Presumptive diagnosis of dNCO asthma is presently dependent on criteria such as work history, report of work-related asthma-like symptoms and nonspecific airway reactivity to methacholine challenge.

This invention is a cost-effective, objective alternative for clinical assessment of occupational/environmental dNCO exposure in patient samples. These antibodies may also provide for passive-immunization and prevention of allergic contact dermatitis and/or asthma that can result from extended dermal exposure to dNCO contaminated surfaces and vapors. Further, the present technology allows for high-throughput testing of workplace dNCO air, fabric and working-surface contamination.

Potential Commercial Applications:

• Occupational/environmental safety biomonitoring of polyurethane-worker/user exposure to diisocyanates(dNCOs)

• Clinical diagnostic use

• dNCO-induced allergy/asthma prevention by passive immunization

Competitive Advantages:

• Ready for use in high-throughput immuno-histochemistry biomarker detection assays and kits

• Two sandwich ELISAs have been developed and validated using human samples

• Monitoring is currently performed by elaborate analytical chemical assays; this technology is more rapid and cost effective for dNCO exposure/contamination assessment

Development Stage:

• Early-stage

• In vitro data available

Inventors: Paul D. Siegel, Donald H. Beezhold, Tinashe Blessing Ruwona, Detlef Schmechel, Victor Johnson (all of CDC)

Publications:

1. Lemons AR, et al. Development of sandwich ELISAs for the detection of aromatic diisocyanate adducts. J Immunol Methods. 2013 Nov 29;397(1–2):66–70. [PMID 24012971]

2. Ruwona TB, et al. Monoclonal antibodies against toluene diisocyanate haptenated proteins from vapor-exposed mice. Hybridoma (Larchmt). 2010 Jun;29(3):221–9. [PMID 20568997]

3. Ruwona TB, et al. Production, characterization and utility of a panel of monoclonal antibodies for the detection of toluene diisocyanate haptenated proteins. J Immunol Methods. 2011 Oct 28;373(1–2):127–35. [PMID 21878336]

Intellectual Property: HHS Reference No. E–189–2013/0—US Patent Application No. 12/577,241 filed 12 Oct 2009

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Real-time RT–PCR Assay for the Detection of Rift Valley Fever Virus in Humans and Livestock

Description of Technology: A quantitative RT–PCR-based assay has been developed to rapidly detect all known strains of Rift Valley fever virus (RVFV). RVFV infections occur in both humans and livestock animals resulting in significant mortality and economic loss. Upon outbreak, RVFV has been known to cause devastating loss among livestock (primarily sheep and cattle) with outbreaks characterized by sweeping ''abortion storms'' and elevation newborn animal mortality approaching 100% in affected areas. The CDC-developed assay is capable of detecting and quantifying RVFV infection in both human and veterinary samples.

Potential Commercial Applications:

• Diagnostic assay for the detection of Rift Valley fever virus in human and veterinary samples

• Research tool to quantitatively measure viral load in laboratory specimens

Competitive Advantages:

• Assay detects positive infections for 33 known variants of Rift Valley fever virus

• Easily adaptable to kits for high-throughput screening of a large number of samples at once, useful for ensuring herd-health for example

Development Stage: In vitro data available

Inventors: Brian H. Bird and Stuart T. Nichol (CDC)

Publications:

1. Bird BH, et al. Complete genome analysis of 33 ecologically and biologically diverse Rift Valley fever virus strains reveals widespread virus movement and low genetic diversity due to recent common ancestry. J Virol. 2007 Mar;81(6):2805–16. [PMID 17192303]

2. Bird BH, et al. Multiple virus lineages sharing recent common ancestry were associated with a Large Rift Valley fever outbreak among livestock in Kenya during 2006–2007. J Virol. 2008 Nov;82(22):11152–66. [PMID 18786992]

Intellectual Property: HHS Reference No. E–187–2013/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Entangling/Entrapping Synthetic Setae for Control of Insects and Other Pests

Description of Technology: In nature, some beetle larvae possess specialized barbed hastate setae that serve as an entanglement defense mechanism and incapacitate other insects. CDC researchers have developed synthetic setae for control and entrapment of insects and other pests. While smaller synthetic setae can trap mosquitoes and small insects, larger ''macro'' setae can be used for entrapment of bats, rodents, etc. Once used, the setae can be ''reset'' by a vigorous shaking of the fabric. This solution to pest control would be long-lasting and non-toxic, with the additional benefit of avoiding the evolutionary selection of pesticide resistant organisms.

Potential Commercial Applications:

• Insect and pest control agents

• Population sampling and monitoring

Competitive Advantages:

• Fine entanglement setae can be used anywhere insects congregate, including mosquito bed netting, resting boxes, curtains, or wall linings

• Mosquitoes and other pests trapped in the setae will quickly desiccate

• Easy reuse of setae by shaking

• Long-lasting, non-toxic (no insecticide) alternative to insect control

Development Stage: Prototype

Inventor: Robert Wirtz (CDC)

Intellectual Property: HHS Reference No. E–175–2013/0—US Patent Application No. 61/772,790 filed 05 Mar 2013

Related Technologies:

• HHS Reference No. E–223–2013/0

• HHS Reference No. E–166–2013/0

• HHS Reference No. E–218–2013/1
• HHS Reference No. E–354–2013/1

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Sensitive Method for Detection and Quantification of Anthrax, Bordetella pertussis, Clostridium difficile, Clostridium botulinum and Other Pathogen-Derived Toxins in Human and Animal Plasma

Description of Technology: CDC research scientists have developed a method to identify and quantify the activity of pathogenic bacterial adenylate cyclase toxins by liquid chromatography tandem mass spectrometry (LC–MS/MS). Bacterial protein toxins are among the most potent natural poisons known, causing paralysis, immune system collapse, hemorrhaging and death in some cases. A useful tool for quantitative detection of specific toxin activity in clinical samples will provide insights into the kinetics of intoxication, stage of infection and present stage of pathogenesis.

This rapid, high-throughput analysis method will provide measurements that quantify the efficacy of toxin-based therapeutics and support patient management decisions during treatment. This technology is specific, ultrasensitive and can be implemented to detect toxins from a wide range of pathogenic bacteria. This method could be fabricated into a kit format to deliver to state or research laboratories for use during an anthrax emergency or for research purposes, i.e. animal studies evaluating anthrax therapeutics. This technology may be easily applied to detection/diagnosis of additional pathogenic bacterial species infections as well.

Potential Commercial Applications:
• Detect toxins from a wide range of pathogenic bacteria
• Biodefense, biosecurity diagnostics

Competitive Advantages:
• Presently no individual patient screening assay for anthrax-exposure is widely available; exposure is determined by public health investigation and environmental-sampling tests
• Current tests lack sensitivity and evidence of effectiveness
• Relatively rapid and exquisitely sensitive method for the detection and quantification of bacterial toxin activity from very small blood samples, accurately assessing exposure and infection

Development Stage:
• In vitro data available
• In vivo data available (animal)
• In vivo data available (human)

Inventors: Anne E. Boyer, Renata C. Lins, Zsuzsanna Kuklenyik, Maribel Gallegos-Candela, Conrad P. Quinn, John R. Barr (all of CDC)

Publications:
1. Duriez E, et al. Femtomolar detection of the anthrax edema factor in human and animal plasma. Anal Chem. 2009 Jul 15;81(14):5935–41. [PMID 19522516]
2. Boyer AE, et al. Quantitative mass spectrometry for bacterial protein toxins—a sensitive, specific, high-throughput tool for detection and diagnosis. Molecules. 2011 Mar 14;16(3):2391–413. [PMID 21403598]

Intellectual Property: HHS Reference No. E–167–2013/0—
• US Patent Application No. 13/878,378 filed 08 Apr 2013
• PCT Application No. PCT/US2011/059739 filed 08 Nov 2011, which published as WO 2012/074683 on 07 Jun 2012
• Various international filings pending

Related Technologies:
• HHS Reference No. E–157–2013/0
• HHS Reference No. E–158–2013/2
• HHS Reference No. E–196–2013/0
• HHS Reference No. E–203–2013/0
• HHS Reference No. E–210–2013/0
• HHS Reference No. E–474–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

A Simple Colorimetric Assay for Anti-malarial Drugs Quality Assurance and Rapid, On-site Counterfeit Detection

Description of Technology: This CDC assay aims to lessen the anti-malarial drug counterfeiting epidemic by testing for the artemisinin-type drugs (the active compound), through the use of a simple, inexpensive colorimetric test. Poor quality and counterfeit drugs pose an immediate threat to public health and undermine malaria control efforts, resulting in resistant-parasites and invalidates effective compounds, i.e. the artemisinins.

In response to this threat, CDC researchers have developed a simple, inexpensive, field-adapted colorimetric test to determine artemisinin-derivative authenticity in anti-malarial tablets. This assay exploits a chemical reaction in which the active element in question readily reacts under mild conditions with diazonium salts producing a visually distinct green-colored product. The resultant product delineates a positive correlation between color intensity and the drug's concentration of active-compound; counterfeit drugs will have no or little change in color.

Potential Commercial Applications:
• Quality assurance, fraud prevention for anti-malarials
• Public health and humanitarian concerns
• Artesunate, artemisinin sales and distributions

Competitive Advantages:
• Potentially life-saving technology in developing nations and malaria affected regions
• Simple assay with an unaided-eye readout
• Inexpensive and field-adapted for use in low-resource environments

Development Stage:
• In vitro data available
• In situ data available (on-site)

Inventor: Michael D. Green (CDC)

Publications:
1. Green MD, et al. A colorimetric field method to assess the authenticity of drugs sold as the antimalarial artesunate. J Pharm Biomed Anal. 2000 Dec;24(1):65–70. [PMID 11108540]
2. Green MD, et al. Authentication of artemether, artesunate and dihydroartemisinin antimalarial tablets using a simple colorimetric method. Trop Med Int Health. 2001 Dec;6(12):980–2. [PMID 11737833]

Intellectual Property: HHS Reference No. E–161–2013/0—
• PCT No. PCT/US2008/082466 filed 05 Nov 2008, which published as WO 2009/061808 on 14 May 2009
• US Patent 8,435,794 issued 07 May 2013

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Use of Detector Response Curves to Optimize Settings for Mass Spectrometry

Description of Technology: This CDC developed optimization technology allows one to characterize the behavior of the coefficient of variation (CV) for a range of mass spectrometer machine settings. Surface-enhanced laser desorption/ionization (SELDI) and matrix-assisted laser desorption/ionization (MALDI) are used for the early detection of numerous diseases, for example cervical cancer. A critical step in the analytical process is the optimization of experiment and machine settings to ensure the best possible reproducibility of results, as measured by the CV. The high cost of this procedure includes man hours spent optimizing the machine, opportunity cost, materials used, and spent biological samples used in the optimization process.

This technology can be used to optimize the CV with the following advantages over conventional methods: (1) No need to use biological samples,

(2) fewer materials are consumed in the process, (3) improved CV and thus more reproducible results, (4) fewer man hours required to find ideal machine settings, and (5) potential full-automation of the process of optimizing CV. This idea is beneficial to all scientists and clinicians that use MALDI/SELDI for biomarker discovery and clinical diagnostics. Further, manufacturers of MALDI/SELDI mass spectrometer devices would find incorporation of this technology quite beneficial.

Potential Commercial Applications:

- MALDI/SELDI mass spectrometer calibration improvement
- Biomarker discovery studies
- Quality control techniques
- Automated coefficient of variation (CV) optimization of mass spectrometer devices

Competitive Advantages:

- Lower resource input requirement
- Increased cost efficiency
- Simplifies SELDI/MALDI setup, reducing technician man-hours and need for extensive training
- Improves experimental optimization providing greater reproducibility
- Potential for automation of CV optimization

Development Stage: In vitro data available

Inventors: Vincent A. Emanuele and Brian M. Gurbaxani (CDC)

Publications:

1. Emanuele VA 2nd, Gurbaxani BM. Quadratic variance models for adaptively preprocessing SELDI–TOF mass spectrometry data. BMC Bioinformatics. 2010 Oct 13;11:512. [PMID 20942945]
2. Emanuele VA 2nd, et al. Sensitive and specific peak detection for SELDI–TOF mass spectrometry using a wavelet/neural-network based approach. PLoS One. 2012;7(11):e48103. [PMID 23152765]

Intellectual Property: HHS Reference No. E–157–2013/0—

- PCT Application No. PCT/US2011/055376 filed 07 Oct 2011, which published as WO 2012/048227 on 12 Apr 2012
- US Patent Application No. 13/575,317 filed 26 Jul 2012

Related Technology: HHS Reference No. E–167–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Immunogenic Hepatitis E Virus Polypeptides for Vaccine and Diagnostics Development

Description of Technology: This technology comprises specific hepatitis E virus (HEV) antigenic polypeptides. HEV causes epidemic and sporadic cases of hepatitis outbreaks with a mortality rate as high as 20% for pregnant women. In order to address this problem, CDC scientists carried out thorough HEV antigen screenings and subsequently developed recombinant proteins that efficiently model major HEV neutralization epitope(s). These recombinant proteins may be considered as candidates for the development of an HEV subunit vaccine, as well as for the development of highly sensitive and specific diagnostic tests.

Potential Commercial Applications:

- Development of a peptide subunit-based vaccine for hepatitis E virus (HEV)
- Development of HEV sero-diagnostic tools and reagents
- Blood transfusion screening
- Pregnancy screening safety precautions
- Hepatitis monitoring programs
- Basic research into hepatitis pathogenicity and immune response

Competitive Advantages:

- Generated antibodies were cross-reactive with a number of geographically distinct HEV strains
- Useful for development of highly sensitive and specific diagnostic tests
- Could be useful for improving efficacy and HEV-strain immunity provided by current vaccine(s)

Development Stage: In vitro data available

Inventors: Howard Fields, Yury Khudyakov, Jihong Meng (all of CDC)

Publication: Meng J, et al. Identification and characterization of the neutralization epitope(s) of the hepatitis E virus. Virology. 2001 Sep 30;288(2):203–11. [PMID 11601892]

Intellectual Property: HHS Reference No. E–152–2013/0—

- PCT Application No. PCT/US2001/010696 filed 03 Apr 2001, which published as WO 2001/077156 on 18 Oct 2001
- Various international patents issued

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

New Human Rotavirus Vaccine Strains

Description of Technology: This invention relates to rotavirus vaccine compositions and methods of vaccination. The vaccine strains include Rotavirus A CDC–9 and CDC–66. These strains represent common rotavirus serotypes and may serve as improvements or alternatives to current live, oral rotavirus vaccine strains.

Potential Commercial Applications:

- Novel rotavirus vaccines
- Childhood vaccination initiatives
- Rotavirus surveillance programs

Competitive Advantages:

- Isolated strains are representative of those involved in community-acquired infection
- Suitable for the development of improved, broadly effective rotavirus vaccines
- Can be developed for injection and/or oral vaccine administration
- Derived vaccines may be administered alone or in combination with other vaccines

Development Stage: In vitro data available

Inventors: Baoming Jiang, Roger I. Glass, Yuhuan Wang (all of CDC)

Publications:

1. Esona MD, et al. Molecular characterization of human rotavirus vaccine strain CDC–9 during sequential passages in Vero cells. Hum Vaccin.;6(3). (Epub ahead of print) [PMID 20009519]
2. Wang Y, et al. Inactivated rotavirus vaccine induces protective immunity in gnotobiotic piglets. Vaccine. 2010 Jul 26;28(33):5432–6. [PMID 20558244]

Intellectual Property: HHS Reference No. E–150–2013/0—

- PCT Application No. PCT/US2010/034537 filed 12 May 2010, which published as WO 2010/132561 on 18 Nov 2010
- US Patent Application No. 13/320,095 filed 11 Nov 2011
- Various international filings pending or deferred

Related Technologies:

- HHS Reference No. E–122–2013/0
- HHS Reference No. E–153–2013/0
- HHS Reference No. E–191–2013/2
- HHS Reference No. E–521–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Non-radioactive, Miniature Bipolar Aerosol Particle Charger for Personal, Portable Instrumentation

Description of Technology: This CDC developed invention is a novel device for a miniature, nonradioactive bipolar charger to electrically charge aerosol particles for use in personal and portable aerosol instrumentation. Such devices are an integral component of aerosol instruments employing electrical mobility-based techniques. Current, commercial state-of-the-art mobility instruments employ aerosol chargers using radioactivity to achieve bipolar particle charging and, therefore, are not suitable for field-portable instruments. Due to strict regulatory restrictions on use of radioactive materials, these radioactive chargers also tend to be too bulky for use in compact aerosolization instruments.

This invention circumvents these two critical drawbacks by eliminating radioactivity and miniaturizing overall unit size (1x0.75 x 0.5 inch). Other unique aspects of the invention entail elimination of the need for additional air flows (other than the aerosol sample flow), minimal power consumption, a low per-unit cost, and simplicity of operation. In all, excellent transmission efficiency, steady-state charging characteristics and the miniature size make this bipolar particle charger well-suited for integration with portable or personal aerosol instrumentation.

Potential Commercial Applications:

• Personal and portable aerosol instrumentation

• Component of field-use device for determining workplace/environmental exposure to ultrafine aerosols and airborne nanoparticles

• Tool for environmental/occupational health, toxicology, workplace control evaluations and hazard identification involving aerosol exposure

Competitive Advantages:

• Non-radioactive; no associated regulatory or transportation issues

• Low-cost and requires very little power to operate

• Additional air flows other than sample airflow are unnecessary

• Unit is small (1x0.75x0.5in; 2.54x1.91x1.27cm) and highly portable

• Eliminates a major barrier for reliable aerosol sampling using ''bipolar charger + differential mobility analyzer + condensation particle detector'' scheme in a compact device

Development Stage: In situ data available (on-site)

Inventors: Prarnod Kulkarni and Chaolong Qi (CDC)

Intellectual Property: HHS Reference No. E–146–2013/0—US Patent No. 8,611,066 issued 17 Dec 2013

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Rapid Detection of Antiretroviral(s) Drug-Resistant HIV–1 Within Clinical Samples

Description of Technology: One of the problems with the development of current therapies for HIV infection is that the virus rapidly develops resistance to drugs such as reverse transcriptase (RT) inhibitors. CDC researchers have developed an enzyme-based methodology for detecting phenotypic resistance to antiretroviral drugs whose mode of action decreases the efficiency of the HIV–1 RT enzyme.

This invention will enhance clinical monitoring by providing data that tells physicians if and when the HIV–1 infecting a patient has become resistant to commonly used antiretroviral drugs, such as zidovudine/azidothymidine (AZT), nevirapine and lamivudine (3TC). This invention provides physicians and patient care facilities with a simple, rapid lab test that will tell them when a particular antiviral drug is not or no longer beneficial for a patient. Additionally this technology is superior to current culture-based methods for determining phenotypic resistance to HIV antiviral drugs, which are time-consuming and labor-intensive and therefore impractical for clinical monitoring.

Potential Commercial Applications:

• Clinical monitoring of individual patient antiretroviral therapy

• HIV/AIDS public health programs

• Surveillance of retroviral drug resistance

Competitive Advantages:

• Rapid diagnostic which greatly reduces time and labor for improved clinical monitoring of HIV treatment

• Ready for commercialization

• Easily adapted to kit format

• Assists continued usefulness of common antiretroviral therapeutics

Development Stage: In vitro data available

Inventors: Walid M. Heneine, Gerardo Garcia-Lerma, Shinji Yamamoto, William M. Switzer, Thomas M. Folks (all of CDC)

Publication: Qari SH, et al. A rapid phenotypic assay for detecting multiple nucleoside analogue reverse transcriptase inhibitor-resistant HIV–1 in plasma. Antivir Ther. 2002 Jun;7(2):131–9. [PMID 12212925]

Intellectual Property:

• HHS Reference No. E–129–2013/0—

—PCT Application No. PCT/US1999/013957 filed 16 Jun 1999, which published as WO 1999/66068 on 23 Dec 1999

—US Patent No. 6,787,126 issued 07 Sep 2004

—Various international patents issued

• HHS Reference No. E–129–2013/1—

—US Patent No. 7,691,572 issued 06 Apr 2010

Related Technologies: HHS Reference No. E–232–1993—

• PCT Application No. PCT/US1996/001257 filed 26 Jan 1996, which published as WO 1996/023076 on 01 Aug 1996

• US Patent No. 5,849,494 issued 15 Dec 1998

• US Patent No. 6,136,534 issued 24 Oct 2000

• Various international patents issued or pending

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Antigen, Encoding Gene, Related Monoclonal Antibody and Hybridoma Clones for *Streptococcus pneumoniae* Serological Diagnostics

Description of Technology: This CDC developed invention pertains to *Streptococcus pneumoniae* protein ''pneumococcal fimbrial protein A (PfpA),'' as well as the encoding *pfpA* gene. *S. pneumoniae* linked pneumococcal disease is prevalent among the very young, the elderly and also immunocompromised individuals. This invention covers the breadth of directly PfpA-related technology that might be employed for development of diagnostic tests for *S. pneumoniae* and/or vaccines directed against the pathogen. In addition to the intellectual property protected amino acid sequence and encoding plasmid, monoclonal antibodies and corresponding hybridomas are also available.

Potential Commercial Applications:

• Screening diagnostic young, elderly and immunocompromised patients for possible *S. pneumoniae* infection

• Pneumococcal disease vaccine development or refinement

Competitive Advantages:

• Easily adapted to a high-throughput assay for mass screening purposes

• Can be formatted as an on-site, lateral-flow diagnostic; both PfpA antigen and anti-PfpA mAb are available

Development Stage: In vitro data available

Inventors: Harold Russell, Jacquelyn Sampson, Steven P. O'Connor (all of CDC)

Publications:

1. Russell H, et al. Monoclonal antibody recognizing a species-specific protein from Streptococcus pneumoniae. J Clin Microbiol. 1990 Oct;28(10):2191–5. [PMID 2229341]

2. Sampson JS, et al. Cloning and nucleotide sequence analysis of psaA, the Streptococcus pneumoniae gene encoding a 37-kilodalton protein homologous to previously reported Streptococcus sp. adhesins. Infect Immun. 1994 Jan;62(1):319–24. [PMID 7505262]

Intellectual Property: HHS Reference No. E–157–1991/0—US Patent No. 6,312,944 issued 06 Nov 2001

Related Technologies:

• HHS Reference No. E–030–2010/0

• HHS Reference No. E–250–2013/0

• HHS Reference No. E–325–2013/0

• HHS Reference No. E–660–2013/0

• HHS Reference No. E–661–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Dated: January 27, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–02252 Filed 2–3–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: February 26, 2014.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Susana Mendez, Ph.D., DVM, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550, *mendezs@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 28, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–02253 Filed 2–3–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2013–0066]

Privacy Act of 1974; Department of Homeland Security/ALL—001 Freedom of Information Act and Privacy Act Records System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Homeland Security (''Department'' or ''DHS'') proposes to modify the current Department of Homeland Security system of records notice titled, ''Department of Homeland Security/ALL—001 Freedom of Information Act and Privacy Act Records System of Records,'' last published October 28, 2009. This system of records allows the Department of Homeland Security to collect and maintain records about Freedom of Information Act (FOIA) and Privacy Act requests and appeals submitted to the Department, including any litigation that may result therefrom, information on Mandatory Declassification Reviews, and information that is created and used in the Department's management of the FOIA and Privacy Act programs. As a result of the biennial review of this system, (1) the location of certain records has been updated, (2) categories of records has been updated to clarify that responses are included, (3) five routine uses have been added, and (4) six routine uses have been modified. Additionally, this Notice includes non-substantive changes to simplify the formatting and the text of the previously published Notice. The entire notice is being republished for ease of reference. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before March 6, 2014. This updated system will be effective March 6, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2013–0066 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Karen L. Neuman (202–343–1717), Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to modify a current DHS system of records titled ''DHS/ALL—001 Freedom of Information Act and Privacy Act Records System of Records,'' 74 FR 55572 (October 28, 2009).

As part of its biennial review process, DHS is updating and reissuing this system of records notice to reflect a change in the location of records to include the use of electronic FOIA tracking systems by DHS and its components, and because routine uses are being updated to permit additional sharing. Categories of records have been updated to include responses to requests. Routine use (L) has been added to permit sharing with National Archives and Records Administration (NARA), Office of Government Information Services (OGIS) so those agencies can review administrative policies, procedures, and compliance, and to facilitate resolutions to disputes between persons making Freedom of Information Act (FOIA) requests and DHS. Routine use (M) has been added to allow information to be shared with a court, magistrate, or administrative tribunal in the course of presenting evidence, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings. Routine use (N) has been added to allow information to be shared with a court, grand jury, or administrative or adjudicative body, when DHS determines that the records are relevant, to the proceeding. Routine use (O) has been added to allow information to be shared with appropriate federal, state, tribal, local, or foreign governmental agencies or multilateral government organizations

responsible for investigations or prosecutions when DHS believes the information would assist enforcement of applicable civil or criminal laws. Routine use (P) has been added to allow information to be shared with the news media and the public, with approval of the Chief Privacy Officer in consultation with counsel.

In addition, six routine uses have been modified. Routine use (A) has been modified to include former employees of DHS and to eliminate redundant language. Routine use (C) has been updated to specify that information may be shared specifically with the General Services Administration (GSA) for records management purposes. Modifications have been made to routine uses (D), (E), (G), and (H) to provide greater clarity and make non-substantive grammatical changes.

Consistent with DHS's information sharing mission, information stored in the DHS/ALL—001 Freedom of Information Act and Privacy Act Records System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate other federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this systems of records notice. Certain information about FOIA requestors, including the name of the requestor and a description of the requested records is not exempt under the FOIA and is released to outside entities who request such information.

The previously issued Final Rule exempting this system of records from certain provisions of the Privacy Act remains in effect [75 FR 50846 (August 18, 2010)]. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/ALL—001 Freedom of Information Act and Privacy Act Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

Department of Homeland Security (DHS)/ALL—001

SYSTEM NAME:

DHS/ALL—001 Freedom of Information Act and Privacy Act Records.

SECURITY CLASSIFICATION:

Classified and unclassified.

SYSTEM LOCATION:

Records are maintained at DHS and component Freedom of Information Act (FOIA) offices in Washington, DC, and at field locations. Electronic records are maintained within electronic request tracking systems. These records reside within DHS and component FOIA office systems and databases. These systems and databases include commercial off-the-shelf applications as well as government developed applications and systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system encompasses all individuals who submit FOIA requests, Privacy Act requests, and administrative appeals to DHS; individuals whose requests and/or records have been referred to DHS by other agencies; attorneys or other persons representing individuals submitting such requests and appeals; individuals who are the subjects of such requests and appeals; individuals who file litigation based on their requests; Department of Justice (DOJ) and other government litigators; and/or DHS personnel assigned to handle such requests or appeals.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Records received, created, or compiled in processing FOIA and Privacy Act requests or appeals, including:
  - Original requests and administrative appeals and responses to either or both;
  - Intra or interagency memoranda, referrals, correspondence, notes, fee schedules, assessments, cost calculations, and other documentation related to the referral and/or processing of the FOIA and/or Privacy Act request or appeal;
  - Correspondence with the individuals or entities that submitted the requested records and copies of the requested records, including records that might contain confidential business information or personal information;
  - Correspondence related to fee determinations and collection of fees owed under the FOIA; and
  - Copies of requested records and records under administrative appeals.
- Types of information in the records may include:
  - Requesters' and their attorneys' or representatives' information including name, address, email address, telephone numbers, fax numbers, office telephone numbers, and FOIA and Privacy Act case numbers;
  - Name, address, email address, telephone numbers, and fax number of DHS employees and contractors;
  - Name of the person who is the subject of the request or administrative appeal;
  - Fee determinations and amounts of fees owed;
  - Unique case identifier;
  - Alien Registration Number (A-Number) of the requester/appellant or the attorney or other individual representing the requester, or other identifier assigned to the request or appeal;
  - Other identifiers provided by a requester/appellant about him or herself, or about the individual whose records are requested, such as social security number, driver's license number, FBI Number, or A-Number.
- The system also contains copies of documents relevant to appeals and lawsuits brought under the FOIA and Privacy Act including those from DOJ and other government litigators.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 (Freedom of Information Act), 5 U.S.C. 552a (Privacy Act); 44 U.S.C. 3101 (Records Management by Federal Agencies); E.O. 12958 (Classified National Security Information, as amended).

PURPOSE(S):

The purpose of this system is to support the processing of record access requests and administrative appeals under the FOIA, as well as access, notification, and amendment requests and administrative appeals under the Privacy Act, whether DHS receives such

requests directly from the requester or via referral from another agency. In addition this system is used to support agency participation in litigation arising from such requests and appeals, and to assist DHS in carrying out any other responsibilities under the FOIA or the access or amendment provisions of the Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, which includes the release of the name of individuals making FOIA requests and a description of the records requested as required by FOIA, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ) including United States Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To National Archives and Records Administration (NARA) or the General Services Adminstration (GSA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign agency, including law enforcement, or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations.

H. To a federal, state, local, or foreign agency or entity for the purpose of consulting with that agency or entity to enable DHS to make a determination as to the propriety of access to or correction of information, or for the purpose of verifying the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment of information.

I. To a federal agency or other federal entity that furnished the record or information for the purpose of permitting that agency or entity to make a decision regarding access to or correction of the record or information, or to a federal agency or entity for purposes of providing guidance or advice regarding the handling of particular requests.

J. To the DOJ, to the Department of Treasury (DOT), or to a consumer reporting agency for collection action on any delinquent debt when circumstances warrant.

K. To the Office of Management and Budget (OMB) or the DOJ to obtain advice regarding statutory and other requirements under the FOIA or Privacy Act.

L. To National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the FOIA, and to facilitate OGIS's offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

M. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in response to a subpoena, or in connection with criminal law proceedings.

N. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when DHS determines that the records are relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

O. To appropriate federal, state, tribal, local, or foreign governmental agencies or multilateral government organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, when DHS believes the information would assist enforcement of applicable civil or criminal laws.

P. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy, or that disclosure would violate any federal statuate or regulation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Privacy Act information may be reported to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on paper and/or in electronic form. Records that contain national security information and are classified are stored in accordance with applicable executive orders, statutes, and agency implementing regulations.

RETRIEVABILITY:

Records are retrieved by the name of the requester or appellant; the number assigned to the request or appeal; and in some instances the name of the attorney representing the requester or appellant, the name of an individual who is the subject of such a request or appeal, and/or the name or other identifier of DHS personnel assigned to handle such requests or appeals.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Records and technical equipment are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the NARA's General Records Schedule 14, which can be found at: *http://www.archives.gov/records-mgmt/grs/grs14.html*.

FOIA and Privacy Act records in litigation are retained for ten years after the end of the fiscal year in which judgment was made or when all appeals have been exhausted, whichever is later. This disposition is temporary and is under review and approval was approved by the NARA through pending schedule N1–563–08–33, Item 11.

If the FOIA or Privacy Act record deals with significant policy-making issues, it is a permanent record.

A FOIA or Privacy Act record may qualify as a permanent federal record if the FOIA or Privacy Act record deals with significant policy-making issues. The National Archives, a facility operated by the National Archives and Records Administration (NARA), is responsible for safeguarding Government records. It requires that permanent records go to the National Archives when they are at least 30 years old or when the Agency determines that they are no longer needed for business purposes. Permanent records include all records accessioned by NARA into the National Archives of the United States and later increments of the same records, and those for which the disposition is permanent on SF 115s, Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

SYSTEM MANAGER AND ADDRESS:

For DHS Headquarters records, Deputy Chief FOIA Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under ''contacts.''

NOTIFICATION PROCEDURE:

If you are seeking notification of and access to any record contained in this system of records, or seeking to contest its content, you may submit a request in writing to the DHS Headquarters' or component's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If you believe more than one component maintains records in this system of records concerning you, you may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records.

If your request is seeking records on behalf of another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from those individuals who submit requests and administrative appeals pursuant to the FOIA and the Privacy Act or who file litigation regarding such requests and appeals; the agency record keeping systems searched in the process of responding to such requests and appeals; Departmental personnel assigned to handle such requests, appeals, and/or litigation; other agencies or entities that have referred to DHS requests concerning DHS records, or that have consulted with DHS regarding handling of particular requests; and submitters or subjects of records or information that have provided assistance to DHS in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2), potions of this system are exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4): (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (e)(12); (f); (g)(1); and (h). Additionally, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5), and (k)(6), portions of this system are exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When DHS is processing Privacy Act and/or FOIA requests, responding to appeals, or participating in FOIA or Privacy Act litigation, exempt materials from other systems of records may become part of the records in this system.

To the extent that copies of exempt records from other systems of records

are entered into this system, DHS claims the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

Dated: January 10, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–02206 Filed 2–3–14; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–1065]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of teleconference meeting.

SUMMARY: The Towing Safety Advisory Committee (TSAC) will meet via teleconference to present and discuss its final report on Recommendations for the Improvement of Automatic Identification System Encoding for Towing Vessels, receive status reports from nine TSAC subcommittees, and consider a topic of interest to the committee. This meeting will be open to the public.

DATES: The teleconference will take place on Tuesday, February 25, 2014, from 1 p.m. to 3 p.m. EST. This meeting may close early if all business is finished. If you wish to make oral comments at the teleconference, notify Mr. Ken Doyle before the teleconference, as specified in the **FOR FURTHER INFORMATION CONTACT** section, or the designated Coast Guard staff at the meeting. If you wish to submit written comments or make a presentation, submit your comments or request to make a presentation by February 18, 2014.

ADDRESSES: The Committee will meet via teleconference. To participate by phone, please contact Mr. Ken Doyle listed below in the **FOR FURTHER INFORMATION CONTACT** section to obtain teleconference information. Note the number of teleconference lines is limited and will be available on a first-come, first-served basis. To come to the host location in person and join those participating in this teleconference from U.S. Coast Guard Headquarters, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7509, please contact Mr. Ken Doyle, listed in the **FOR FURTHER INFORMATION CONTACT** section to request directions and building access. You must request building access by February 18, 2014, and present a valid, government-issued photo identification to gain entrance to the Coast Guard Headquarters building.

For information on facilities or services for individuals with disabilities or to request special assistance at the teleconference, contact Mr. Ken Doyle listed in the **FOR FURTHER INFORMATION CONTACT** section, as soon as possible.

If you want to make a presentation, send your request by February 18, 2014, to Mr. Ken Doyle, listed in the **FOR FURTHER INFORMATION CONTACT** section. To facilitate public participation we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit a written comment on or before February 18, 2014 or make an oral comment during the public comment portion of the teleconference.

To submit a comment in writing, use one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Kenneth.J.Doyle@uscg.mil.* Include the docket number (USCG–2013–1065) on the subject line of the message.
- *Fax:* (202) 372–8283. Include the docket number (USCG–2013–1065) on the subject line of the fax.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.
- To avoid duplication, please use only one of these methods.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this notice. All comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this Notice, go to *http://www.regulations.gov,* insert USCG–2013–1065 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Commander Robert Smith, Designated Federal Official (DFO) of TSAC, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington, DC 20593–7509; telephone (202) 372–1410, fax (202) 372–8283, or Mr. Ken Doyle, Alternate Designated Federal Official (ADFO) of TSAC, Commandant (CG–OES–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7509, Washington, DC 20593–7509; telephone (202) 372–1421, fax (202) 372–8283. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix. (Pub. L. 92–463). As stated in 33 U.S.C. 1231a, the Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

Agenda of Meeting

The agenda for the February 25, 2014, teleconference includes:

(1) Presentation of the draft final report on Recommendations for the Improvement of Automatic Identification System Encoding for Towing Vessels (AIS)—Task #13–01.

(2) Status updates from the following Subcommittees:

(a) Recommendations Regarding Manning of Inspected Towing Vessels—Task #13–02.

(b) Recommendations to Create Standardized Terminology for the Towing Industry—Task #13–03.

(c) Recommendations for Evaluating Placement of Structures Adjacent to or Within the Navigable Channel—Task #13–04.

(d) Recommendations for Designation of Narrow Channels—Task #13–05.

(e) Recommendations for the Maintenance, Repair and Utilization of Towing Equipment, Lines and Couplings—Task #13–06.

(f) Recommendations Regarding Steel Repair of Inspected Towing Vessels on Inland Service—Task #13–07.

(g) Recommendations For Mid-Stream Liquefied Natural Gas and Compressed Natural Gas Refueling of Towing Vessels—Task #13–08.

(h) Review of Coast Guard marine casualty reporting requirements and revision of Forms CG–2692—Report of Marine CASUALTY; CG–2692A—Barge Addendum; and CG–2692B—REPORT OF REQUIRED CHEMICAL DRUG AND ALCOHOL TESTING FOLLOWING A

SERIOUS MARINE INCIDENT—Task #13–09.

(i) Recommendation to Establish Criteria for Identification of Air Draft for Towing Vessels and Tows—Task #13–10.

(3) Presentation and discussion on cyber security awareness.

(4) TSAC member comments.

(5) Public comments.

There will be a comment period for TSAC and a comment period for public after each report, but before each recommendation is formulated. The committee will review the information presented on each issue, deliberate on any recommendations presented in the subcommittees' reports, and formulate recommendations for the Department's consideration. A copy of each draft report and the final agenda will be available at *https://homeport.uscg.mil/tsac.*

During the February 25, 2014 teleconference, the public comment period will be from approximately 2:45 p.m. to 3 p.m. Speakers are requested to limit their comments to three minutes. Please note that this public comment period may start before 2:45 p.m. if all other agenda items have been covered and may end before 3 p.m. if all of those wishing to comment have done so. Please contact Mr. Ken Doyle, listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Minutes

Minutes from the meeting will be available for public review and copying within 30 days following the meeting at *https://homeport.uscg.mil/tsac.*

Notice of Future 2014 TSAC Meetings

To receive automatic email notices of future TSAC meetings in 2014, go to the online docket, USCG–2013–1065 (*http://www.regulations.gov/#!docketDetail;D=USCG-2013-1065*), and select the sign-up-for-email-alerts option. We plan to use the same docket number for all TSAC meetings notice in 2014, so when the next meeting notice is published you will receive an email alert from *www.regulations.gov* when the notice appears in this docket.

Dated: January 29, 2014.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2014–02220 Filed 2–3–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0686]

Waterway Suitability Assessment for Expansion of Liquefied Gas Facilities; Houston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Coast Guard, at Sector Houston-Galveston, announces receipt of a Letter of Intent (LOI) and Waterways Suitability Assessment (WSA) for two separate proposed construction projects expanding existing Liquefied Hazardous Gas (LHG) facilities in Houston, Texas. The LOI and WSA were submitted by Intercontinental Terminals Company (ITC) and Vopak. The Coast Guard is notifying the public of this action to solicit public comments on the proposed expansion of Liquefied Hazardous Gas (LHG) facilities, as defined by 33 CFR 127.005.

DATES: Comments and related material must be received on or before March 6, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0686 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) Fax: 202–493–2251.

(3) Mail or Delivery: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these three methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of availability, call or email LCDR Xochitl Castaneda, U.S. Coast Guard; telephone 713–671–5164, email *Xochitl.L.Castaneda@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl T. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard encourages public participation. We request that you submit comments and related materials in response to this notice. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice, USCG–2013–0686, and provide a reason for each suggestion or recommendation. You may submit your comments and related material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0686) in the ''SEARCH'' box and click ''SEARCH.'' Then click on ''Submit a Comment'' on the line associated with this notice.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0686) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public meeting: We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If, based on requests or comments received, the Coast Guard determines that a public meeting would aid this evaluation and subsequent recommendation, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Under 33 CFR 127.007, an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must submit an LOI to the Captain of the Port (COTP) of the zone in which the facility is or will be located. Under 33 CFR 127.009, after receiving an LOI, the COTP issues a Letter of Recommendation (LOR) as to the suitability of the waterway for LNG or LHG marine traffic to the appropriate jurisdictional authorities. The LOR is based on a series of factors outlined in 33 CFR 127.009 that relate to the physical nature of the affected waterway and issues of safety and security associated with LNG or LHG marine traffic on the affected waterway.

The purpose of this notice is to solicit public comments on the two separate proposed construction and expansion projects related to existing LHG facilities as submitted by ITC and Vopak in Houston, Texas. Input from the public may be useful to the COTP with respect to developing the LOR. The Coast Guard requests comments to help assess the suitability of the associated waterway for increased LHG marine traffic as it relates to navigation, safety, and security.

On January 24, 2011, the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 01–2011, ''Guidance Related to Waterfront Liquefied Natural Gas (LNG) Facilities.'' NVIC 01–2011 provides guidance for owners and operators seeking approval to construct and operate LNG facilities. While NVIC 01–2011 is specific to LNG, it provides useful process information and guidance for owners and operators seeking approval to construct and operate or expand LHG facilities as well. The Coast Guard will refer to NVIC 01–2011 for process information and guidance in evaluating the two projects included in the LOI and WSA submitted by ITC and Vopak. A copy of NVIC 01–2011 is available for viewing in the public docket for this notice and also on the Coast Guard's Web site at *http://www.uscg.mil/hq/cg5/nvic/2010s.asp.*

This notice is issued under authority of 33 U.S.C. §§ 1223–1225, Department of Homeland Security Delegation Number 0170.1(70), 33 CFR 127.009, and 33 CFR 103.205.

Dated: December 31, 2013.

B.K. Penoyer,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston, Texas.

[FR Doc. 2014–02198 Filed 2–3–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Customs Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-day notice and request for comments; extension of an existing collection of information: 1651–0009.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Customs Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (78 FR 70065) on November 22, 2013, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before March 6, 2014 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Customs Declaration.

OMB Number: 1651–0009.

Form Number: CBP Form 6059B.

Abstract: CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 U.S.C. 66 and section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498). Section 148.13 of the CBP

regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12 requires verbal declarations from travelers entering the United States. Generally, verbal declarations are required from travelers arriving by land.

A sample of CBP Form 6059B can be found at: *http://www.cbp.gov/xp/cgov/travel/vacation/sample_declaration_form.xml.*

Current Actions: This submission is being made to extend the expiration date. In addition, burden hours have been added to this collection to allow for existing requirements for verbal declarations under 19 CFR 148.12. There are no changes to the data CBP collects under the provisions of 19 CFR 148.12, 148.13 or CBP Form 6059B.

Type of Review: Extension (with change).

Affected Public: Individuals.

CBP Form 6059B:

Estimated Number of Respondents: 104,506,000.

Estimated Number of Total Annual Responses: 104,506,000.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 7,001,902.

Verbal Declarations:

Estimated Number of Respondents: 233,000,000.

Estimated Number of Total Annual Responses: 233,000,000.

Estimated Time per Response: 10 seconds.

Estimated Total Annual Burden Hours: 669,000.

Dated: January 29, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–02231 Filed 2–3–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2014–0005]

Advisory Committee on Commercial Operations of Customs and Border Protection (COAC)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) will meet on February 20, 2014, in Washington, DC. The meeting will be open to the public.

DATES: COAC will meet on Thursday, February 20, from 1:00 p.m. to 5:00 p.m. EST. Please note that the meeting may close early if the committee has completed its business.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using a method indicated below:

—For members of the public who plan to attend the meeting in person, please register either online at *https://apps.cbp.gov/te_reg/index.asp?w==15*; by email to *tradeevents@dhs.gov;* or by fax to 202–325–4290 by 5:00 p.m. EST on February 18, 2014.

—For members of the public who plan to participate via webinar, please register online at *https://apps.cbp.gov/te_reg/index.asp?w=16* by 5:00 p.m. EST on February 18, 2014.

Feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered and later require cancellation, please do so in advance of the meeting by accessing one (1) of the following links: *https://apps.cbp.gov/te_reg/cancel.asp?w=15* to cancel an in person registration, or *https://apps.cbp.gov/te_reg/cancel.asp?w=16* to cancel a webinar registration.

ADDRESSES: The meeting will be held at the U.S. Customs and Border Protection, Office of Training and Development Conference Space, at 1717 H Street NW., Conference Room 7300 A–C, Washington, DC 20006.

All visitors to 1717 H Street NW., must show a state-issued ID or Passport and sign in as a visitor to proceed through the security checkpoint for admittance to the building.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection at 202–344–1661 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee prior to the formulation of recommendations as listed in the ''Agenda'' section below.

Comments must be submitted in writing no later than February 13, 2014, and must be identified by Docket No. USCBP–2014–0005, and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: Tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–325–4290
- *Mail:* Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. Do not submit personal information to this docket.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2014–0005. To submit a comment, see the link on the Regulations.gov Web site for ''How do I submit a comment?'' located on the right hand side of the main site page.

There will be multiple public comment periods held during the meeting on February 20, 2014. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP Web page, *http://www.cbp.gov/xp/cgov/trade/trade_outreach/coac/coac_13_meetings/*, at the time of the meeting.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone 202–344–1440; facsimile 202–325–4290.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. Appendix (Pub. L. 92–463). The COAC provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS and the Department of the Treasury.

Agenda

The COAC will hear from the following project leaders and subcommittees on the topics listed below and then will review, deliberate,

provide observations, and formulate recommendations on how to proceed on those topics:

1. The Trusted Trader Subcommittee: Review and discuss the subcommittee's proposed recommendations pertaining to the Customs-Trade Partnership Against Terrorism (C–TPAT) criteria for exporters. Review and discuss the action plan to establish the C–TPAT for exports component under the C–TPAT umbrella.

2. The Export Subcommittee: Review and discuss suggested revisions to specific Customs and Border Protection's export policies as well as recommendations on a Master Principles Document for a One U S. Government at the Border focused on Exports.

3. The One U.S. Government at the Border Subcommittee: Review and discuss an update on the progress of the Partner Government Agency –Message Set (PGA–MS) and potential collaboration with the Border Inter-Agency Executive Council (BIEC).

4. The Trade Enforcement and Revenue Collection Subcommittee: Review and discuss the comments from the Regulatory Audit Working Group on the final draft document on the planned enhancements for the Focused Assessment process; report out on the Intellectual Property Rights (IPR) Working Group's work to determine the feasibility of a Trusted Trader Program for IPR, the simplified seizure process for low-value shipments, and the application of the Document Imaging System for IPR purposes; and report on the Bonds Working Group's discussions on the concept of e-bonds and centralization of Single Transaction Bonds.

5. The Trade Modernization Subcommittee: Review and discuss potential recommendations addressing the Role of the Broker Working Group in the area of Broker Permits and update on the Automated Commercial Environment (ACE) Development and Deployment Schedule.

6. The Global Supply Chain Subcommittee: Review and discuss the recommendations regarding the Air Cargo Advance Screening (ACAS) pilot and address the next steps regarding land border issues in the area of Beyond the Border and 21st Century Initiatives.

Dated: January 30, 2014.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Office of Trade Relations.

[FR Doc. 2014–02337 Filed 2–3–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5770–N–01]

Request for Comment on the 2015 American Housing Survey Metropolitan Samples

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice announces the intent of the Department of Housing and Urban Development (HUD) to conduct the American Housing Survey (AHS) for 2015 with a new national sample and up to 30 metropolitan area samples. As part of the planning for the 2015 AHS, HUD is soliciting public comments regarding which metropolitan areas should be sampled. HUD is interested in all comments, especially from government policymakers, academic researchers, and AHS data users that specify: (1) Which metropolitan areas are important from a housing policy perspective; (2) which metropolitan areas are important from a housing program perspective, including, but not limited to, low-income and assisted housing programs; and (3) which metropolitan areas are important for other demographic or socioeconomic reasons. HUD encourages those persons interested in commenting to consider these three questions when suggesting metropolitan areas to be sampled for 2015.

DATES: *Comments Due Date:* April 7, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must refer to the above docket number and title. There are two methods for submitting public comments:

1. Submission of Comments by Mail. Comments may be submitted by mail to Shawn Bucholtz, Director, Housing and Demographic Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th St. SW., Room 8222, Washington, DC 20410. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments: All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Shawn Bucholtz, Director, Housing and Demographic Analysis Division, Office of Policy, Development and Research, 451 7th Street SW., Room 8222, Washington, DC 20410–0500, telephone number 202–402–5538 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

The American Housing Survey (AHS) provides a periodic measure of the size and composition of the country's housing inventory and provides valuable information about housing costs and housing quality. HUD provides all funding and oversight for the AHS. Through an interagency agreement, the Census Bureau provides operational management and field data collection for the survey.

The current AHS collects data on subjects such as the amount and types of changes in the housing stock, the physical condition of the housing stock, the characteristics of the occupants, housing costs, the persons eligible for and beneficiaries of assisted housing, and the number and characteristics of vacant units.

HUD needs AHS data to monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly. AHS data allow HUD to evaluate, monitor, and design HUD programs to improve efficiency and effectiveness. Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

B. AHS Sample Design

The AHS is composed of a national longitudinal sample, which is surveyed every two years, and metropolitan longitudinal samples, which have been surveyed at irregular intervals. The current national longitudinal sample was drawn in 1985, with additions and subtractions to account for new construction, demolitions and conversions. The national longitudinal sample is designed to be representative of the nation's housing stock.

The metropolitan longitudinal samples are designed to be representative of the housing stock within a specific metropolitan area. The metropolitan longitudinal samples (55) were drawn at various points in time between 1974 and 2013. The 2013 AHS was the final survey administered to the current national and metropolitan longitudinal samples. HUD will draw a new national longitudinal sample and individual metropolitan longitudinal samples for 2015 and beyond.

C. AHS Metropolitan Longitudinal Sample History

The current goal of the AHS is to survey each of the largest 60 metropolitan areas once every four years. However, due to budgetary reductions, this goal has not been achieved since the late 1970s. The most recent surveys, the 2011 AHS and the 2013 AHS, have benefited from increased funding, which has enabled HUD to nearly achieve its metropolitan area sample goal. The 2011 AHS included 29 metropolitan area samples, and the 2013 AHS included 25 metropolitan area samples. Table 1 summarizes the metropolitan area samples in the 2011 AHS. Table 2 summarizes the metropolitan area samples in the 2013 AHS.

TABLE 1—METROPOLITAN AREA SAMPLES IN THE 2011 AHS

Metropolitan area or division	Years spanned by longitudinal sample
Anaheim-Santa Ana Metro Division	1974, 1977, 1981, 1986, 1990, 1994, 2002, 2011.
Atlanta-Sandy Springs-Marietta, GA Metro Area	1996, 2004, 2011.
Birmingham-Hoover, AL Metro Area	1998, 2011.
Buffalo-Niagara Falls, NY Metro Area	1976, 1979, 1984, 1988, 1994, 2002, 2011.
Charlotte-Gastonia-Concord, NC-SC Metro Area	1995, 2002, 2011.
Cincinnati-Middletown, OH-KY-IN Metro Area	1998, 2011.
Cleveland-Elyria-Mentor, OH Metro Area	1996, 2004, 2011.
Columbus, OH Metro Area	1995, 2002, 2011.
Dallas-Plano-Irving, TX Metro Division	1974, 1981, 1985, 1989, 1994, 2002, 2011.
Denver-Aurora, CO Metro Area	1995, 2004, 2011.
Fort Worth-Arlington, TX Metro Division	1974, 1977, 1981, 1985, 1989, 1994, 2002, 2011.
Indianapolis-Carmel, IN Metro Area	1996, 2004, 2011.
Kansas City, MO-KS Metro Area	1995, 2002, 2011.
Los Angeles-Long Beach, CA Metro Division	1995, 1999, 2003, 2011.
Memphis, TN-MS-AR Metro Area	1996, 2004, 2011.
Milwaukee-Waukesha-West Allis, WI Metro Area	1975, 1979, 1984, 1988, 1994, 2002, 2011.
New Orleans-Metairie-Kenner, LA Metro Area	1995, 2004, 2009, 2011.
Oakland-Fremont-Hayward, CA Metro Division	1998, 2011.
Phoenix-Mesa-Scottsdale, AZ Metro Area	1974, 1977, 1981, 1985, 1989, 1994, 2002, 2011.
Pittsburgh, PA Metro Area	1995, 2004, 2011.
Portland-Vancouver-Beaverton, OR-WA Metro Area	1995, 2002, 2011.
Providence-New Bedford-Fall River, RI-MA Metro Area	1998, 2011.
Riverside-San Bernardino-Ontario, CA Metro Area	1975, 1978, 1982, 1986, 1990, 1994, 2002, 2011.
San Diego-Carlsbad-San Marcos, CA Metro Area	1975, 1978, 1982, 1987, 1991, 1994, 2002, 2011.
San Francisco-San Mateo-Redwood City, CA Metro Division	2011.
San Jose-Sunnyvale-Santa Clara, CA Metro Area	1998, 2011.
St. Louis, MO-IL Metro Area	1996, 2004, 2011.
Sacramento—Arden-Arcade—Roseville, CA Metro Area	1996, 2004, 2011.
Virginia Beach-Norfolk-Newport News, VA-NC Metro Area	1998, 2011.

TABLE 2—METROPOLITAN AREA SAMPLES IN THE 2013 AHS

Metropolitan area or division	Years spanned by longitudinal sample
Austin-Round Rock, TX Metro Area	2013.
Baltimore-Towson, MD Metro Area	1998, 2007, 2013.
Boston-Cambridge-Quincy, MA-NH Metro Area	1998, 2007, 2013.
Chicago Metro Area	1999, 2003, 2009, 2013.
Detroit-Warren-Livonia, MI Metro Area	1999, 2003, 2009, 2013.
Hartford-West Hartford-East Hartford, CT Metro Area	1996, 2004, 2013.
Houston-Sugar Land-Baytown, TX Metro Area	1998, 2007, 2013.

TABLE 2—METROPOLITAN AREA SAMPLES IN THE 2013 AHS—Continued

Metropolitan area or division	Years spanned by longitudinal sample
Jacksonville, FL Metro Area	2013.
Las Vegas-Paradise, NV Metro Area	2013.
Louisville-Jefferson County, KY-IN Metro Area	2013.
Miami-Fort Lauderdale-Miami Beach, FL Metro Area	1995, 2002, 2007, 2013.
Minneapolis-St. Paul-Bloomington, MN-WI Metro Area	1998, 2007, 2013.
New York Metro Area	1995, 1999, 2003, 2009, 2013.
Nashville-Davidson—Murfreesboro—Franklin, TN Metro Area	2013.
Northern NJ Metro Area	1987, 1991, 1995, 1999, 2003, 2009, 2013.
Oklahoma City, OK Metro Area	1996, 2004, 2013.
Orlando-Kissimmee, FL Metro Area	2013.
Philadelphia, PA Metro Area	1995, 1999, 2003, 2009, 2013.
Richmond, VA Metro Area	2013.
Rochester, NY Metro Area	1998, 2013.
San Antonio, TX Metro Area	1995, 2004 ,2013.
Seattle-Tacoma-Bellevue, WA Metro Area	1996, 2004, 2009, 2013.
Tampa-St. Petersburg-Clearwater, FL Metro Area	1998, 2007, 2013.
Tucson, AZ Metro Area	2013.
Washington-Arlington-Alexandria, DC-VA-MD-WV Metro Area	1998, 2007, 2013.

D. Redesign Goals of the Metropolitan Longitudinal Samples

Since 2012, HUD has been redesigning the AHS in preparation for the 2015 survey. One area of emphasis during the redesign has been to increase the use and improve usefulness of the metropolitan area data. To do this, we investigated the use of metropolitan area samples in research and evaluated our methodology for determining which metropolitan areas to sample, including our goal of maintaining longitudinal metropolitan area samples by repeating them every four years. The 2015 AHS redesign process has emphasized for HUD the need to develop and maintain constituencies for metropolitan area data.

E. Metropolitan Areas of Importance for Housing Policy, Housing Programs, and Other Reasons

In the past, HUD chose which AHS metropolitan areas to sample based mainly on population size. While population size may be a useful criterion, there are at least three other criteria that may be of greater interest or importance to HUD and the AHS user community.

First, certain metropolitan areas may be good candidates for inclusion in the 2015 AHS because of one or more housing policy issues. For instance, some metropolitan areas may have experienced slower recovery from the housing crisis due to different foreclosure processes. Coastal metropolitan areas may be changing housing policy to improve resiliency to climate change.

Second, some metropolitan areas may be good candidates for inclusion in the 2015 AHS because of participation in housing programs, especially metropolitan areas that are experimenting with different low-income housing program alternatives.

Third, some metropolitan areas may be good candidates for inclusion in the 2015 AHS because of unique demographic or socioeconomic trends related to housing. For instance, some metropolitan areas may be facing fast growth due to energy production and are consequently experiencing housing supply shortages. Other metropolitan areas may be shrinking which could lead to vacant or abandoned housing.

Lastly, it is worth noting that some metropolitan areas may be good candidates for inclusion in the AHS in 2015 and in 2017 or 2019. For instance, in the aftermath of Hurricanes Katrina and Rita, HUD surveyed New Orleans in both 2007 and 2009 for the purposes of measuring recovery in the physical housing stock and in the overall housing market. Commenters should feel free to suggest a near-term (2015–2021) schedule for sampling one or more metropolitan areas.

F. Request for Comments

HUD is seeking additional information from the public regarding which metropolitan areas should be sampled for the 2015 AHS. Governmental policymakers, academic researchers, and other interested parties are encouraged to participate by submitting comments. Information regarding how to submit comments is stated in the **ADDRESSES** section of this notice.

Dated: January 17, 2014.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2014–02193 Filed 2–3–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–EA–2014–N013; FF09X60000–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public meeting of the Sport Fishing and Boating Partnership Council (Council). A Federal advisory committee, the Council was created in part to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

DATES: The meeting will take place Tuesday, February 25, 2014, from 8:30 a.m. to 4 p.m. (Eastern Daylight Time). For deadlines and directions on registering to attend the meeting, submitting written material, and/or giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Department of the Interior; 1849 C Street, NW.; Room 5160.; Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, by U.S. mail at 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; by telephone at (703) 358–2336;

by fax at (703) 358–2548; or by email at *doug_hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Sport Fishing and Boating Partnership Council will hold a meeting.

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, and government. The Council represents the interests of the public and private sectors of the recreational fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc*.

Meeting Agenda

The Council will hold a meeting to consider:

- Issues regarding the Boating Infrastructure Grant Program and Clean Vessel Act Grant Program;
- An update on the activities of the Federal Interagency Council on Outdoor Recreation (FICOR) in implementing the America's Great Outdoors Initiative;
- An update from the FWS Fish and Aquatic Conservation Program on progress in implementing Council recommendations to improve program activities;
- An update from the Recreational Boating and Fishing Foundation on progress in implementing Council recommendations to improve the activities and operations of the Foundation;
- An update on the Wildlife and Sport Fish Restoration Program;
- An update on the implementation of the National Wildlife Refuge System Vision, in particular, recommendation 17: Hunting, Fishing and Outdoor Recreation;
- Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

Public Input

If you wish to	Then you must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	Tuesday, February 18, 2014
Submit written information or questions before the meeting for the council to consider during the meeting.	Tuesday, February 18, 2014
Give an oral presentation during the meeting.	Tuesday, February 18, 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 dates 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 meeting. Written statements must be received by the date listed above in ''Public Input,'' so that the information may be made available to the Council for their consideration prior to the meeting. Written statements must be supplied to the Council Coordinator in one 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 during 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. To ensure an opportunity to speak during the public comment period of the meeting, members of the public must register with the Council Coordinator. 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 meeting 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/sfbpc*.

Stephen Guertin,

Acting Director.

[FR Doc. 2014–02323 Filed 2–3–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES934000–L13200000–EL0000; ALES 57824]

Notice of Invitation To Participate; Coal Exploration License Application ALES 57824, Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are invited to participate with Cahaba Resources, LLC, on a pro rata cost-sharing basis in a program for the exploration of coal deposits owned by the United States of America in lands located in Tuscaloosa County, Alabama, encompassing 760 acres.

DATES: Any party seeking to participate in this exploration program must send written notice to both the Bureau of Land Management (BLM) and Cahaba Resources, LLC, to the addresses provided in the **ADDRESSES** section below, no later than March 6, 2014, or 10 calendar days after the last publication of this Notice in the *Tuscaloosa News* newspaper, whichever is later. This Notice will be published once a week for 2 consecutive weeks in the *Tuscaloosa News,* Tuscaloosa, Alabama. Such written notice must refer to serial number ALES 57824.

ADDRESSES: The proposed exploration license and plan are available for review from 9 a.m. to 4 p.m., Monday through

Friday, in the following offices (serialized under number ALES 57824): BLM Eastern States State Office, 7450 Boston Boulevard, Springfield, VA; and BLM Southeastern States Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS.

A written notice to participate in the exploration license should be sent to Cahaba Resources, LLC, P.O. Box 122, Brookwood, AL 35444; and to the State Director, BLM Eastern States, 7450 Boston Boulevard, Springfield, VA 22153.

FOR FURTHER INFORMATION CONTACT: Michael Glasson, Solid Minerals Program Lead, BLM Eastern States, 7450 Boston Boulevard, Springfield, VA, by email at *mglasson@blm.gov* or by telephone at 202–912–7723. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The exploration activities will be performed pursuant to the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 201(b), and to the regulations at 43 CFR part 3410. The purpose of the exploration program is to gain additional geologic knowledge of the coal underlying the exploration area for the purpose of assessing the coal resources. The exploration program is fully described and will be conducted pursuant to an exploration license and plan approved by the BLM. The exploration plan may be modified to accommodate the legitimate exploration needs of persons seeking to participate. Cahaba Resources, LLC, has applied to the BLM for a coal exploration license on private surface with federally owned minerals in Tuscaloosa County, Alabama.

The lands to be explored for coal deposits in exploration license ALES 57824 are described as follows:

Huntsville Meridian, Alabama

T. 18 S., R. 9 W.,
Sec. 26, S½NE¼, E½SW¼, SE¼;
Sec. 34, SE¼NE¼;
Sec. 35, N½NE¼, SE¼NE¼, N½NW¼, SW¼NW¼, NW¼SW¼, E½SE¼, and SW¼SE¼.

Containing 760 acres.

The Federal coal within the lands described for exploration license ALES 57824 is currently unleased for development of Federal coal reserves.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM.

John Ruhs,
Acting State Director.

[FR Doc. 2014–02267 Filed 2–3–14; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON00000 L10200000 DF0000.LXSICADR0000]

Notice of Public Meeting, Northwest Colorado Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC scheduled a meeting from 10 a.m. to 3 p.m. March 6, 2014, with public comment periods regarding matters on the agenda at 11:15 a.m. and 2 p.m. A specific agenda will be available before the meeting at *www.blm.gov/co/st/en/BLM_Resources/racs/nwrac.html*.

ADDRESSES: The meeting will be held at the BLM Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652.

FOR FURTHER INFORMATION CONTACT: David Boyd, Public Affairs Specialist, Colorado River Valley Field Office (see address above), (970) 876–9008. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in northwestern Colorado.

Topics of discussion during Northwest Colorado RAC meetings may include the BLM National Greater Sage-Grouse Conservation Strategy, working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, wild horse herd management, land exchange proposals, cultural resource management and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

John Mehlhoff,
BLM Colorado Acting State Director.

[FR Doc. 2014–02303 Filed 2–3–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14723; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State Historical Society of Wisconsin has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the State Historical Society of Wisconsin. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the State Historical Society of Wisconsin at the address in this notice by March 6, 2014.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Museum, 30 North Carroll Street, Madison, WI 53703, telephone (608) 261–2461, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the State Historical Society of Wisconsin, Madison, WI. The human remains were removed from the Merton Burial site, Waukesha County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the State Historical Society of Wisconsin professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; and the Menominee Indian Tribe of Wisconsin.

History and Description of the Remains

On July 8, 1993, human remains representing, at minimum, one individual (HP.WK–0248.1) were removed from the Merton Burial site (BWK–0248) in Waukesha County, WI. The Merton Burial site is located near several known Potawatomi villages. There are also early settler accounts of the Potawatomi inhabiting this region of Waukesha County at the time of contact. The human remains were discovered by a construction crew working on a private residence. The crew contacted the Waukesha County Sheriff's Department and County Coroner, who in turn contacted the Historical Society's Burial Sites Preservation Office. Historical Society staff collected the remains that had been exposed and excavated a cranium that was *in situ*. The human remains were determined to be those of a Native American male over the age of 50. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the State Historical Society of Wisconsin

Officials of the State Historical Society of Wisconsin have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, location and context of the burial, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Forest County Potawatomi Community, Wisconsin.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Museum, 30 North Carroll Street, Madison, WI 53703, telephone (608) 261–2461, email Jennifer.Kolb@wisconsinhistory.org, by March 6, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The State Historical Society of Wisconsin is responsible for notifying The Aboriginal Land Tribes that this notice has been published.

Dated: December 23, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–02334 Filed 2–3–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14694; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Anthropology at Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Anthropology at Washington State University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum of Anthropology

at Washington State University. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum of Anthropology at Washington State University at the address in this notice by March 6, 2014.

ADDRESSES: Mary Collins, Museum of Anthropology at Washington State University, P.O. Box 644910 Pullman, WA 99164, telephone (509) 335–4314, email *collinsm@wsu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Museum of Anthropology at Washington State University. The human remains and associated funerary objects were removed from Walla Walla County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Anthropology at Washington State University professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon).

History and Description of the Remains

Sometime before 2000, possibly in 1988, human remains representing, at minimum, one individual were removed from an unknown location in Walla Walla County, WA. The human remains were at the University of Idaho from some unknown date until 2000, when they were transferred to the Museum of Anthropology at Washington State University. Notes at the University of Idaho state the human remains were collected on March 21, 1988, but no additional information was located. No known individuals were identified. The eight associated funerary objects are 2 freshwater mussel shells, 1 bone awl, 2 smooth pebbles, 2 fragmentary pieces of bird bone, and 1 fragment of a chipped stone tool.

The human remains were determined to be Native American based on the nature of the dental wear and the character of the associated funerary objects. Present-day cultural affiliation was based on the generalized location from which the remains were removed in Walla Walla County, WA. The character of the associated funerary objects suggests the human remains probably date to the late prehistoric period or between 2000 and 500 years ago.

Determinations Made by the Museum of Anthropology at Washington State University

Officials of the Museum of Anthropology at Washington State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the eight objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Collins, Museum of Anthropology at Washington State University, P.O. Box 644910 Pullman, WA 99164, telephone (509) 335–4314, email *collinsm@wsu.edu,* by March 6, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon) may proceed.

The Museum of Anthropology at Washington State University is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon) that this notice has been published.

Dated: December 18, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–02336 Filed 2–3–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14724; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State Historical Society of Wisconsin has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the State Historical Society of Wisconsin. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the State Historical Society of Wisconsin at the address in this notice by March 6, 2014.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Museum, 30 North Carroll Street, Madison, WI 53703, telephone (608) 261–2461, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the State Historical Society of Wisconsin, Madison, WI. The human remains and associated funerary objects were removed from the Silverwood Farm Site, Kenosha County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the State Historical Society of Wisconsin professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; and the Menominee Indian Tribe of Wisconsin.

History and Description of the Remains

In January 1995, human remains representing, at minimum, one individual (HP.KN–0408.1) were removed from the Silverwood Farm Site (47–KN–0408) in Kenosha County, WI. The Silverwood Farm site is located near two known Potawatomi villages and a Potawatomi burial ground. There are also early settler accounts of the Potawatomi inhabiting this region of Kenosha County at the time of contact. The remains were disturbed by the landowner while digging postholes with an auger. The Historical Society's Burial Sites Preservation Program was notified of the discovery and the remains were transferred to them. The remains were determined to be those of a juvenile of indeterminate sex and ancestry. No known individuals were identified. The one associated funerary object is a piece of copper (HP.KN–0408.2).

Determinations Made by the State Historical Society of Wisconsin

Officials of the State Historical Society of Wisconsin have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, location and context of the burial, and the associated funerary object.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Forest County Potawatomi Community, Wisconsin.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereafter referred to as ''The Aboriginal Land Tribes'').
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Museum, 30 North Carroll Street, Madison, WI 53703, telephone (608) 261–2461, email *Jennifer.Kolb@wisconsinhistory.org,* by March 6, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects The Aboriginal Land Tribes may proceed.

The State Historical Society of Wisconsin is responsible for notifying The Aboriginal Land Tribes that this notice has been published.

Dated: December 23, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–02288 Filed 2–3–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14698: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Colorado Museum of Natural History, Boulder, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Colorado Museum of Natural History has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural

affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the University of Colorado Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Colorado Museum of Natural History at the address in this notice by March 6, 2014.

ADDRESSES: Steve Lekson, Curator of Anthropology, University of Colorado Museum of Natural History, Campus Box 218, Boulder, CO 80309, telephone (303) 492–6671, *Lekson@colorado.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Colorado Museum of Natural History. The human remains were removed from an unknown location in Georgia, Kentucky, Michigan, New York, North Carolina, Pennsylvania, South Carolina, Virginia, or West Virginia.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Colorado Museum of Natural History professional staff in consultation with representatives of tribes with aboriginal territory in Georgia, Kentucky, Michigan, New York, North Carolina, Pennsylvania, South Carolina, Virginia, or West Virginia. The consultant tribes with aboriginal territory in Georgia, Kentucky, Michigan, New York, North Carolina, Pennsylvania, South Carolina, Virginia, or West Virginia include: The Absentee-Shawnee Tribe of Indians of Oklahoma; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Cherokee Nation; Chickasaw Nation; Delaware Tribe of Indians; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; The Muscogee (Creek) Nation; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York); Sault Ste. Marie Tribe of Chippewa Indians of Michigan; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); United Keetoowah Band of Cherokee Indians in Oklahoma; and White Earth Band of the Minnesota Chippewa Tribe, Minnesota.

The following tribes with aboriginal territory in Georgia, Kentucky, Michigan, New York, North Carolina, Pennsylvania, South Carolina, Virginia, or West Virginia were also invited to participate but were not involved in consultations: Alabama-Quassarte Tribal Town; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kialegee Tribal Town; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Miccosukee Tribe of Indians; Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Lake Band of Chippewa Indians, Minnesota; Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations); Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Tribe of Oklahoma; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Stockbridge Munsee Community, Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and Wyandotte Nation.

Hereafter, all tribes listed in this section are referred to as ''The Consulted and Notified Tribes.''

History and Description of the Remains

Prior to the death of the collector in 1959, human remains representing, at minimum, one individual were removed from an unknown location in Georgia, Kentucky, Michigan, New York, North Carolina, Pennsylvania, South Carolina, Virginia, or West Virginia. Avocational archaeologist Gervis W. Hoofnagle (1886–1959) assembled a collection of nearly 700 Native American cultural items including several sets of human remains. Mr. Hoofnagle's widow sold the collection to the University of Colorado Museum of Natural History in 1961. According his catalog, Mr. Hoofnagle removed these remains from one of nine states he identified as ''Eastern US''. The states are Georgia, Kentucky, Michigan, New York, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia. No known individuals were identified. No associated funerary objects are present.

Pursuant to 43 CFR 10.16, the Secretary of the Interior may make a recommendation for a transfer of control of culturally unidentifiable human remains. On November 6, 2013, the University of Colorado Museum of Natural History requested that the

Secretary, through the Native American Graves Protection and Repatriation Review Committee, recommend the proposed transfer of control of the culturally unidentifiable Native American human remains in this notice to the Eastern Band of Cherokee Indians; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the United Keetoowah Band of Cherokee Indians in Oklahoma. These tribes jointly requested disposition.

The Review Committee, acting pursuant to its responsibility under 25 U.S.C. 3006(c)(5), considered the request at its November 2013 meeting and recommended to the Secretary that the proposed transfer of control proceed. A December 11, 2013 letter on behalf of the Secretary of Interior from the Designated Federal Official transmitted the Secretary's independent review and concurrence with the Review Committee that:

- The University of Colorado Museum of Natural History consulted with every appropriate Indian tribe or Native Hawaiian organization,
- None of The Consulted and Notified Tribes objected to the proposed transfer of control, and
- The University of Colorado Museum of Natural History may proceed with the agreed upon transfer of control of the culturally unidentifiable human remains to the Eastern Band of Cherokee Indians; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Transfer of control is contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Determinations Made by the University of Colorado Museum of Natural History

Officials of the University of Colorado Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based the collecting focus and composition of the Hoofnagle collection.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.16, the disposition of the human remains will be to the Eastern Band of Cherokee Indians; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Steve Lekson, Curator of Anthropology, University of Colorado Museum of Natural History, Campus Box 218, Boulder, CO 80309, telephone (303) 492–6671, *Lekson@colorado.edu,* by March 6, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Eastern Band of Cherokee Indians; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The University of Colorado Museum of Natural History is responsible for notifying The Consulted and Notified Tribes that this notice has been published.

Dated: December 19, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–02341 Filed 2–3–14; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–14641; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Field Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Field Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Field Museum of Natural History at the address in this notice by March 6, 2014.

ADDRESSES: Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 S. Lake Shore Dr., Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Field Museum of Natural History, Chicago, IL. The human remains and associated funerary objects were removed from the Dumaw Creek site in Oceana County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Field Museum of Natural History (Field Museum) professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad

River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac de Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Band of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Fort Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Oneida Tribe of Indians of Wisconsin; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Tribe of Oklahoma; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; Stockbridge Munsee Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation; as well as the Burt Lake Band of Odawa and Chippewa Indians and the Grand River Band of Ottawa Indians, non-Federally recognized Indian groups. Hereafter, all tribes and groups listed in this section are referred to as ''The Consulting Tribes and Indian Groups.''

History and Description of the Remains

In 1915 and 1916, human remains representing, at minimum, 42 individuals were removed from the Dumaw Creek site in Oceana County, MI, by a local farmer, Carl Schrumpf. Mr. Schrumpf sold his collection to Mr. H. E. Sargent of Grand Rapids, MI, who, in turn, sold a large portion of the collection to Mr. Charles Nelson in the late 1920s or early 1930s. The Field Museum's Department of Zoology purchased this material in 1958 from the estate of Mr. Charles Nelson. The collection was transferred from Zoology to the Anthropology Department in March 1959.

Of the 42 individuals, three individuals were children, four were juveniles, one was a young adult of unknown sex, three were young adult females, two were young adult males, ten were adults of unknown sex, one was a middle-aged female, and one was a middle-aged male. One young adult, one middle aged individual, and two older adults probably were males. One individual of indeterminate age, one individual of middle age, and one individual of middle- to old-aged were possibly male. One juvenile or young adult, two young adults, one late early adult to middle-aged adult, one middle-aged individual, one middle- to old-aged adult, and one older adult were possibly female. One young adult was probably female. One individual was of indeterminate age and sex, and one other may have been either a juvenile or an adult. It is possible that some of the elements representing individuals may belong to the same individual, but this could not be determined definitively by Field Museum staff. No known individuals were identified.

The 83 catalog numbers containing associated funerary objects are 1 woven bag of buffalo hair; 1 lot of bag fragments; 1 bag of weasel skin; 1 leather bag or pouch; 1 lot of braided leather thongs; 1 lot of leather bag parts; 1 piece of leather; 1 woven bag of beaver skin; 2 fragments of beaver skin; 1 section of elk skin and hair; 1 section of black bear skin and hair; 1 fragment of raccoon skin; 1 lot of copper hair ornaments; 1 hair plaque fragment; 1 lot of bead fragments; 1 part of a headdress; 1 lot of copper hair beads; 4 lots of hair pipes; 4 lots of projectile points; 7 lots of knives; 1 lot of beads on a thong; 1 part of a bear skin; 1 lot of thong fragments; 1 lot of cord fragments; 1 lot of leather and thongs; 1 lot of braided grass; 1 lot of wood fragments; 1 mussel shell; 1 wooden shaft fragment; 1 thorn; 1 lot of pumpkin seeds; 1 box of bag remnants; 1 lot of hawk beak culmens; 1 lot of bird tail fragments; 1 box of leaf fragments; 1 seed; 1 bone bead; 1 shell bead; 2 celts; 1 tinkling cone; 1 lot of animal skin fragments from the above animals; 2 awls; 1 spear; 1 lot of beaver incisors; 17 lots of beads; 1 lot of small shell beads; 1 lump of ochre; 1 lot of shell pendants; 1 lot of effigy pendants; 1 pendant; 1 lot of grass fragments; and 1 box of powdered ochre.

In 1960, the Field Museum accessioned material as the result of an exchange with the Wright L. Coffinberry Chapter of the Michigan Archaeological Society. This exchange was initiated by Field Museum curator George Quimby. Quimby wrote that this material was directly traceable to the dealer H.E. Sargent, who had bought the material from Mr. Schrumpf. The two associated funerary objects are globular vessels recorded as originally having been found in a burial context.

In 1961, the Field Museum accessioned lithic material collected by Quimby that included material from a Mr. Seymour Rider. Quimby reported that Mr. Rider collected at the site following Schrumpf. It is likely that Quimby made this purchase on behalf of the Field Museum, as it is known that he visited and examined Mr. Rider's collection in the 1960s. The five associated funerary objects accessioned are granite-tempered tan and gray rim sherds that Quimby reported as originally having been removed from graves at the Dumaw Creek site in 1916.

George Quimby conducted research on the Dumaw Creek site in the 1960s, which included visiting the site. Quimby determined that the Dumaw Creek site was the location from which the Native American human remains and associated funerary objects listed in the notice were removed. He determined that the site was both a village and burial ground dating to the early 17th century (he settled on the window of 1605 to 1620 in his 1966 *Fieldiana* report, *The Dumaw Creek site: a seventeenth century prehistoric Indian village and cemetery in Oceana County, Michigan).* Field Museum staff has relied on this date for the purposes of assessing cultural affiliation. Quimby and other researchers have characterized the lower peninsula of Michigan at the time as a zone between Iroquois tribes of the east and Algonquian tribes in eastern Wisconsin (including the Potawatomi, Kickapoo, Sauk, Fox, Menominee, Mascouten, and

Miami). Other texts, such as the *Handbook of North American Indians,* place the Potawatomi's ''protohistoric estate'' in the lower peninsula of Michigan, west and north of, but adjacent to, Central Algonquian groups like the Kickapoo, Sauk, Fox, and Mascouten. O'Gorman and Lovis write that the Potawatomi entered the area around Lake Michigan fairly late in prehistoric times, and that they came to an area which held other groups from about the 1400s to the early 1600s—groups that others, through linguistic and ethnohistoric information, have determined to be the Kickapoo, Sauk, Fox, and Mascouten. Quimby also considered there to be similarity between the burial assemblage—such as a twined bag—and bags made in the 19th century by some of these tribes. This information contributes to a largely agreed-upon oral tradition and belief, as well as accepted historical and archeological information, that a splitting of groups occurred around the Straits of Mackinac by the late 16th century, with the Ottawa/Odawa remaining in this area, the Chippewa/Ojibwe heading west and north, and the group(s) now known as the Potawatomi heading south. Further research and final consultation with Potawatomi, Kickapoo, Sauk, Fox, Menominee, Mascouten, and Miami tribes resulted in the Field Museum's determination that it is reasonable to conclude that the cultural affiliation of the human remains and cultural items listed in this notice lies with the descendant tribes listed in the following section.

Determinations Made by the Field Museum

Officials of the Field Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 42 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 90 catalog numbers representing the objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity can be reasonably traced between the Native American human remains and associated funerary objects and the Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Helen Robbins, The Field Museum of Natural History, 1400 S. Lake Shore Dr., Chicago, IL 60605, telephone (312) 665–7317, email *hrobbins@fieldmuseum.org,* by March 6, 2014. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas) may proceed.

The Field Museum is responsible for notifying The Consulting Tribes and Indian Groups that this notice has been published.

Dated: December 23, 2013.

Melanie O'Brien,

Acting Manager, National NAGPRA Program.

[FR Doc. 2014–02349 Filed 2–3–14; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Review)]

Sodium Nitrite From China and Germany

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty order on sodium nitrite from China and the antidumping duty orders on sodium nitrite from China and Germany would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on July 1, 2013 (78 FR 39316) and determined on October 21, 2013, that it would conduct expedited reviews (78 FR 68474, November 14, 2013).

The Commission completed and filed its determination in these reviews on January 29, 2014. The views of the Commission are contained in *Sodium Nitrite from China and Germany (Inv. Nos. 701–TA–453 and 731–TA–1136–1137 (Review)),* USITC Publication 4451, January 2014.

By order of the Commission.

Issued: January 30, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–02277 Filed 2–3–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0021]

FBI National Academy Post-Graduate Questionnaires; Proposed Collection, Comments Requested; Approval for a Revised Collection; FBI National Academy Post-Graduate Questionnaire for Graduates; FBI National Academy Post-Graduate Questionnaire for Supervisors of Graduates

ACTION: 60-Day notice.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Curriculum Management Section (CMS) will be submitting the following information

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 7, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact *Keith Shirley, Unit Chief, Evaluation and Accreditation Unit, Training Division, Federal Bureau of Investigation, Quantico, Virginia 22135.* Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following three points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This information

1. *Type of Information Collection:*

Approval of a Revised Collection.

2. *Title of the Forms:*

FBI National Academy Post-Graduate Questionnaire for Graduates.

FBI National Academy Post-Graduate Questionnaire for Supervisors of Graduates.

3. *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0021.

Sponsor: Training Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: FBI National Academy graduates and their identified supervisors represents state and local police departments, sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These questionnaires have been designed to collect feedback from FBI National Academy students regarding their courses and instructors. The results are used to help determine if the FBI National Academy program is functioning as intended and meeting its goals and objectives. We will utilize the students' comments to improve the current curriculum.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Approximately 1,000 FBI National Academy graduates per year will respond to the FBI National Academy Post-Graduate Questionnaire for Graduates. It is predicted that we will receive a 50% response rate. The average response time for reading the questionnaire directions for the FBI National Academy Post-Graduate Questionnaire for Graduates is estimated to be two (2) minutes; time to complete the questionnaire is estimated to be 30 minutes. Thus the total time to complete the Post-Graduate Questionnaire for Graduates is 32 minutes.

There are approximately 1,000 FBI National Academy graduates who have identified their supervisors that will respond to the FBI National Academy Post-Graduates Questionnaire for Supervisors of Graduates. It is predicted that we will receive a 50% response rate. The average response time for reading the directions for the FBI National Academy Post-Graduate Questionnaire for Supervisors of Graduates is estimated to be 2 minutes; time to complete the questionnaire is estimated to be 30 minutes. Thus the total time to complete the Post-Graduate Questionnaire for Supervisors for Graduates is 32 minutes.

The total estimated time to complete each questionnaire per respondent for each group is 32 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:*

Given that approximately 50% of those surveyed (or 500 from each group) will respond, the total public burden for completing questionnaires is 533 hours.

For additional information, contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 30, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–02270 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0050]

FBI National Academy: End-of-Session Questionnaires; Proposed Collection, Comments Requested; FBI National Academy: End-of-Session Student Course Questionnaire; FBI National Academy: General Remarks Questionnaire; Approval for a Revised Collection

ACTION: 60-Day Notice.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Training Division's Curriculum Management Section (CMS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until April 7, 2014. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Keith Shirley, Unit Chief, Evaluation and Accreditation Unit, Training Division, FBI Academy, Federal Bureau of Investigation, Quantico, Virginia 22135.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the

burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This information

1. Type of Information Collection:

Approval of a Revised Collection

2. Title of the Forms:

FBI National Academy: End-of-Session Student Course Questionnaire

FBI National Academy: General Remarks Questionnaire

3. Agency Form Number, if any, and the applicable component of the department sponsoring the collection:

Form Number: 1110–0050

Sponsor: Training Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ)

4. Affected Public who will be asked or required to respond, as well as a brief abstract:

Primary: FBI National Academy students that represent state and local police and sheriffs' departments, military police organizations, and federal law enforcement agencies from the United States and over 150 foreign nations.

Brief Abstract: This collection is requested by FBI National Academy. These questionnaires have been designed to collect feedback from National Academy students regarding their courses and instructors. The results are used to help determine if the National Academy program is functioning as intended and meeting its goals and objectives. We will utilize the students' comments to improve the current curriculum.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:

Approximately 1,000 FBI National Academy students per year will respond to two types of questionnaires. (1) FBI National Academy: End-of-Session Student Course Questionnaire and (2) FBI National Academy: General Remarks Questionnaire. It is predicted we will receive a 75% response rate for both questionnaires. Each student will respond to seven Student Course questionnaires—one for each course they completed. The average time for reading the questionnaire directions is estimated to be two (2) minutes; the time to complete each questionnaire is estimated to be approximately 13 minutes. Thus the total time to complete one Student Course questionnaire is 15 minutes and 105 minutes for all seven questionnaires.

For the FBI National Academy: General Remarks Questionnaire, students will respond to one questionnaire. The average time for reading the questionnaire directions is estimated to be two (2) minutes; the time to complete the questionnaire is estimated to be approximately 10 minutes. Thus the total time to complete the General Remarks Questionnaire is 12 minutes.

The total estimated time for both questionnaires per respondent is approximately 117 minutes or about 2 hours.

6. An estimate of the total public burden (in hours) associated with the collection:

Given that approximately 75% of those surveyed (or 750) will respond, the total public burden for completing all questionnaires is 1462.5 hours.

For additional information, contact: Jerri Murray, Department Clearance Officer, U.S. Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street NE., Room 3W0–1407B, Washington, DC 20530.

Dated: January 30, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–02271 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; S & B Pharma, Inc.

Pursuant to 21 CFR 1301.34(a), this is notice that on March 18, 2013, S & B Pharma, Inc., DBA Norac Pharma, 405 S. Motor Avenue, Azusa, California 91702–3232, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for internal use, and to manufacture bulk intermediates for sale to its customers.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 6, 2014.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02199 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Research Triangle Institute

By Notice dated July 23, 2013, and published in the **Federal Register** on July 31, 2013, 78 FR 46369, Research Triangle Institute, Poonam G. Pande, Ph.D. RPH, RAC, Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
AM-2201 (7201)	I
AM-694 (7694)	I
JWH-018 (7118)	I
JWH-073 (7173)	I
JWH-200 (7200)	I
JWH-250 (6250)	I
JWH-019 (7019)	I
JWH-081 (7081)	I
SR-19 and RCS-4 (7104)	I
JWH-122 (7122)	I
JWH-203 (7203)	I
JWH-398 (7398)	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl] piperidine (7470).	I
1-[1-(2-Thienyl)cyclohexyl] pyrrolidine (7473).	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
2,5-Dimethoxyamphetamine (7396).	I
2C-D (7508)	I
2C-E (7509)	I
2C-H (7517)	I
2C-N (7521)	I
2C-P (7524)	I
2C-T-2 (7385)	I
2C-T-7 (7348)	I
2C-I (7518)	I
2C-C (7519)	I
2C-T-4 (7532)	I
3,4,5-Trimethoxyamphetamine (7390).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxymethamphetamine (7405).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3-Methylfentanyl (9813)	I
3-Methylthiofentanyl (9833)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
4-Methylaminorex (cis isomer) (1590).	I
4-Methoxyamphetamine (7411)	I
CP-47497 C8 Homologue (7298)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
5-Methoxy-N-N-dimethyltryptamine (7431).	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
Acetorphine (9319)	I
Acetyl-alpha-methylfentanyl (9815).	I
Acetyldihydrocodeine (9051)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alpha-ethyltryptamine (7249)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Alpha-methylfentanyl (9814)	I
Alpha-methylthiofentanyl (9832)	I
Alpha-methyltryptamine (7432)	I
Aminorex (1585)	I
Benzethidine (9606)	I
Benzylmorphine (9052)	I
Betacetylmethadol (9607)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Beta-hydroxyfentanyl (9830)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Bufotenine (7433)	I
CP-47497 (7297)	I
Cathinone (1235)	I
Clonitazene (9612)	I
Codeine methylbromide (9070)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Diethyltryptamine (7434)	I
Difenoxin (9168)	I
Dihydromorphine (9145)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I
Dimethyltryptamine (7435)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Drotebanol (9335)	I
Ethylmethylthiambutene (9623)	I
Etonitazene (9624)	I
Etorphine except HCl (9056)	I
Etoxeridine (9625)	I
Fenethylline (1503)	I
Furethidine (9626)	I
Gamma Hydroxybutyric Acid (2010).	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Hydroxypethidine (9627)	I
Ibogaine (7260)	I
Ketobemidone (9628)	I
Levomoramide (9629)	I
Levophenacylmorphan (9631)	I
Lysergic acid diethylamide (7315)	I
MDPV (7535)	I
Marihuana (7360)	I
Mecloqualone (2572)	I
Mephedrone (1248)	I
Mescaline (7381)	I
Methaqualone (2565)	I
Methcathinone (1237)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Methylone (7540)	I
Morpheridine (9632)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
N,N-Dimethylamphetamine (1480)	I
N-Benzylpiperazine (7493)	I
N-Ethyl-3-piperidyl benzilate (7482).	I
N-Ethylamphetamine (1475)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
N-Methyl-3-piperidyl benzilate (7484).	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Normorphine (9313)	I
Norpipanone (9636)	I
Para-Fluorofentanyl (9812)	I
Parahexyl (7374)	I
Peyote (7415)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenomorphan (9647)	I
Phenoperidine (9641)	I
Pholcodine (9314)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Propiram (9649)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Racemoramide (9645)	I
SR-18 and RCS-8 (7008)	I
Tetrahydrocannabinols (7370)	I
Thebacon (9315)	I
Thiofentanyl (9835)	I
Tilidine (9750)	I
Trimeperidine (9646)	I
1-Phenylcyclohexylamine (7460)	II
1-Piperidinocyclohexane carbonitrile (8603).	II
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Alfentanil (9737)	II
Alphaprodine (9010)	II
Amobarbital (2125)	II
Amphetamine (1100)	II
Anileridine (9020)	II
Bezitramide (9800)	II
Carfentanil (9743)	II
Coca Leaves (9040)	II
Cocaine (9041)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Dihydrocodeine (9120)	II
Dihydroetorphine (9334)	II

Drug	Schedule
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Etorphine HCl (9059)	II
Fentanyl (9801)	II
Glutethimide (2550)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Isomethadone (9226)	II
Levo-alphacetylmethadol (9648)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Lisdexamfetamine (1205)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Moramide intermediate (9802)	II
Morphine (9300)	II
Nabilone (7379)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium poppy/Poppy Straw (9650)	II
Oripavine (9330)	II
Poppy Straw Concentrate (9670)	II
Opium, granulated (9640)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II
Pentobarbital (2270)	II
Phenazocine (9715)	II
Phencyclidine (7471)	II
Phenmetrazine (1631)	II
Phenylacetone (8501)	II
Piminodine (9730)	II
Powdered opium (9639)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Remifentanil (9739)	II
Secobarbital (2315)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Thebaine (9333)	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse (NIDA) for research activities.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate, 72 FR 3417 (2007)

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Research Triangle Institute to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02205 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Wildlife Laboratories, Inc.

By Notice dated October 16, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64014, Wildlife Laboratories, Inc., 1230 W. Ash Street, Suite D, Windsor, Colorado 80550, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Etorphine (except HCl) (9056)	I
Etorphine HCl (9059)	II

The company plans to import the listed controlled substances for sale to its customers.

No comments or objections have been received. The DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Wildlife Laboratories, Inc., to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA has investigated Wildlife Laboratories, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: January 23, 2013.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02204 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Penick Corporation

By Notice dated October 17, 2013, and published in the **Federal Register** on October 25, 2013, 78 FR 64014, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances to manufacture bulk controlled substance intermediates for sale to its customers.

Comments and requests for hearings on application to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Penick Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company

is granted registration as an importer of the basic classes of controlled substances listed.

Dated: January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02209 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Sigma Aldrich Research Biochemicals, Inc.

Pursuant to 21 CFR 1301.33(a), this is notice that on November 19, 2013, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760–2447, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Etorphine HCl (9059)	II
Methcathinone (1237)	I
Mephedrone(4-Methyl-N-methylcathinone) (1248).	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
1-[1-(2-Thienyl)cyclohexyl] piperidine (TCP) (7470).	I
N-Benzylpiperazine (BZP) (7493)	I
MDPV(3,4-Methylenedioxypyrovalerone) (7535).	I
Methylone(3,4-Methylenedioxy-N-methylcathinone) (7540).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 7, 2014.

Dated: January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02202 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Johnson Matthey Pharmaceutical Materials, Inc.

Pursuant to 21 CFR 1301.33(a), this is notice that on December 23, 2013, Johnson Matthey Pharmaceutical Materials, Inc., Pharmaceutical Service, 25 Patton Road, Devens, Massachusetts 01434, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Hydrocodone (9193)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II

The company plans to utilize this facility to manufacture small quantities of the listed controlled substances in bulk and to conduct analytical testing in support of the company's primary manufacturing facility in West Deptford, New Jersey. The controlled substances manufactured in bulk at this facility will be distributed to the company's customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODW), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 7, 2014.

Dated: January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02208 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cambridge Isotope Lab

By Notice dated August 15, 2013, and published in the **Federal Register** on August 26, 2013, 78 FR 52802, Cambridge Isotope Lab, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to utilize small quantities of the listed controlled substance in the preparation of analytical standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of

Cambridge Isotope Lab to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Lab to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02207 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration, Euticals, Inc.

By Notice dated August 22, 2013, and published in the **Federal Register** on August 29, 2013, 78 FR 53480, Euticals, Inc., 2460 W. Bennett Street, Springfield, Missouri 65807–1229, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Methadone Intermediate (9254)	II
Tapentadol (9780)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

With regards to amphetamine (1100), the company plans to procure the listed controlled substance in bulk from a domestic source in order to manufacture other controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Euticals, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Euticals, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems; verification of the company's compliance with state and local laws; and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: Signed January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02200 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cerilliant Corporation

By Notice dated August 29, 2013, and published in the **Federal Register** on September 6, 2013, 78 FR 54917, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
4-Methyl-N-methylcathinone (1248).	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590).	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
XLR11 (7011)	I
AKB48 (7048)	I
1-Pentyl-3-(1-naphthoyl)indole (7118).	I
UR–144 (7144)	I
1-Butyl-3-(1-naphthoyl)indole (7173).	I
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole (7200).	I
Alpha-ethyltryptamine (7249)	I
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol] (7297).	I
5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol] (7298).	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Parahexyl (7374)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylendioxyamphetamine (7402).	I
3,4-Methylendioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymeth-amphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431).	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
N-Benzylpiperazine (7493)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Codeine methylbromide (9070)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I

Drug	Schedule
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Dipipanone (9622)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661).	I
Tilidine (9750)	I
Para-Fluorofentanyl (9812)	I
3-Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-methylthiofentanyl (9832)	I
3-Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603).	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cerilliant Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems; verification of the company's compliance with state and local laws; and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: Signed January 15, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2014–02197 Filed 2–3–14; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No OSHA–2013–0007]

Maritime Advisory Committee for Occupational Safety and Health (MACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of MACOSH Membership.

SUMMARY: On April 12, 2013, the Acting Secretary of Labor announced, the reestablishment of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH). On January 16, 2014, he selected 15 members and a Special Agency Liaison to serve on the Committee. The Committee is diverse and balanced, both in terms of segments of the maritime industry represented (e.g., shipyard employment, longshoring, and marine terminal industries), and in the views and interests represented by the members. The MACOSH charter was signed on May 6, 2013, and will expire after two years on May 6, 2015.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Frank Meilinger, OSHA's Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1725; email *Meilinger.Francis2@dol.gov.*

For general information about MACOSH: Ms. Amy Wangdahl, Director, Office of Maritime and Agriculture, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2066; email *Wangdahl.amy@dol.gov.*

SUPPLEMENTARY INFORMATION: MACOSH will contribute to OSHA's performance of its duties under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*). Authority to establish this Committee is at Sections 6(b)(1) and 7(b) of the OSH Act, Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR Part 1912. The Committee will advise OSHA on matters relevant to the safety and health of employees in the maritime industry. This includes advice on maritime issues that will result in more effective enforcement, training, and outreach programs, and streamlined regulatory efforts. The maritime industry includes shipyard employment, longshoring, and marine terminal industries. The Committee will function solely as an advisory body in compliance with the provisions of the FACA and OSHA's regulations covering advisory committees (29 CFR Part 1912).

Background

The maritime industry has historically experienced a high incidence of work-related fatalities, injuries, and illnesses. OSHA targeted this industry for special attention due to that experience. This targeting included development of guidance or outreach materials specific to the industry, rulemakings to update requirements, and other activities. MACOSH will advise the Secretary through the Assistant Secretary of Labor for Occupational Safety and Health on matters relevant to the safety and health of employees in the maritime industry.

The Committee's advice will result in more effective enforcement, training and outreach programs, and streamlined regulatory efforts.

Appointment of Committee Members

OSHA received nominations of highly qualified individuals in response to the Agency's request for nominations (77 FR 46156, August 2, 2012). The Secretary selected to serve on the Committee individuals who have broad experience relevant to the issues to be examined by the Committee. The MACOSH members are:

Karen I. Conrad, North Pacific Fishing Vessel Owners' Association;

Kelly J. Garber, APL Ltd.;

Robert Godinez, International Brotherhood of Boilermakers—Iron Ship Builders;

LCDR John F. Halpin, MD, MPH, U.S. Department of Health and Human Services; National Institute of Occupational Safety and Health;

Daniel R. Harrison, American Society of Safety Engineers;

Lesley E. Johnson, International Brotherhood of Electrical Workers;

George S. Lynch, Jr., International Longshoremen's Association;

Christopher John McMahon, U.S. Department of Transportation, Maritime Administration;

Timothy J. Podue, International Longshore and Warehouse Union;

Donald V. Raffo, General Dynamics Corp.;

James A. Rone, Washington State Department of Labor and Industries;

Arthur T. Ross, Texas Terminals, L.P.;

Amy Sly, Marine Chemist Association;

Kenneth A. Smith, U.S. Coast Guard; and

James R. Thornton, American Industrial Hygiene Association.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 29 U.S.C. 655 and 656, 5 U.S.C. App. 2, Secretary of Labor's Order 1–2012 (77 FR 3912; Jan. 25, 2012), and 29 CFR Part 1912.

Signed at Washington, DC, on January 29, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–02262 Filed 2–3–14; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2014–1]

Reengineering of Recordation of Documents

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of public meetings.

SUMMARY: The United States Copyright Office will be holding three public meetings in connection with its project of reengineering the recordation of documents pertaining to copyrights. A Notice of Inquiry in connection with this project was published in the **Federal Register** on January 15, 2014, *see* Strategic Plan for Recordation of Documents, 79 FR 2696 (January 15, 2014), and is available at *http://www.copyright.gov/docs/recordation.* Comments on that Notice of Inquiry are due by March 15, 2014. The public meetings will be held following the end of that comment period, on March 25, 2014 in Los Angeles, California; on March 26, 2014 in Santa Clara County, California; and on March 28, 2014 in New York, New York.

DATES: The meetings will be open to the public, but seating to participate at the principal discussion table will be limited. Requests to participate can be submitted via the Copyright Office Web site at *http://www.copyright.gov/docs/recordation* or sent by email to *USCOrecordation@loc.gov* by Friday, February 28, 2014, with contents as requested below. Persons who are unable to submit a request to participate by email should contact Joanna Corwin at 202–707–7827. Confirmations of participation will be sent via email by March 5, 2014. A tentative general agenda covering all meetings is presented below; a detailed agenda for each meeting will be posted by March 18, 2014 at *http://www.copyright.gov/docs/recordation,* and will also be sent via email to all confirmed participants.

ADDRESSES: The public meeting in Los Angeles will be held in Room 1314 (the Bruce Spector Conference Room) of the UCLA School of Law, 405 Hilgard Avenue, Los Angeles, California 90095, on Tuesday, March 25, 2014, from 9 a.m. to 3 p.m. PST.

The public meeting in Santa Clara County will be held in the Manning Faculty Lounge of the Stanford Law School, 559 Nathan Abbott Way, Stanford, California 94305, on Wednesday, March 26, 2014, from 9 a.m. to 3 p.m. PST.

The public meeting in New York will be held in the Jerome Greene Annex of Columbia Law School, 410 West 117th Street, New York, New York 11027 on Friday, March 28, 2014, from 9 a.m. to 3 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Robert Brauneis, Abraham L. Kaminstein Scholar in Residence, by email at *USCOrecordation@loc.gov* or telephone at 202–707–9536.

SUPPLEMENTARY INFORMATION: On January 15, 2014, the Copyright Office published a Notice of Inquiry on five topics relating to the reengineering of the recordation of documents pertaining to copyright. *See* Strategic Plan for Recordation of Documents, 79 FR 2696 (January 15, 2014), available at *http://www.copyright.gov/docs/recordation.* Discussion at the public meetings will focus on these five topics. They include: (1) A guided remitter responsibility model of electronic recordation; (2) the use of structured electronic documents that contain their own indexing information; (3) the linking of recordation records to registration records; (4) the use of standard identifiers, and other metadata standards, in recorded documents and the catalog of such documents; and (5) potential additional incentives to record documents pertaining to copyrights. For further background information on these topics, please see the Notice of Inquiry.

Tentative General Agenda: By March 18, 2014, a detailed agenda for each public meeting will be posted at *http://www.copyright.gov/docs/recordation,* and will also be sent via email to all confirmed participants. The tentative general agenda for each meeting is as follows: 9:00 a.m.- 9:30 a.m. Introduction and Initial Presentations; 9:30 a.m.–11:15 a.m. Electronic Recordation Models (with coffee break); 11:15 a.m.–11:45 a.m. Linking Recordation and Registration Records; 11:45 a.m.–12:45 a.m. Lunch; 12:45 p.m.–1:45 p.m. Standard Identifiers and Metadata Standards; 1:45 p.m.–3 p.m. Additional Incentives to Record Documents.

Requests to Participate. Each request to participate in a public meeting should include the name of the requestor; the date and location of the public meeting that the requestor would like to attend; a statement of whether the requestor would like to limit his or her participation to particular portions of the meeting agenda; the requestor's organizational affiliation and title; and complete contact information, including postal address, email address, and telephone number. If the requestor, or the organization that the requestor is representing, has submitted comments in response to the Notice of Inquiry, the

request should identify those comments. Requestors who have not submitted comments should include a brief summary of their views on the topics they wish to discuss.

Dated: January 29, 2014.

Maria A. Pallante,

Register of Copyrights.

[FR Doc. 2014–02211 Filed 2–3–14; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 14–013]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Frances Teel, National Aeronautics and Space Administration, Mail Code JF000, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF0000, Washington, DC 20546. *Frances.c.teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection has to do with recordkeeping and reporting required to ensure proper accounting of Federal funds and property provided under NASA cooperative agreements with commercial firms.

II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance. In addition, NASA encourages the use of computer technology and is participating in Federal efforts to extend the use of information technology to more Government processes via the Internet. Specifically, progress has been made in the area of property reporting, most of it being done electronically.

III. Data

Title: Cooperative Agreements with Commercial Firms.

OMB Number: 2700–0092.

Type of review: Reinstatement of a Previously Approved Information Collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Total Annual Burden Hours: 1,218.

Estimated Total Annual Cost: $40,072.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2014–02276 Filed 2–3–14; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Task Force on Administrative Burdens, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the CANCELLATION of the teleconference for the transaction of National Science Board business that was, published in the **Federal Register** on January 7, 2014 (79 FR 855).

CANCELLED DATE AND TIME: Thursday, January 30, 2014, 4 p.m.–5 p.m. EST.

This meeting will be rescheduled. Please refer to the National Science Board Web site *www.nsf.gov/nsb/notices* for additional information and a schedule update.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–02368 Filed 1–31–14; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board's Subcommittee on Facilities (SCF), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Thursday, February 6, 2014, 1 p.m.–2 p.m. EST.

SUBJECT MATTER: SCF members will discuss possible recommendations regarding the FY 2013 APR.

STATUS: Closed.

This meeting will be held by teleconference. Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting). Point of contact for this meeting is John Veysey at *jveysey@nsf.gov*.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–02366 Filed 1–31–14; 11:15 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings; Audit Committee Meeting of the Board of Directors

TIME AND DATE: 2 p.m., Tuesday, February 11, 2014.

PLACE: NeighborWorks America—Gramlich Boardroom, 999 North Capitol Street NE., Washington, DC 20002.

STATUS: Open (with the exception of Executive Sessions).

CONTACT PERSON: Jeffrey Bryson, General Counsel/Secretary, (202) 760–4101; *jbryson@nw.org.*

AGENDA:

I. CALL TO ORDER

II. Presentation with the External Auditor
III. Executive Session with the External Auditor
IV. Executive Session with the Chief Audit Executive
V. Executive Session with Officers: Pending Litigation & Internal Operations
VI. Internal Audit Reports with Management's Response
VII. Internal Audit Status Reports
VIII. Compliance Update
IX. OHTS Watch List Review
X. Adjournment

Jeffrey T. Bryson,

EVP & General Counsel/Corporate Secretary.

[FR Doc. 2014–02398 Filed 1–31–14; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0016]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 9, 2014, to January 22, 2014. The last biweekly notice was published on January 21, 2014 (79 FR 3412).

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0016. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0016 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0016.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0016 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination,

any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's public Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC's public

Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. 50–528, 50–529, and 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona.

Date of amendment request: September 27, 2013.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.3.3, ''Control Element Assembly Calculators (CEACS),'' to reinstate an inadvertently omitted 4-hour completion time to Required Action B.2.2. Additionally, the amendment would revise a test frequency note within a Surveillance Requirement (SR) under TS 3.3.6, ''Engineered Safety Features Actuation System (ESFAS) Logic and Manual Trip,'' which should have been addressed in the license amendment request for Technical Specifications Task Force (TSTF) change traveler TSTF–425, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk-Informed TSTF] Initiative 5b.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The reinstatement of the 4-hour completion time within TS 3.3.3 does not alter existing controls on plant operation (i.e., safety limit values, [Limiting Conditions for Operation (LCOs)], Surveillance Requirements or Design Features). Functions which are necessary to operate the facility safely and in accordance with the operating licenses remain in effect. The proposed change will not affect the operation of structures, systems, or components, and will not reduce programmatic controls such that the plant safety would be affected.

The revision to the SR testing frequency note under TS 3.3.6 relocates the specified frequency to licensee control under the Surveillance Frequency Control Program (SFCP). Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which this frequency is being relocated are still required to be operable, meet the acceptance criteria for the surveillance requirement, and be capable of performing any mitigation function assumed in the accident analysis.

Based on the above, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The reinstatement of the 4-hour completion time within TS 3.3.3 is an administrative correction. It will not affect the operation of structures, systems, or components, and will not reduce programmatic controls such that plant safety would be affected.

No new or different accidents result from the revision to the SR testing frequency note under TS 3.3.6. The change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, this change does not impose any new or different requirements. This change does not alter assumptions made in the safety analysis. This change is consistent with the safety analysis assumptions and current plant operating practice.

Based on the above, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The reinstatement of the 4-hour completion time within TS 3.3.3 is administrative and will not diminish any administrative controls currently in place. The proposed change will not affect the operation of structures, systems, or components, and will not reduce programmatic controls such that plant safety would be affected.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Updated Final Safety Analysis Report and Bases to the TS), since these are not affected by the proposed change which will revise the SR testing frequency note under TS 3.3.6. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis.

Based on the above, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Associate General Counsel—Nuclear and Environmental, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Stop 7602, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: September 25, 2013.

Description of amendment request: The amendments requests transition of the fire protection licensing basis at Catawba Nuclear Station, Units 1 and 2 from Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.48(b), to 10 CFR 50.48(c), National Fire Protection Association (NFPA) 805.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of Catawba Nuclear Station in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. The Updated Final Safety Analysis Report documents the analyses of design basis accidents at Catawba Nuclear Station. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, and components to perform their design function. Structures, systems, and components required to safely shut down the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The purpose of this amendment is to permit Catawba Nuclear Station to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in Regulatory Guide (RG) 1.205. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify Fire Protection system and features that are an acceptable alternative to Catawba Nuclear Station's existing fire protection requirements. Engineering Analyses, in accordance with NFPA 805, have been performed to demonstrate that the risk-informed performance-based requirements for NFPA 805 have been met.

The NFPA 805, taken as a whole, provides an acceptable alternative to 10 CFR 50.48(b) and satisfies 10 CFR 50.48(a) and General Design Criterion 3 of Appendix A to 10 CFR Part 50 and meets the underlying intent of the NRC's existing fire protection regulations and guidance, and achieves defense-in depth and the goals, performance objectives, and performance criteria specified in Chapter 1 of the standard. The small increases in core damage frequency associated with the LAR submittal are consistent with the Commission's Safety Goal Policy. Additionally, 10 CFR 50.48(c) allows self-approval of the fire protection program changes post-transition. If there are any increases post-transition in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

Based on this, the implementation of this amendment does not significantly increase the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function.

Therefore, the consequences of any accident previously evaluated are not significantly increased with the implementation of the amendment.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of Catawba Nuclear Station in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with offsite dose was included in the evaluation of design basis accidents documented in the Updated Final Safety Analysis Report. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the new Fire Protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205 will not result in new or different accidents.

The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of structure, systems, and components to perform their design function. Structure, systems, and components required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to permit Catawba Nuclear Station to adopt a new Fire Protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205. The NRC considers that the NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify Fire Protection systems and features that are an acceptable alternative to Catawba Nuclear Station's existing fire protection requirements.

The requirements in the NFPA 805 address only Fire Protection and the impacts of fire on the plant have already been evaluated. Based on this, the implementation of this amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. The proposed changes do not involve new failure mechanisms or malfunctions that can initiate a new accident.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Operation of Catawba Nuclear Station in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the Updated Final Safety Analysis Report. The proposed amendment does not adversely affect the ability of Structure, Systems, and Components to perform their design function. Structure, Systems, and Components required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to permit Catawba Nuclear Station to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance in RG 1.205. The NRC considers that the NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify Fire Protection systems and features that are an acceptable alternative to Catawba Nuclear Station's existing fire protection requirements. Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based methods do not result in a significant reduction in the margin of safety.

Based on this, the implementation of this amendment does not significantly reduce the margin of safety. The proposed changes are evaluated to ensure that risk and safety margins are kept within acceptable limits. Therefore, the transition does not involve a significant reduction in the margin of safety.

The NFPA 805 continues to protect public health and safety and the common defense and security because the overall approach of the NFPA 805 is consistent with the key principles for evaluating license basis changes, as described in RG 1.174, is consistent with the defense-in-depth philosophy, and maintains sufficient safety margins.

Margins previously established for the Catawba Nuclear Station Fire Protection program in accordance with existing fire protection requirements are not significantly reduced.

Therefore, this amendment does not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Robert J. Pascarelli.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment requests: November 15, 2013.

Description of amendment requests: The proposed amendments would revise the Technical Specification requirements related to the response time for the main steam line flow-high isolation function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed increase in Main Steam Line (MSL) High Flow Isolation System Instrumentation Response Time from ≤ 0.5 seconds to ≤ 1.0 seconds does not involve a significant increase in the probability or consequences of an accident previously evaluated (i.e., Main Steam Line Break (MSLB)). GE Hitachi Nuclear Energy, using the SAFER04A Engineering Computer Program (SAFER), has performed an analysis of the impact to existing MSLB analysis using 1.0 seconds as the new response time input for the instrument channel high flow trip signal. The analysis concluded that for the worst case conditions, which is the Hot Standby initial operating condition, by increasing the instrument delay for Main Steam Line Isolation Valve (MSIV) actuation from 0.5 seconds to 1.0 seconds, the water mass release is increased by about 12%, the steam mass release is increased by about 8%, and the total coolant mass release increased by about 12% to 115,700 pounds mass (lbm). The major source of coolant activity which contributes to the released dose is contained in the coolant that is initially released in the liquid water phase. The enveloping total coolant mass release for radiological consequence evaluation is 140,000 lbm liquid; therefore, the MSLB total coolant mass release values calculated in this analysis remain bounded and the original MSLB Accident Dose Evaluation remains unchanged.

In regards to Peak Cladding Temperatures (PCT), the MSLB Accident is considered in evaluating a plant's response for fuel integrity and barrier protection to Loss of Coolant Accidents (LOCAs). Specifically, the MSLB Accident breaks either inside containment or outside containment are considered for fuel heat-up and neither scenario is limiting for Peak Cladding Temperature. The MSLB LOCA PCT response is not affected by the proposed amendment.

There are no special events analyses (Anticipated Transient Without Scram (ATWS), Fire Safe Shutdown, or Station Blackout) that consider main steam line breaks.

For building compartments that contain safety related equipment, the proposed increase in the instrument response time does not impact the calculated peak pressures and temperatures that occur at approximately 1.0 seconds since the blowdown flow is not impacted until the MSIVs are assumed to start closing at 5.0 seconds. However, the increase in response time could have an impact on the overall duration of the blowdown. The MSL High Energy Line Break (HELB) Analysis was revised to conservatively assume that the MSIVs remain fully open for 6.0 seconds (5.0 seconds + 1.0 seconds) and the total blowdown duration was increased from 6.5 seconds to 7.0 seconds. The revised HELB analysis confirmed that the critical peak temperatures and pressures did not change in building compartments containing safety related equipment and that the only impact was a less than 4.0-degree Fahrenheit increase in the main condenser area compartment and steam venting plenum compartment peak temperatures. These two compartments do not contain safety-related environmentally qualified equipment. Therefore, this minimal increase in peak temperature has no adverse impact on the plant.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed increase in MSL High Flow Isolation System Instrumentation Response Time from ≤ 0.5 seconds to ≤ 1.0 seconds does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change only affects the primary containment isolation system response time, which is a mitigating system, for which the effects have been specifically evaluated for impact to the MSLB Accident and found to be acceptable. There are no special events analyses (ATWS, Fire Safe Shutdown, or Station Blackout) that consider main steam line breaks. The pressure and temperature of affected compartments do not affect the environmental qualification or performance of safety related equipment.

The instrument channel logic delay time associated with this proposal was not postulated as an initiator of any previously analyzed accident, and is not expected to create any new system interactions, transient precursors, or failure modes of any structures, systems and components (SSCs). Thus, equipment important to safety will continue to operate as designed, and the proposed change will not result in any

adverse conditions or any increase in challenges to safety systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed increase in MSL High Flow Isolation System Instrumentation Response Time from ≤ 0.5 seconds to ≤ 1.0 seconds does not involve a significant reduction in a margin of safety. The proposed change will increase the total calculated total coolant mass release from 108,785 lbm to 115,700 lbm. The change in the total coolant mass release of 6,915 lbm is well within the current available margin (~31,200 lbm) to the 140,000 lbm bounding value used for the radiological consequence evaluation.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

Acting NRC Branch Chief: John G. Lamb.

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 12, 2013.

Description of amendment request: The proposed amendment will revise the Oyster Creek Nuclear Generating Station Technical Specifications (TSs). The proposed amendment will adopt TS Task Force (TSTF) Traveler TSTF–522, Revision 0, ''Revise Ventilation System Surveillance Requirements to Operate for 10 Hours per Month.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with the NRC's edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change replaces an existing SR [surveillance requirement] to operate the Standby Gas Treatment System for a minimum of 10 hours at a frequency controlled in accordance with the SFCP [Surveillance Frequency Control Program] with a requirement to operate the system for a minimum of 15 continuous minutes at a frequency controlled in accordance with the SFCP.

This system is not an accident initiator and therefore, this change does not involve a significant increase in the probability of an accident. The proposed change is consistent with current regulatory guidance for this system and will continue to assure that this system performs its design function which may include mitigating accidents. Thus, the change does not involve a significant increase in the consequences of an accident.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change replaces an existing SR to operate the Standby Gas Treatment System for a minimum of 10 hours at a frequency controlled in accordance with the SFCP with a requirement to operate the system for a minimum of 15 continuous minutes at a frequency controlled in accordance with the SFCP.

The change proposed for this ventilation system does not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are capable of performing their intended safety functions. The change does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed change replaces an existing SR to operate the Standby Gas Treatment System for a minimum of 10 hours at a frequency controlled in accordance with the SFCP with a requirement to operate the system for a minimum of 15 continuous minutes at a frequency controlled in accordance with the SFCP. The proposed change is consistent with regulatory guidance.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

Acting NRC Branch Chief: John G. Lamb.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: December 20, 2013.

Description of amendment request: The proposed amendment would revise the VEGP Units 3 and 4 Emergency Plan, in accordance with 10 CFR Part 50, Appendix E, Section 1.5, to comply with the regulatory changes published in the **Federal Register** on November 23, 2011, (76 FR 72560), ''Enhancements to Emergency Preparedness Regulations.'' Eleven topics for change were described in the published rule.

In addition, the requested amendment proposes to change License Condition 2.D(12)(d) of the VEGP Units 3 and 4 Combined Licenses to require a detailed staffing analysis to be performed no later than 180 days before initial fuel load.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The VEGP 3 and 4 Emergency Plan provides assurance that the requirements of emergency preparedness regulations are met. The changes do not affect the design, construction, or operation of the nuclear plant, so there is no change to the probability or consequences of an accident previously evaluated. Adding a license condition related to an emergency preparedness staffing analysis and changing the VEGP 3 and 4 Emergency Plan does not affect prevention and mitigation of abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses as the purpose of the plan is to implement emergency preparedness regulations. No safety-related structure, system, component (SSC) or function is adversely affected. The change does not involve nor interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the [Updated Final Safety Analysis Report] UFSAR are not affected. Because the changes do not involve any SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the UFSAR are not affected.

Therefore, the proposed amendment does not involve an increase in the probability or

consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The VEGP 3 and 4 Emergency Plan provides assurance that the requirements of emergency preparedness regulations are met. The changes do not affect the design, construction, or operation of the nuclear plant, so there is no new or different kind of accident from any accident previously evaluated. The changes do not affect safety-related equipment, nor do they affect equipment which, if it failed, could initiate an accident or a failure of a fission product barrier. In addition, the changes do not result in a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The VEGP 3 and 4 Emergency Plan provides assurance that the requirements of emergency preparedness regulations are met. The changes do not affect the assessments or the plant itself. The changes do not affect safety-related equipment or equipment whose failure could initiate an accident, nor does it adversely interface with safety-related equipment or fission product barriers. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested change.

Therefore, the proposed amendment does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Lawrence J. Burkhart.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of application of amendments: June 27, 2012, as supplemented by letters dated December 14, 2012, May 28, July 26, November 26, December 6, and December 12, 2013.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' Required Action C.2.2.5 to allow a temporary one-time Completion Time extension of 62 days to restore an inoperable Keowee Hydro Unit (KHU) for the purpose of performing generator field pole rewind work on each KHU.

Date of Issuance: January 8, 2014.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 383, 385, and 384.

Renewed Facility Operating License Nos. DPR–38, DPR–47 and DPR–55: Amendments revised the license and the TSs.

Date of initial notice in **Federal Register***:* October 2, 2012 (77 FR 60149). The supplemental letters dated December 14, 2012, May 28, July 26, November 26, December 6, and December 12, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 2014.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: November 19, 2012, as supplemented by letter dated September 13, 2013.

Brief description of amendment: The amendment changed the Technical Specification 3.7.10 to require a unit shutdown within the TS 3.7.10 Actions instead of entering Limiting Condition for Operation 3.0.3 when both Control Room Emergency Ventilation System (CREVS) trains are inoperable in MODE 1, 2, 3, or 4 due to actions taken as a result of a tornado warning and the Completion Time of 8 hours for restoration of at least one CREVS train to OPERABLE status is not met.

Date of issuance: January 14, 2014.

Effective date: As of the date of issuance and shall be implemented no later than 60 days from date of issuance.

Amendment No.: 94.

Facility Operating License No. NPF–90: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register****:* March 19, 2013 (78 FR 16886). The supplement letter dated September 13, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated January 14, 2014.

No significant hazards consideration comments received: None.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 29, 2011, as supplemented by letters dated November 9, 2011, April 17 and July 12, 2012, and February 19, August 5, September 24, and December 19, 2013.

Brief description of amendment: The amendment transitions the Callaway Plant fire protection program to a risk-informed, performance-based program based on the National Fire Protection Association (NFPA) 805, in accordance with 10 CFR 50.48(c). The NFPA 805 allows the use of performance-based methods such as fire modeling and risk-informed methods such as fire probabilistic risk assessment to demonstrate compliance with the nuclear safety performance criteria.

Date of issuance: January 13, 2014.

Effective date: As of its date of issuance and shall be implemented by 8 months from the date of issuance.

Amendment No.: 206.

Facility Operating License No. NPF–30: The amendment revised the Operating License and Technical Specifications.

*Date of initial notice in **Federal Register*** :February 14, 2012 (77 FR 8294). The supplements dated November 9, 2011, April 17 and July 12, 2012, and February 19, August 5, September 24, and December 19, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 2014.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 20, 2012, as supplemented by letters dated June 6 and August 29, 2013.

Brief description of amendment: The amendment revised a methodology in the licensing basis as described in the Final Safety Analysis Report—Standard Plant to include damping values for the seismic design and analysis of the integrated head assembly that are consistent with the recommendations of the NRC's Regulatory Guide 1.61, ''Damping Values for Seismic Design of Nuclear Power Plants,'' Revision 1, March 2007.

Date of issuance: January 14, 2014.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. NPF–30: The amendment revised the Operating License.

*Date of initial notice in **Federal Register:*** March 4, 2013 (78 FR 14139). The supplemental letters dated June 6 and August 29, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 2014.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 24th day of January 2014.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–02048 Filed 2–3–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0008]

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Turkey Point Nuclear Generating, Units 3 and 4; and Seabrook Station, Unit 1. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by March 6, 2014. A request for a hearing must be filed by April 7, 2014. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by February 14, 2014.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0008. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN, 06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0008 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0008.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at

1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0008 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should ML14007A219 circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a

genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC's adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's public Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's

electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: June 28, 2012 (publicly available version is in ADAMS at Accession No. ML12191A048), as supplemented by letters dated September 19, 2012, March 18, 2013, April 16, 2013, and May 15, 2013 (ADAMS Accession Nos. ML12278A106, ML13099A441, ML13109A008, and ML13157A011, respectively).

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The licensee requests NRC review and approval for adoption of a new fire protection licensing basis for the Turkey Point Nuclear Generating, Units 3 and 4 (PTN, which is a licensee designation for the plant). The request was submitted in accordance with the requirements in 10 CFR 50.48(a) and (c), and the guidance in Regulatory Guide (RG) 1.205, Revision 1, ''Risk-Informed Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' dated December 2009 (ADAMS Accession No. ML092730314). The licensee's request follows the Nuclear Energy Institute (NEI) methodology in Revision 2 of NEI 04–02, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program under 10 CFR 50.48(c),'' dated April 2008 (ADAMS Accession No. ML081130188). The request includes the methodology used to demonstrate compliance with and transition to the National Fire Protection Association (NFPA) 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants,'' 2001 Edition. Copies of NFPA 805 may be purchased from the NFPA Customer Service Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101 and in PDF format through the NFPA Online Catalog (*http://www.nfpa.org*) or by calling 1–800–344–3555 or 617–770–3000. Copies are also available for inspection at the NRC's Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738, and at the NRC's PDR, One White Flint North, Room O1–F15, 11555 Rockville Pike, Rockville, Maryland, 20852–2738.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Operation of PTN in accordance with the proposed amendment does not increase the probability or consequences of accidents previously evaluated. The Updated Final Safety Analysis Report (UFSAR) documents the analyses of design basis accidents (DBAs) at PTN. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, and components (SSCs) to perform their design function. The SSCs required to safely shut down the reactor and to maintain it in a safe shutdown (SSD) condition will remain capable of performing their design functions.

The purpose of this amendment is to permit PTN to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance of Regulatory Guide (RG) 1.205, Revision 1. The NRC considers that the NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, in accordance with NFPA 805, have been performed to demonstrate that the risk-informed, performance-based (RI–PB) requirements per NFPA 805 have been met.

The NFPA 805, taken as a whole, provides an acceptable alternative to 10 CFR 50.48(b) and satisfies 10 CFR 50.48(a) and General Design Criterion 3 of Appendix A to 10 CFR Part 50 and meets the underlying intent of the NRC's existing fire protection regulations and guidance, achieves defense-in-depth (DID) and the goals, performance objectives, and performance criteria specified in Chapter 1 of the standard. The small increase in net change in core damage frequency associated with this License Amendment Request (LAR) submittal is consistent with the Commission's Safety Goal Policy. Additionally, 10 CFR 50.48(c) allows self-approval of fire protection program changes post-transition. If there are any increases post-transition in core damage frequency or risk, the increase will be small and consistent with the intent of the Commission's Safety Goal Policy.

Based on this, the implementation of this amendment does not significantly increase the probability of any accident previously evaluated. Equipment required to mitigate an accident remains capable of performing the assumed function.

Therefore, the consequences of any accident previously evaluated are not significantly increased with the implementation of this amendment.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Operation of PTN in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with offsite dose was included in the evaluation of DBAs documented in the UFSAR. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance of RG 1.205, Revision 1 will not result in new or different accidents.

The proposed amendment does not adversely affect accident initiators nor alter

design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. The SSCs required to safely shut down the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of this amendment is to permit PTN to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance of RG 1.205, Revision 1. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536; June 16, 2004).

The requirements in NFPA 805 address only fire protection and the impacts of fire on the plant that have already been evaluated. Based on this, the implementation of this amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. The proposed changes do not involve new failure mechanisms or malfunctions that can initiate a new accident.

Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Operation of PTN in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the UFSAR. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. The SSCs required to safely shut down the reactor and to maintain it in a safe shutdown condition remain capable of performing their design function.

The purpose of this amendment is to permit PTN to adopt a new fire protection licensing basis which complies with the requirements in 10 CFR 50.48(a) and (c) and the guidance of RG 1.205, Revision 1. The NRC considers that NFPA 805 provides an acceptable methodology and performance criteria for licensees to identify fire protection systems and features that are an acceptable alternative to the 10 CFR Part 50, Appendix R fire protection features (69 FR 33536; June 16, 2004). Engineering analyses, which may include engineering evaluations, probabilistic safety assessments, and fire modeling calculations, have been performed to demonstrate that the performance-based methods do not result in a significant reduction in the margin of safety.

Based on this, the implementation of this amendment does not significantly reduce the margin of safety. The proposed changes are evaluated to ensure that the risk and safety margins are kept within acceptable limits.

Therefore, the transition does not involve a significant reduction in the margin of safety.

The NFPA 805 continues to protect public health and safety and the common defense and security because the overall approach of NFPA 805 is consistent with the key principles for evaluating license basis changes, as described in RG 1.174, is consistent with the DID philosophy, and maintains sufficient safety margins.

Margins previously established for the PTN program in accordance with 10 CFR 50.48(b) and Appendix R to 10 CFR Part 50 are not significantly reduced.

Therefore, this LAR does not result in a reduction in a margin of safety.

The NRC staff reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William S. Blair, Managing Attorney—Nuclear, Florida Power & Light, 700 Universe Blvd., MS LAW/JB, Juno Beach, Florida, 33408–0420.

NRC Branch Chief: Jessie F. Quichocho.

NextEra Energy Seabrook, LLC., Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: September 10, 2013. A publicly available version is in ADAMS under Accession No. ML13260A160.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment will modify the Seabrook Technical Specifications (TSs). Specifically, the proposed amendment will revise TS 6.8.1.6.b, ''Core Operating Limits Report,'' by adding Areva Licensing Report ANP–3243P, ''Seabrook Station, Unit 1 Fixed Incore Detector System Analysis Supplement to YAEC–1855PA,'' dated July 31, 2013 (a publicly available version is in ADAMS under Accession No. ML13260A161), which supplements and modifies the previously approved methodology. The proposed change also modifies the surveillance requirements associated with the heat flux hot channel factor and nuclear enthalpy rise hot channel factor to include revised uncertainty values when measurement is obtained using the fixed incore detector system (FIDS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, along with the NRC's edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The FIDS is used for core surveillances to provide confirmatory information on the neutron flux distribution of the core. This system is not used for accident mitigation and does not provide any automatic control functions or protective functions for the operation of the plant.

As the proposed change does not involve any changes to the physical equipment or operation of the system, there is no increase in the probability of an accident previously evaluated.

The proposed Technical Specification (TS) change determines a revised uncertainty value for the F_Q [heat flux hot channel factor] and $F_{\Delta h}$ [nuclear enthalpy rise hot channel factor] TS surveillance parameters. ANP–3243P, ''Seabrook Station Unit 1 Fixed Incore Detector System Analysis Supplement to YAEC–1855PA,'' documents that these modifications yield results in surveillance parameters that compare well to the original methodology over the first 8 cycles. The report also documents that the results of the uncertainty analysis using all 15 completed cycles compared well to the results of the uncertainty analysis for the original YAEC–1855PA methodology. The report concludes that the revised FIDS analysis methodology remains comparable in accuracy and functionality to the original YAEC–1855PA methodology and the moveable incore detector system.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The operation of the facility in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the proposed change will not affect plant safety analysis assumptions or the physical design of the facility. The revised uncertainty applied to the measured core peaking factors ensures the safety limits are maintained; hence, no new failure mode is introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant system pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed

changes to modify the FIDS methodology and provide revised uncertainty values for the F_Q and $F_{\Delta h}$ TS surveillance parameters do not involve a significant change in the method of plant operation, and no accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits and will not relax any safety system settings. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. James Petro, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, Florida, 33408–0420.

Acting NRC Branch Chief: John G. Lamb.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating, Units 3 and 4, Miami-Dade County, Florida; NextEra Energy Seabrook, LLC., Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 22nd day of January 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2014–01597 Filed 2–3–14; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATES: Weeks of February 3, 10, 17, 24, March 3, 10, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 3, 2014

There are no meetings scheduled for the week of February 3, 2014.

Week of February 10, 2014—Tentative

There are no meetings scheduled for the week of February 10, 2014.

Week of February 17, 2014—Tentative

Wednesday, February 19, 2014

9:30 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

1:30 p.m. Briefing on Security Issues (Closed—Ex. 3)

Thursday, February 20, 2014

9:30 a.m. Briefing on Threat Environment Assessment (Closed—Ex. 1)

Week of February 24, 2014—Tentative

There are no meetings scheduled for the week of February 24, 2014.

Week of March 3, 2014—Tentative

Monday, March 3, 2014

1:30 p.m. Briefing on Human Reliability Program Activities and Analyses (Public Meeting)

(Contact: Sean Peters, 301–251–7582)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Tuesday, March 4, 2014

9:00 a.m. Briefing on Security Issues (Closed—Ex. 1)

1:30 p.m. Briefing on Security Issues (Closed—Ex. 1)

Friday, March 7, 2014

10:00 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Ed Hackett, 301–415–7360)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of March 10, 2014—Tentative

There are no meetings scheduled for the week of March 10, 2014.

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

Additional Information

By a vote of 4–0 on January 24, 2014, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the Affirmation Session on *USDOE HLW Repository, State of Nevada Petition for Clarification of 11/18/13 Restart Order and Related Staff Requirements Memorandum (11/27/13); ''Five Parties'' Motion for Reconsideration of Memorandum and Order (11/27/13)* be held with less than one week notice to the public. The meeting was held on January 24, 2014.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/public-involve/public-meetings/schedule.html.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov.*

Dated: January 30, 2014.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary,

[FR Doc. 2014–02437 Filed 1–31–14; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1038; EA–13–228; NRC–2014–0017]

In the Matter of South Carolina Electric & Gas Company, Virgil C. Summer ; Nuclear Station Independent Spent Fuel Storage Installation Order Modifying License (Effective Immediately)

AGENCY: Nuclear Regulatory Commission.

ACTION: Order; modification.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a general license to South Carolina Electric & Gas Company (SCEG), authorizing the operation of an Independent Spent Fuel Storage Installation (ISFSI), in accordance with its regulations. This Order is being issued to SCEG because SCEG has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of the NRC's regulations.

ADDRESSES: Please refer to Docket ID NRC–2014–0017 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0017. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9196; email: *Raynard.Wharton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to § 2.106 of Title 10 of the *Code of the Federal Regulations* (10 CFR), the NRC is providing notice, in the matter of Virgil C. Summer Nuclear Station Independent Spent Fuel Storage Installation (ISFSI) Order Modifying License (Effective Immediately).

II. Further Information

I.

The NRC has issued a general license to South Carolina Electric & Gas Company (SCEG), authorizing the operation of an ISFSI, in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR part 72. This Order is being issued to SCEG because SCEG has identified near-term plans to store spent fuel in an ISFSI under the general license provisions of 10 CFR part 72. The Commission's regulations at 10 CFR 72.212(b)(5), 10 CFR 50.54(p)(1), and 10 CFR 73.55(c)(5) require licensees to maintain safeguards contingency plan procedures to respond to threats of radiological sabotage and to protect the spent fuel against the threat of radiological sabotage, in accordance with 10 CFR part 73, Appendix C. Specific physical security requirements are contained in 10 CFR 73.51 or 73.55, as applicable.

Inasmuch as an insider has an opportunity equal to, or greater than, any other person, to commit radiological sabotage, the Commission has determined these measures to be prudent. Comparable Orders have been issued to all licensees that currently store spent fuel or have identified near-term plans to store spent fuel in an ISFSI.

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and near Washington, DC, using large commercial aircraft as

weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. On October 16, 2002, the Commission issued Orders to the licensees of operating ISFSIs, to place the actions taken in response to the Advisories into the established regulatory framework and to implement additional security enhancements that emerged from NRC's ongoing comprehensive review. The Commission has also communicated with other Federal, State, and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has conducted a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures (ASMs) are required to address the current threat environment, in a consistent manner throughout the nuclear ISFSI community. Therefore, the Commission is imposing requirements, as set forth in Attachments 1 and 2 of this Order, on all licensees of these facilities. These requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the public health and safety, the environment, and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachments 1 and 2 to this Order, in response to previously issued Advisories, or on their own. It also recognizes that some measures may not be possible or necessary at some sites, or may need to be tailored to accommodate the specific circumstances existing at SCEG's facility, to achieve the intended objectives and avoid any unforeseen effect on the safe storage of spent fuel.

Although the ASMs implemented by licensees in response to the Safeguards and Threat Advisories have been sufficient to provide reasonable assurance of adequate protection of public health and safety, in light of the continuing threat environment, the Commission concludes that these actions should be embodied in an Order, consistent with the established regulatory framework.

To provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, licenses issued pursuant to 10 CFR 72.210 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202, I find that, in light of the common defense and security circumstances described above, the public health, safety, and interest require that this Order be effective immediately.

III.

Accordingly, pursuant to Sections 53, 103, 104, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 50, 72, and 73, *it is hereby ordered, effective immediately, that your general license is modified as follows:*

A. SCEG shall comply with the requirements described in Attachments 1 and 2 to this Order, except to the extent that a more stringent requirement is set forth in the Virgil C. Summer Nuclear Station's physical security plan. SCEG shall demonstrate its ability to comply with the requirements in Attachments 1 and 2 to the Order no later than 365 days from the date of this Order or 90 days before the first day that spent fuel is initially placed in the ISFSI, whichever is earlier. SCEG must implement these requirements before initially placing spent fuel in the ISFSI. Additionally, SCEG must receive written verification from the NRC that it has adequately demonstrated compliance with these requirements before initially placing spent fuel in the ISFSI.

B. 1. SCEG shall, within twenty (20) days of the date of this Order, notify the Commission: (1) if it is unable to comply with any of the requirements described in Attachments 1 and 2; (2) if compliance with any of the requirements is unnecessary, in its specific circumstances; or (3) if implementation of any of the requirements would cause SCEG to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide SCEG's justification for seeking relief from, or variation of, any specific requirement.

2. If SCEG considers that implementation of any of the requirements described in Attachments 1 and 2 to this Order would adversely impact the safe storage of spent fuel, SCEG must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 requirements in question, or a schedule for modifying the facility, to address the adverse safety condition. If neither approach is appropriate, SCEG must supplement its response, to Condition B.1 of this Order, to identify the condition as a requirement with which it cannot comply, with attendant justifications, as required under Condition B.1.

C. 1. SCEG shall, within twenty (20) days of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in Attachments 1 and 2.

2. SCEG shall report to the Commission when it has achieved full compliance with the requirements described in Attachments 1 and 2.

D. All measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

SCEG's response to Conditions B.1, B.2, C.1, and C.2, above, shall be submitted in accordance with 10 CFR 72.4. In addition, submittals and documents produced by SCEG as a result of this Order, that contain Safeguards Information as defined by 10 CFR 73.22, shall be properly marked and handled, in accordance with 10 CFR 73.21 and 73.22.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions, for good cause.

IV.

In accordance with 10 CFR 2.202, SCEG must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its publication in the **Federal Register**. In addition, SCEG and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and

include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which SCEG relies and the reasons as to why the Order should not have been issued. If a person other than SCEG requests a hearing, that person shall set forth with particularity the manner in which his/her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in the NRC's adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents electronically, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary of the Commission, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a hearing is requested by SCEG or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the

issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), SCEG may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified in Section III shall be final twenty (20) days from the date this Order is published in the **Federal Register**, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions as specified in Section III, shall be final when the extension expires, if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For The Nuclear Regulatory Commission,

Dated at Rockville, Maryland, this 28th day of January, 2014.

Catherine Haney,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1—Additional Security Measures (ASMs) for Physical Protection of Dry Independent Spent Fuel Storage Installations (ISFSIs) Contains Safeguards Information and is not included in the Federal Register notice

Attachment 2—Additional Security Measures for Access Authorization and Fingerprinting at Independent Spent Fuel Storage Installations, Dated June 14, 2013

A. General Basis Criteria

1. These additional security measures (ASMs) are established to delineate an independent spent fuel storage installation (ISFSI) licensee's responsibility to enhance security measures related to authorization for unescorted access to the protected area of an ISFSI in response to the current threat environment.

2. Licensees whose ISFSI is collocated with a power reactor may choose to comply with the U.S. Nuclear Regulatory Commission (NRC)-approved reactor access authorization program for the associated reactor as an alternative means to satisfy the provisions of sections B through G below. Otherwise, licensees shall comply with the access authorization and fingerprinting requirements of section B through G of these ASMs.

3. Licensees shall clearly distinguish in their 20-day response which method they intend to use in order to comply with these ASMs.

B. Additional Security Measures for Access Authorization Program

1. The licensee shall develop, implement and maintain a program, or enhance its existing program, designed to ensure that persons granted unescorted access to the protected area of an ISFSI are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety for the common defense and security, including a potential to commit radiological sabotage.

a. To establish trustworthiness and reliability, the licensee shall develop, implement, and maintain procedures for conducting and completing background investigations, prior to granting access. The scope of background investigations must address at least the past 3 years and, as a minimum, must include:

i. Fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check (CHRC). Where an applicant for unescorted access has been previously fingerprinted with a favorably completed CHRC, (such as a CHRC pursuant to compliance with orders for access to safeguards information) the licensee may accept the results of that CHRC, and need not submit another set of fingerprints, provided the CHRC was completed not more than 3 years from the date of the application for unescorted access.

ii. Verification of employment with each previous employer for the most recent year from the date of application.

iii. Verification of employment with an employer of the longest duration during any calendar month for the remaining next most recent 2 years.

iv. A full credit history review.

v. An interview with not less than two character references, developed by the investigator.

vi. A review of official identification (e.g., driver's license; passport; government identification; state-, province-, or country-of-birth issued certificate of birth) to allow comparison of personal information data provided by the applicant. The licensee shall maintain a photocopy of the identifying document(s) on file, in accordance with ''Protection of Information,'' in Section G of these ASMs.

vii. Licensees shall confirm eligibility for employment through the regulations of the U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, and shall verify and ensure, to the extent possible, the accuracy of the provided social security number and alien registration number, as applicable.

b. The procedures developed or enhanced shall include measures for confirming the term, duration, and character of military service for the past 3 years, and/or academic enrollment and attendance in lieu of employment, for the past 5 years.

c. Licensees need not conduct an independent investigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government-granted security clearance (i.e., Top Secret, Secret, or Confidential).

d. A review of the applicant's criminal history, obtained from local criminal justice resources, may be included in addition to the FBI CHRC, and is encouraged if the results of the FBI CHRC, employment check, or credit check disclose derogatory information. The scope of the applicant's local criminal history check shall cover all residences of record for the past 3 years from the date of the application for unescorted access.

2. The licensee shall use any information obtained as part of a CHRC solely for the purpose of determining an individual's suitability for unescorted access to the protected area of an ISFSI.

3. The licensee shall document the basis for its determination for granting or denying access to the protected area of an ISFSI.

4. The licensee shall develop, implement, and maintain procedures for updating background investigations for persons who are applying for reinstatement of unescorted access. Licensees need not conduct an independent reinvestigation for individuals who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

5. The licensee shall develop, implement, and maintain procedures for reinvestigations of persons granted unescorted access, at intervals not to exceed 5 years. Licensees need not conduct an independent reinvestigation for individuals employed at a facility who possess active ''Q'' or ''L'' clearances or possess another active U.S. Government granted security clearance, i.e., Top Secret, Secret or Confidential.

6. The licensee shall develop, implement, and maintain procedures designed to ensure that persons who have been denied unescorted access authorization to the facility are not

allowed access to the facility, even under escort.

7. The licensee shall develop, implement, and maintain an audit program for licensee and contractor/vendor access authorization programs that evaluate all program elements and include a person knowledgeable and practiced in access authorization program performance objectives to assist in the overall assessment of the site's program effectiveness.

C. Fingerprinting Program Requirements

1. In a letter to the NRC, the licensee must nominate an individual who will review the results of the FBI CHRCs to make trustworthiness and reliability determinations for unescorted access to an ISFSI. This individual, referred to as the ''reviewing official,'' must be someone who requires unescorted access to the ISFSI. The NRC will review the CHRC of any individual nominated to perform the reviewing official function. Based on the results of the CHRC, the NRC staff will determine whether this individual may have access. If the NRC determines that the nominee may not be granted such access, that individual will be prohibited from obtaining access.[1] Once the NRC approves a reviewing official, the reviewing official is the only individual permitted to make access determinations for other individuals who have been identified by the licensee as having the need for unescorted access to the ISFSI, and have been fingerprinted and have had a CHRC in accordance with these ASMs. The reviewing official can only make access determinations for other individuals, and therefore cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if the licensee wishes to have a new or additional reviewing official, the NRC must approve that individual before he or she can act in the capacity of a reviewing official.

2. No person may have access to Safeguards Information (SGI) or unescorted access to any facility subject to NRC regulation, if the NRC has determined, in accordance with its administrative review process based on fingerprinting and an FBI identification and CHRC, that the person may not have access to SGI or unescorted access to any facility subject to NRC regulation.

3. All fingerprints obtained by the licensee under this Order, must be submitted to the Commission for transmission to the FBI.

4. The licensee shall notify each affected individual that the fingerprints will be used to conduct a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information,'' in section F of these ASMs.

5. Fingerprints need not be taken if the employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, has a favorably adjudicated U.S. Government CHRC within the last 5 years, or has an active Federal security clearance. Written confirmation from the Agency/employer who granted the Federal security clearance or reviewed the CHRC must be provided to the licensee. The licensee must retain this documentation for a period of 3 years from the date the individual no longer requires access to the facility.

D. Prohibitions

1. A licensee shall not base a final determination to deny an individual unescorted access to the protected area of an ISFSI solely on the basis of information received from the FBI involving: an arrest more than 1 year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge, or an acquittal.

2. A licensee shall not use information received from a CHRC obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

E. Procedures for Processing Fingerprint Checks

1. For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–03B46M, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking unescorted access to an ISFSI, to the Director of the Division of Facilities and Security, marked for the attention of the Criminal History Program. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling 301–415–5877, or by email to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

2. The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

3. Fees for processing fingerprint checks are due upon application. The licensee shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees will need to establish an account with Pay.Gov (https://www.pay.gov). To request an account, the licensee shall send an email to det@nrc.gov. The email must include the licensee's company name, address, point of contact (POC), POC email address, and phone number. The NRC will forward the request to Pay.Gov; who will contact the licensee with a password and user lD. Once the licensee has established an account and submitted payment to Pay.Gov, they shall obtain a receipt. The licensee shall submit the receipt from Pay.Gov to the NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at 301–415–7513. Combined payment for multiple applications is acceptable. The application fee (currently $26) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

4. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's

[1] The NRC's determination of this individual's unescorted access to the ISFSI, in accordance with the process, is an administrative determination that is outside the scope of the Order.

application(s) for CHRCs, including the FBI fingerprint record.

F. Right to Correct and Complete Information

1. Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal history records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of 1 year from the date of notification.

2. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least 10 days for an individual to initiate an action challenging the results of a FBI CHRC after the record is made available for his/her review. The licensee may make a final access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to an ISFSI, the licensee shall provide the individual its documented basis for denial. Access to an ISFSI shall not be granted to an individual during the review process.

G. Protection of Information

1. The licensee shall develop, implement, and maintain a system for personnel information management with appropriate procedures for the protection of personal, confidential information. This system shall be designed to prohibit unauthorized access to sensitive information and to prohibit modification of the information without authorization.

2. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures, for protecting the record and the personal information from unauthorized disclosure.

3. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining suitability for unescorted access to the protected area of an ISFSI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have the appropriate need to know.

4. The personal information obtained on an individual from a CHRC may be transferred to another licensee if the gaining licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

5. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

[FR Doc. 2014–02324 Filed 2–3–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0268]

Introduction—Part 2, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: Light-Water Small Modular Reactor Edition

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan section; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to the following section of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The final revision is the Standard Review Plan (SRP), ''Introduction—Part 2, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: Light-Water Small Modular Reactor Edition.''

DATES: The effective date of this SRP update is March 6, 2014.

ADDRESSES: Please refer to Docket ID NRC–2012–0268 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0268. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The final revision for ''Introduction—Part 2, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: Light-Water Small Modular Reactor Edition'' is available in ADAMS under Accession No. ML13207A315.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- The NRC posts its issued staff guidance on the NRC's external Web page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*.

FOR FURTHER INFORMATION CONTACT: Jonathan DeGange, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6992 or email: *mailto:Jonathan.DeGange@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 22, 2013 (78 FR 4477), the NRC published for public comment the initial issuance of ''Introduction—Part 2, Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: Integral Pressurized Water Reactor (iPWR) Edition.''

Comment submissions were received on the proposed revision (ADAMS Accession No. ML12142A237).

The NRC staff made several changes to the proposed revision after consideration of the comments. The scope of use of the new introduction has been expanded to include any type of application under Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR): early site permits (ESPs), design certifications (DCs), standard design approvals (SDAs), combined licenses (COLs), or manufacturing licenses (MLs). Additionally, throughout the document, the use of the term ''iPWR'' (integral pressurized water reactor) has been replaced by ''SMR'' (small modular reactor) for consistency. Finally, the historical summary paragraph related to SECY–11–0156 was removed as it did not directly apply to the guidance in the new part of the introduction.

A summary of the public comments and the NRC staff's disposition of the comments are available in a separate document, Response to Public Comments on Draft SRP, ''Introduction—Part 2'' (ADAMS Accession No. ML13207A309). The ADAMS Accession Number for the Nuclear Energy Institute letter and comments is ML13091A017.

II. Backfitting and Issue Finality

Issuance of this final SRP section does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The NRC staff's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.*

The SRP provides guidance to the staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. The staff does not currently intend to impose the positions represented in this SRP section in a manner that is inconsistent with any issue finality provisions of 10 CFR part 52. If in the future the NRC staff does indeed intend to impose positions inconsistent with these issue finality provisions, the NRC staff must address the regulatory criteria for avoiding issue finality.

3. *The NRC staff has no intention to impose the SRP positions on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The staff does not intend to impose or apply the positions described in the SRP section to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals—in this case, design certifications. Hence, the issuance of this SRP guidance even if considered guidance which is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule, or address the criteria for avoiding issue finality as described applicable issue finality provision, as applicable.

III. Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 28th day of January 2014.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2014–02317 Filed 2–3–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203A–2(e), OMB Control No. 3235–0559, SEC File No. 270–501.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 203A–2(e),[1] which is entitled ''Internet Investment Advisers,'' exempts from the prohibition on Commission registration an Internet investment adviser who provides investment advice to all of its clients exclusively through computer software-based models or applications, termed under the rule as ''interactive Web sites.'' [2] These advisers generally would not meet the statutory thresholds currently set out in section 203A of the Advisers Act [3]—they do not manage $25 million or more in assets and do not advise registered investment companies, or they manage between $25 million and $100 million in assets, do not advise registered investment companies or business development companies, and are required to be registered as investment advisers with the states in which they maintain their principal offices and places of business and are subject to examination as an adviser by such states.[4] Eligibility under rule 203A–2(e) is conditioned on an adviser maintaining in an easily accessible place, for a period of not less than five years from the filing of Form ADV,[5] a

[1] 17 CFR 275.203A–2(e).

[2] Included in rule 203A–2(e) is a limited exception to the interactive Web site requirement which allows these advisers to provide investment advice to fewer than 15 clients through other means on an annual basis. 17 CFR 275.203A–2(e)(1)(i). The rule also precludes advisers in a control relationship with an SEC-registered Internet adviser from registering with the Commission under the common control exemption provided by rule 203A–2(b) (17 CFR 275.203A–2(b)). 17 CFR 275.203A–2(e)(1)(iii).

[3] 15 U.S.C. 80b–3a(a).

[4] *Id.*

[5] The five-year record retention period is a similar recordkeeping retention period as imposed on all

record demonstrating that the adviser's advisory business has been conducted through an interactive Web site in accordance with the rule.[6]

This record maintenance requirement is a ''collection of information'' for PRA purposes. The Commission believes that approximately 74 advisers are registered with the Commission under rule 203A–2(e), which involves a recordkeeping requirement of approximately four burden hours per year per adviser and results in an estimated 296 of total burden hours (4 x 74) for all advisers.

This collection of information is mandatory, as it is used by Commission staff in its examination and oversight program in order to determine continued Commission registration eligibility for advisers registered under this rule. Responses generally are kept confidential pursuant to section 210(b) of the Advisers Act.[7] Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) The accuracy of the Commission's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02245 Filed 2–3–14; 8:45 am]

BILLING CODE 8011–01–P

advisers under rule 204–2 of the Advisers Act. See rule 204–2 (17 CFR 275.204–2).

[6] 17 CFR 275.203A–2(e)(1)(ii).

[7] 15 U.S.C. 80b–10(a).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203A–2(d), OMB Control No. 3235–0689, SEC File No. 270–630.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title of the collection of information is: ''Exemption for Certain Multi-State Investment Advisers (Rule 203A–2(d)).'' Its currently approved OMB control number is 3235–0689. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Pursuant to section 203A of the Investment Advisers Act of 1940 (the ''Act'') (15 U.S.C. 80b-3a), an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the Commission unless that adviser has at least $25 million in assets under management or advises a Commission-registered investment company. Section 203A also prohibits from Commission registration an adviser that: (i) Has assets under management between $25 million and $100 million; (ii) is required to be registered as an investment adviser with the state in which it maintains its principal office and place of business; and (iii) if registered, would be subject to examination as an adviser by that state (a ''mid-sized adviser''). A mid-sized adviser that otherwise would be prohibited may register with the Commission if it would be required to register with 15 or more states. Similarly, Rule 203A–2(d) under the Act (17 CFR 275.203a-2(d)) provides that the prohibition on registration with the Commission does not apply to an investment adviser that is required to register in 15 or more states. An investment adviser relying on this exemption also must: (i) Include a representation on Schedule D of Form ADV that the investment adviser has concluded that it must register as an investment adviser with the required number of states; (ii) undertake to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that it would be required by the laws of fewer than 15 states to register as an investment adviser with the state; and (iii) maintain in an easily accessible place a record of the states in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV relying on the rule.

Respondents to this collection of information are investment advisers required to register in 15 or more states absent the exemption that rely on rule 203A–2(d) to register with the Commission. The information collected under rule 203A–2(d) permits the Commission's examination staff to determine an adviser's eligibility for registration with the Commission under this exemptive rule and is also necessary for the Commission staff to use in its examination and oversight program. This collection of information is codified at 17 CFR 275.203a–2(d) and is mandatory to qualify for and maintain Commission registration eligibility under rule 203A–2(d). Responses to the recordkeeping requirements under rule 203A–2(d) in the context of the Commission's examination and oversight program are generally kept confidential.

The estimated number of investment advisers subject to the collection of information requirements under the rule is 152. These advisers will incur an average one-time initial burden of approximately 8 hours, and an average ongoing burden of approximately 8 hours per year, to keep records sufficient to demonstrate that they meet the 15-state threshold. These estimates are based on an estimate that each year an investment adviser will spend approximately 0.5 hours creating a record of its determination whether it must register as an investment adviser with each of the 15 states required to rely on the exemption, and approximately 0.5 hours to maintain these records. Accordingly, we estimate that rule 203A–2(d) results in an annual aggregate burden of collection for SEC-registered investment advisers of a total of 1,216 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative

survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02244 Filed 2–3–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 204–2, OMB Control No. 3235–0278, SEC File No. 270–215.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is ''Rule 204–2'' (17 CFR 275.204–2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1). Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program. The respondents to the collection of information are investment advisers registered with us. The Commission staff estimates that the total reporting and recordkeeping burden of the collection of information for each respondent is approximately 181.45 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02248 Filed 2–3–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form ADV, OMB Control No. 3235–0049, SEC File No. 270–39.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is ''Form ADV'' (17 CFR 279.1). Form ADV is the investment adviser registration form and exempt reporting adviser reporting form filed electronically with the Commission pursuant to rules 203–1 (17 CFR 275.203–1), 204–1 (17 CFR 275.204–1) and 204–4 (17 CFR 275.204–4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*) by advisers registered with the Commission or applying for registration with the Commission or by exempt reporting advisers filing reports with the Commission. The information collected takes the form of disclosures to the adviser's clients and potential clients. The purpose of this collection of information is to provide advisory clients, prospective clients, and the Commission with information about the adviser, its business, its conflicts of interest and personnel. Clients use certain of the information to determine whether to hire or retain an adviser.

The information collected provides the Commission with knowledge about the adviser, its business, its conflicts of interest and personnel. The Commission uses the information to determine eligibility for registration with the Commission and to manage its regulatory, examination, and enforcement programs.

Respondents to the collection of information are investment advisers registered with the Commission or applying for registration with the Commission or exempt reporting advisers filing reports with the Commission. The Commission estimates that the total annual reporting and recordkeeping burden of the collection of information for each respondent is 11.42 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to

comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02250 Filed 2–3–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203–3, Form ADV–H, OMB Control No. 3235–0538, SEC File No. 270–481.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is ''Form ADV–H under the Investment Advisers Act of 1940.'' Rule 203–3 (17 CFR 275.203–3) under the Investment Advisers Act of 1940 (15 U.S.C. 80b) requires that registered advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV–H. Rule 204–4 (17 CFR 275.204–4) under the Investment Advisers Act of 1940 requires that exempt reporting advisers requesting a temporary hardship exemption submit the request on Form ADV–H. The purpose of this collection of information is to permit advisers to obtain a hardship exemption to not complete an electronic filing. The temporary hardship exemption that is available to registered advisers under rule 203–3 and exempt reporting advisers under rule 204–4 permits these advisers to make late filings due to unforeseen computer or software problems. The continuing hardship exemption available to registered advisers under rule 203–3 permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

The Commission has estimated that compliance with the requirement to complete Form ADV–H imposes a total burden of approximately one hour for an adviser. Based on our experience with hardship filings, we estimate that we will receive 11 Form ADV–H filings annually from registered investment advisers and three Form ADV–H filings annually from exempt reporting advisers. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 14 hours for this collection of information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02247 Filed 2–3–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203A–5, OMB Control No. 3235–0688, SEC File No. 270–631.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

The title for the collection of information is Rule 203A–5. Rule 203A–5 (17 CFR 275.203A–5) established a one-time requirement for investment advisers registered with the Commission as of January 1, 2012 to file a mandatory amendment to their Form ADV by March 30, 2012, and, if they no longer met Commission-registration eligibility requirements, to withdraw from registration by filing Form ADV–W by June 28, 2012. The deadlines for information collected pursuant the rule were March 30, 2012 (for Form ADV amendments) and June 28, 2012 (for withdrawals). The Commission is no longer collecting any information pursuant to the rule.

Accordingly, the staff estimates that, each year, no advisers will have to file a Form ADV amendment or Form ADV–W pursuant to rule 203A–5, and that the total burden for the information collection is zero hours at a cost of $0. Although Commission staff estimates that there is no burden associated with rule 203A–5, the staff is requesting an hour burden of one hour for administrative purposes. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will 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 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street, NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: January 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02246 Filed 2–3–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71436; File No. SR–CBOE–2014–009]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Exchange Bulletin

January 29, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 23, 2014, Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the requirement to publish certain information in the Exchange Bulletin. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently publishes a weekly bulletin (''Exchange Bulletin'') as a means of providing certain administrative and regulatory information to Trading Permit Holders (''TPHs''). The Exchange Bulletin is currently delivered by email or by hard copy free of charge to all effective TPHs on a weekly basis. Certain information included in the Exchange Bulletin is required to be published by Exchange rules (i.e., CBOE Rules 3.9, 3.11, 3.89 (sic), 16.3, and 17.9). The Exchange seeks to amend its rules to eliminate the requirement to publish this information in the Exchange Bulletin.

First, the Exchange proposes to amend Rule 3.9 (Application Procedures and Approval or Disapproval). Rule 3.9(e) currently provides that following receipt of an application to change Clearing Trading Permit Holders or an application to become a TPH,[5] the name of the applicant and the application request must be published in the Exchange Bulletin. The Exchange proposes to eliminate this requirement and subparagraph (e) of Rule 3.9 in its entirety. The Exchange notes that prior to its demutualization, Rule 3.9 provided that, in addition to being published in the Exchange Bulletin, this information had to be posted on the Exchange Bulletin Board for a prescribed period of time (''posting period'') so that members were aware of pending applications and could submit comments during this period to the Membership Department regarding an applicant's fitness for membership. The Exchange has since eliminated the requirement to post notice on its Bulletin Board and the posting period[6] and consequently the Exchange no longer accepts such comments from TPHs. The Exchange notes that decisions regarding these applications are based upon objective criteria set forth in Exchange rules. Accordingly, the dissemination of this information is no longer necessary or relevant. Additionally, it is time-consuming for Exchange staff to prepare this information for publication on an ongoing basis and this process has become a strain on current resources. As such, the Exchange proposes to amend its rules to account for a shift in the availability of resources and the relevance of this information.

The Exchange next seeks to eliminate Rule 3.11 (Notice of Effectiveness of Trading Permit Holder and Trading Function Statuses) in its entirety. Rule 3.11 requires the Exchange to publish notice of effectiveness of a TPH status or approval of a trading function[7] in the Exchange Bulletin. The Exchange proposes to eliminate this requirement because the Exchange does not believe it is necessary to provide such information on an ongoing basis and the process of providing this information in the form of a bulletin is a strain on current resources. The Exchange notes that it will make a list of all effective TPHs available upon request.

Next, the Exchange proposes to amend Rule 8.89 (Transfer of DPM Appointments). Rule 8.89(d) provides that the Exchange shall publish in the Exchange Bulletin notice of a proposed transfer of a DPM appointment. The Exchange seeks to eliminate the requirement to publish notice of a proposed transfer of a DPM appointment in the Exchange Bulletin and provide instead that such notice be published on the CBOE Web site. The Exchange notes that it currently posts all proposed DPM appointment transfers on the CBOE Web site. The Exchange wishes to amend Rule 8.89(d) to reflect this practice. Additionally, as the Exchange already publishes such notice on at the CBOE Web site, publication of proposed DPM appointment transfers in the Exchange Bulletin is unnecessary and redundant.

The Exchange also seeks to amend Rule 16.3 (Reinstatement). Rule 16.3(a) currently provides that a TPH, person associated with a TPH or other person suspended or limited or prohibited with respect to access to services offered by the Exchange under the provisions of CBOE Chapter 16 (Summary Suspension), may apply for reinstatement within certain prescribed time periods. Rule 16.3(a) also requires that notice of any such application for reinstatement must be published in the Exchange Bulletin. The Exchange notes that it is a rare occurrence for a TPH,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange is not required to publish receipt of an application submitted by a TPH that has been a TPH within 9 months prior to the date of receipt of the application.

[6] *See* Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR–CBOE–2008–088).

[7] The Exchange notes that historically, it has only published general categories of trading functions (e.g., Market-Maker or Floor Broker).

associated person of a TPH, or other person suspended or limited or prohibited with respect to access to services offered by the Exchange under the provisions of CBOE Chapter 16 to apply for reinstatement within the prescribed time periods. To the extent it would occur however, the Exchange proposes to eliminate this publication requirement. The Exchange does not currently accept comments submitted by TPHs regarding an applicant's fitness for membership (or re-instatement for that matter) and accordingly, the Exchange does not believe it is necessary or required to put TPHs on notice and provide information regarding an application for reinstatement on an ongoing basis.

Finally, the Exchange seeks to amend Rule 17.9 (Decision). By way of background, CBOE Chapter XVII governs the Exchange's disciplinary process. Rule 17.1 (Disciplinary Jurisdiction) provides that a TPH or associated person of a TPH who is alleged to have violated or aided and abetted a violation of, among other things, any provision of the Securities Exchange Act of 1934, as amended (the ''Act''), Bylaw or rule of the Exchange may be appropriately disciplined after notice and opportunity for hearing. Rule 17.6 (Hearing), provides that, subject to Rule 17.7 concerning summary proceedings, a hearing on the charges must held before one or more members of the Business Conduct Committee (the ''BBC''). Rule 17.9 provides that following a hearing, the Panel must issue a decision in writing and that the Exchange must publish a summary of such decision in the Exchange Bulletin upon the decision becoming final. The Exchange seeks to amend Rule 17.9 to eliminate the requirement to publish summaries of BCC hearing decisions in the Exchange Bulletin and provide instead that the Exchange will post complete BCC hearing decisions on the CBOE Web site. The Exchange notes that it currently posts all decisions issued by the BCC on the CBOE Web site. The Exchange will continue this practice as it believes publication of such decisions is important, in part, to ensure consistent decision making. The Exchange also notes that in addition to posting full BCC decisions online, it intends to periodically issue a Regulatory Circular which will include summaries of any BCC decisions that have recently become final. Accordingly, publication of summaries of those decisions in the Exchange Bulletin is unnecessary and redundant, as well as a strain on current resources.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] 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 proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change is needed as publication of the information provided for in Rules 3.9(e), 3.11, 8.89(d), 16.3(a) and 17.9 in the Exchange Bulletin is a time-consuming process and the Exchange believes its resources could be more efficiently used if directed elsewhere. More specifically, by alleviating an unnecessary strain on its resources, the Exchange will be enabled to better protect investors and the public interest.

Additionally, the Exchange notes that, as to the publication requirements set forth in Rules 3.9(e), and 16.3(a), the rationale for publishing this information was to, prior to demutualization, put members on notice of certain applications and provide them an opportunity to submit comments to the Exchange regarding the applicants. The Exchange however, no longer accepts such comments from TPHs. Determinations made regarding these applications are made by Exchange staff alone based upon objective criteria set forth in Exchange rules. Accordingly, the dissemination of this information is no longer necessary or relevant. As to the publication requirements set forth in Rule 3.11, the Exchange also believes it is not necessary to provide ongoing notice of effectiveness of a TPH status or approval of a trading function in the Exchange Bulletin, especially as these notices relate simply to statuses that have already been approved (unlike notices of pending membership applications which, as discussed, were historically posted so that members could submit comments regarding an applicant's fitness for membership).

As it relates to the requirements set forth in Rule 8.89(d) and 17.9, the Exchange notes that this information will continue to be disseminated, but through a different, more efficient means (i.e., post to CBOE Web site).

Finally, the proposed rule change is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, in that all such investors would no longer receive an Exchange Bulletin that publishes: (i) The name of applicants and application requests to change Clearing Trading Permit Holders or to become a TPH; (ii) notice of effectiveness of a TPH status or approval of a TPH trading function; (iii) notice of proposed transfers of DPM appointments; (iv) notice of applications for reinstatement; and (v) summaries of any BCC decisions.

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 does not believe the proposed rule changes impose any burden on intramarket competition because it applies to all TPHs. Additionally, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it is merely attempting to eliminate the dissemination of information that it believes is no longer necessary or relevant via the Exchange Bulletin.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[11] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–009 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–2014–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–009 and should be submitted on or before February 25, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–02243 Filed 2–3–14; 8:45 am]

BILLING CODE 8011–01–P

[11] The Exchange has fulfilled this requirement.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before March 6, 2014.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: Agency Clearance Officer, Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and SBA Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: SBA recently updated the Standard Operating Procedures (SOP) that governs the Agency's primary loan programs. As a result of this update, various lender and loan applicant forms were eliminated and the information consolidated with other forms. Specifically, with respect to this information collection, SBA is eliminating Form 2301 Parts A, B, C and D and retaining Part E, Community Advantage Lender Participation Application only which will be referred to as simply Form 2301, Community Advantage Lender Participation Application SBA is also eliminating Form 7 from this collection. The information previously collected by the eliminated forms has been consolidated with SBA Form 1919 and SBA Form 1920 (OMB Control No. 3245–0348) for use by lenders and applicants in the Lender Advantage program.

Estimated Annual Respondents: 25.

Estimated Annual Responses: 25.

Estimated Annual Hour Burden: 175.

Title: Community Advantage Lender Participation Application Description of Respondents: SBA Lender Participants.

Form Number: 2301E.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2014–01997 Filed 2–3–14; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Investment Companies—Early Stage SBICs

AGENCY: U.S. Small Business Administration.

ACTION: Call for Early Stage Fund Managers.

SUMMARY: This call for proposals (''Call'') invites experienced early stage fund managers to submit the preliminary materials discussed in Section II below, in the form of the Small Business Investment Company (''SBIC'') Management Assessment Questionnaire (''MAQ''), for consideration by the Small Business Administration (''SBA'') to be licensed as Early Stage Small Business Investment Companies. Licensed Early Stage SBICs may receive SBA-guaranteed debenture leverage of up to 100 percent of their Regulatory Capital, up to a maximum of $50 million. However, Early Stage SBICs may request

less than 100 percent of their Regulatory Capital. Importantly, Early Stage SBICs must invest at least 50% of their investment dollars in early stage small businesses. For the purposes of this initiative, an ''early stage'' business is one that has never achieved positive cash flow from operations in any fiscal year. By licensing and providing SBA guaranteed leverage to Early Stage SBICs, SBA seeks to expand entrepreneurs' access to capital and encourage innovation as part of President Obama's Start-Up America Initiative launched on January 31, 2011. More information on the Early Stage SBIC Initiative and the regulations governing these SBICs may be found at *www.sba.gov/inv/earlystage.*

DATES: The following table provides the key milestones for the Early Stage SBIC Initiative.

Milestones	Dates/times
Question and Answer Period Closed	5 p.m. Eastern Time (''EST'') on March 28, 2014.
Initial Review Period:	
Management Assessment Questionnaires (''MAQs'') Due	5 p.m. EST—March 28, 2014.
Interview Period	May 26, 2014–June 5, 2014.
Anticipated Green Light Decision	May 26, 2014–June 5, 2014.
Licensing Periods:	
For funds seeking a license in FY 2014	5 p.m. EST June 30, 2014.
Anticipated Licensing Date for FY 2014 funds	No later than September 30, 2014.
All other funds have 12 months from issuance of a Green Light to submit their license application.	Applications considered as they are received.

Notes:

- *SBA reserves the right to extend its interview, due diligence, committee, and approval timelines as appropriate. SBA will update its website at www.sba.gov/inv/earlystage should these dates change. Applicants will be notified by e-mail should these dates change.*
- *SBA expects to issue additional calls for Early Stage Fund Managers on an annual basis. SBA will announce these calls via a call notice in the* ***Federal Register.***

ADDRESSES: Visit *www.sba.gov/inv/MAQ* to download a copy of the Management Assessment Questionnaire (the ''MAQ''). You must submit via express or next day delivery service (i) the relevant MAQ signature pages and (ii) the completed MAQ on a CD–ROM in *Word* and *Excel* format to the following: Scott Schaefer, Senior Investment Officer, Office of Investment and Innovation, U.S. Small Business Administration, 409 3rd St. SW., Suite #6300, Washington, DC 20416.

SBA will not accept MAQs in .pdf format or MAQs delivered via regular mail (due to irradiation requirements), or hand delivery or courier service.

SUPPLEMENTARY INFORMATION:

I. Background Information

SBA invites early stage fund managers to submit the preliminary materials, as discussed in Section II below, in the form of a Management Assessment Questionnaire (''MAQ'') for the formation and management of an Early Stage SBIC. In 2012, SBA introduced the Early Stage Initiative. Early Stage SBICs represent a new sub-category of SBICs that will focus on making investments in early stage small businesses. Go to *www.sba.gov/inv/earlystage* for information on the Early Stage Initiative and links to the Early Stage SBIC Final Rule (''Final Rule''). This initiative is part of President Obama's ''Start-Up America Initiative'' to promote American innovation and job creation by encouraging private sector investment in job-creating startups and small firms, accelerating research, and addressing barriers to success for entrepreneurs and small businesses.

II. Management Assessment Questionnaire/License Application Materials

The first required submission in the Early Stage Licensing process is SBA's MAQ. The MAQ consists of two forms that cover qualitative and quantitative information on the management team, the proposed strategy for the SBIC, the principals' investment track record, and the proposed fund structure and economics. The MAQ consists of SBA Form 2181 and Exhibits A–F of Form 2182.

Should SBA issue you a ''Green Light letter,'' you must submit the SBIC License Application, consisting of SBA Form 2181, 2182 and 2183 (updated to reflect any changes), for the final licensing phase. Exhibit O in SBA Form 2183 includes the fund's limited partnership agreement (''LPA''). Applicants should review this notice for special instructions associated with the LPA for Early Stage SBICs.

III. Early Stage Licensing Process

There are four stages in SBA's Early Stage Licensing Process: (A) Call Period; (B) Initial Review; (C) Applicant Fundraising and Document Preparation; and (D) Licensing. Each of these stages is discussed below.

A. *Call Period.* This notice signals the start of the Fiscal Year 2014 Early Stage SBIC call period. SBA intends to hold one Early Stage SBIC call period for accepting MAQs per fiscal year and SBA will issue a new notice in the **Federal Register** for the next call period. Interested parties should download a MAQ from *www.sba.gov/inv/MAQ.* You should also review the information at *www.sba.gov/inv/earlystage* which includes a list of frequently asked questions (''FAQs'') regarding the Early Stage Initiative. If you still have questions regarding the Early Stage process, please email your questions to *erikka.robinson@sba.gov.* SBA will endeavor to respond to your question within three business days, depending on volume. SBA may not be able to respond to fund-specific questions or questions that require a legal opinion. SBA will not take any further questions after the end of the Question and Answer Period identified under the Dates section.

B. *Initial Review.* At the end of the Initial Review phase, SBA will issue a Green Light letter to those applicants that have preliminarily met the evaluation criteria for an Early Stage SBIC, including the vintage year and geographic diversification criteria. The process for SBA's Initial Review is as follows:

1. Submit MAQ. SBA must receive your completed MAQ no later than the date and time specified under the Dates section of this notice. SBA will send a confirmation that it has received your MAQ within three business days of your submission. If you have not fully completed all sections of the MAQ or provided sufficient information to allow SBA to evaluate your management team, you may be ineligible for this call period. If so, SBA will notify you by email.

2. Due Diligence. SBA will review all MAQs against the evaluation criteria identified in this notice. SBA may engage a contractor to assist in evaluating MAQs received in response to this Call. The Investment Committee (composed of senior managers from the Office of Investment and Innovation) will consider each MAQ, and if the Investment Committee concludes that the management team may be qualified for an Early Stage SBIC license, the entire team will be invited to SBA Headquarters at 409 Third Street, SW., Washington, DC for an interview. Those applicants not invited for interviews will be notified. After September 30, 2014, SBA will provide feedback upon request to applicants not selected for an interview.

3. Interview Period. SBA's invitation for an interview will identify a 1-hour time block during the Interview Period identified in the Dates Section, along with the topics that the applicant should be prepared to address. SBA will conduct interviews at SBA Headquarters.

Applicants seeking to be licensed by the end of the fiscal year—i.e., September 30, 2014—must bring the following completed exhibits from SBA Form 2182 to the Interview:

a. Exhibit G—Fingerprint cards and

b. Exhibit I—Statements of Personal History.

If the applicant receives a Green Light letter, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI.

4. Green Light Letter. Following the interview, the SBA will issue a Green Light letter to all applicants that have met the criteria identified in this notice, as determined by the Investment Committee. Applicants approved by the Investment Committee can expect to receive the Green Light letter via email within a few days of the Investment Committee's decision. The Green Light letter formally invites an applicant to submit its application for an SBIC License. The Green Light letter is only an invitation to proceed to the next stage in the process, not a guarantee that a fund will be issued an Early Stage SBIC license. Those applicants that do not receive a Green Light letter will also be notified by email within a few days of the Investment Committee's decision. After September 30, 2014, SBA will provide feedback upon request to those applicants that do not receive a Green Light letter.

C. *Fundraising and Document Preparation.* If you receive a Green Light letter, you will need to raise the minimum Regulatory Capital needed to execute your strategy (which can be no less than $20 million) and submit your completed license application within one year from the date of the letter.

1. Raise Regulatory Capital. An Early Stage SBIC applicant must have signed capital commitments for at least $20 million in Regulatory Capital prior to filing its license application.

2. SBIC Education. All principals of the Early Stage SBIC applicant must attend a one-day SBIC Regulations training class. This training is held at least three times per year in Washington, DC. The purpose of this class is to familiarize principals with the SBIC rules, regulations and compliance procedures. Although an applicant may receive a license before all principals have completed the training, a majority of principals must do so before licensing and all must do so before a licensed Early Stage SBIC will be permitted to draw leverage. Information concerning registration for classes can be obtained at *www.sbia.org.* Certain non-principals such as members of a board of directors may also be required to take the class. In addition, any employees or consultants whom you have assigned to handle regulatory matters or to interact with the Office of Investment and Innovation should attend the class.

3. Finalize Documents & Perform Checklist. The following items must be completed and submitted in order to proceed to the Licensing phase:

Item	☑
Updated SBA Form 2181	
SBA Form 2182 & 2183	
At least $20 million in Regulatory Capital evidenced by signed Capital Certificate in Form 2183 (Exhibit K).	
$25,000 Non-refundable licensing fee	

D. *Licensing.* During this last stage, SBA will review your completed application, perform further due diligence and analysis as needed, and make the final licensing decision. Applicants that receive Green Light letters in 2014, and wish to be licensed in FY 2014, will need to submit their completed license application no later than 5 p.m. EST on June 30, 2014, and follow all guidance identified in this notice. Applicants that do not comply with the requirements in this notice risk not receiving a license in FY 2014. All other applicants must apply within one year of the issuance of their Green Light letter. The process for Licensing is detailed below.

1. SBA acceptance of license application. Upon receipt of the application, SBA will acknowledge receipt by email. Within three business days, SBA will determine whether the application is complete, meets the minimum capital requirements and satisfies management ownership diversity requirements. If so, SBA will send the applicant an acceptance letter. If not, SBA will ask the applicant to resolve the issues identified.

2. Background and Documentation Review. Once the application has been accepted, SBA will forward the fingerprint cards and Statements of Personal History to SBA's Office of Inspector General for processing by the FBI if the applicant did not previously submit such information during or after the interview. Following a review of the application and legal documents, SBA will provide the applicant with a ''comment letter.'' Applicants must respond in writing to the comment letter. Applicants seeking to be licensed in Fiscal Year 2014 should make every effort to respond to SBA's comments within one week. Other applicants should respond as quickly as possible, but in any event within 30 days. Failure to address all comments to SBA's satisfaction will slow down the licensing process. Please note that pre-licensing investments, which SBA must review and approve before they are closed, will also add to the licensing time.

3. Divisional Licensing Committee. After SBA's licensing staff and Office of General Counsel have completed their review, the license application is presented to the Divisional Licensing Committee. This committee is composed of the senior managers of the Office of Investment and Innovation. If approved by the Divisional Licensing Committee, the application is forwarded to the Agency Licensing Committee which is comprised of certain senior managers of the SBA. Prior to consideration by the Agency Licensing Committee, an applicant must provide a signed, up-to-date capital certificate showing that it has at least $2.5 million in Leverageable Capital, consisting of cash on deposit, approved pre-licensing investments funded with partners' contributed capital, and/or approved organizational and operational expenses paid out of partners' contributed capital, and at least $20 million in Regulatory Capital. The applicant's bank must certify that the requisite funds are in the applicant's account and unencumbered.

4. Agency Licensing Committee and Administrator Approval. If the Agency Licensing Committee recommends approval of your license application, it will be forwarded to the SBA Administrator or her designee for final action as soon as you submit fully executed copies of all legal documents.

(Please note that the executed documents must be identical to the ''final form'' of the documents approved by SBA.) If the Administrator or her designee approves your application, your Early Stage SBIC license is issued.

5. Leverage Commitments. SBA has allocated $200 million in Fiscal Year (''FY'') 2014 for Early Stage SBICs. SBA expects to allocate another $200 million in each of FYs 2015 and 2016. SBA expects to be able to commit the full amount of leverage that an Early Stage SBIC requests at the time of licensing. If total leverage commitments requested for the FY 2014 licensing cycle exceed the amount available in FY 2014, SBA will allocate available leverage across all FY2014 Early Stage SBICs on a pro rata basis. Early Stage SBICs licensed in FY2014 will be eligible to request the remainder of their uncommitted leverage request in subsequent fiscal years based on availability. Early Stage SBICs that raise additional private capital after licensing may request leverage commitments against that capital. However, such requests are subject to leverage availability and will not be considered until all other licensee requests are satisfied.

IV. Early Stage SBIC LPA and Organizational Instructions

A. *Early Stage SBIC Model LPA.* In order to expedite the review of Early Stage SBIC license applications, SBA has adopted a Model Early Stage SBIC Limited Partnership Agreement (''Model LPA''). The Model LPA includes required provisions shown in Bold Arial type and optional provisions in a different font. You must download the Model LPA at *http://www.sba.gov/content/model-participating-security-sbic-l.* Applicants must use the Model LPA as a template and must follow the organizational structure of the Model LPA. Further, Applicants must include in their limited partnership agreements all of the required provisions of the Model LPA that appear in Bold Arial type. SBA will not accept additions, deletions and other changes or modifications to any of those required provisions. Applicants are required to submit a copy of their limited partnership agreement black-lined against the Model LPA, as explained in the instructions provided at the beginning of the Model LPA. SBA provides the following further guidance on limited partnership agreements:

1. SBA encourages applicants to adhere to the Model LPA to the maximum extent possible. Although SBA does not prohibit changes to those Model LPA provisions that do not appear in Bold Arial type, such changes must be explained in a narrative accompanying the applicant's limited partnership agreement. The entire agreement is subject to SBA's approval.

2. Conditions or restrictions on the ability of the general partner to call private capital commitments are limited to those permitted by the Model LPA.

3. Withdrawal rights are limited to those permitted by the Model LPA.

4. Applicants must adhere to SBA's management fee policies available at *http://www.sba.gov/sites/default/files/files/SBICTechnote07arev200804.pdf.* This policy sets a *maximum* allowable management fee only. The actual management fee will be set by negotiation between the management team and the limited partners and may be less than the maximum. Early Stage SBIC applicants should be aware that the calculation of an SBIC's capital impairment percentage is affected by all fund expenses, including management fees. SBA will consider the management fee in its licensing evaluation criteria as part of fund economics. SBA believes that the primary incentive for fund managers should be carried interest rather than fees.

5. The designation of fund expenses and expenses to be paid out of the management fee must be consistent with SBIC program regulations (see 13 CFR 107.520).

a. Organizational costs, expenses incurred in applying for a license and forming the SBIC and its entity general partner (but not its parent fund or any other affiliate), are considered a partnership expense. Organizational expenses typically include items such as the licensing fee, cost of legal and other professional and consulting services, travel and other fundraising expenses, costs of preparing, printing and distributing the private placement memorandum or other offering materials, and other related expenses such as telephone and supply costs. SBA strongly encourages applicants to include in the LPA a reasonable cap on the total organizational costs to be paid by the applicant. Costs that SBA deems excessive can be paid by an affiliate of the applicant or deducted from the applicant's Regulatory Capital prior to licensing (Regulatory Capital must still be at least $20 million after the deduction).

b. Unreimbursed expenses on deals that do not close may be designated as a partnership expense but must be capped at a reasonable level.

6. Right of limited partners to remove general partner—Provisions allowing removal of the general partner without cause (''no-fault divorce'' provisions) are permitted only after the Early Stage SBIC has repaid all outstanding leverage and any other amounts payable to SBA and has surrendered its SBIC license.

7. Any amendments to the limited partnership required by SBA must be executed before licensing. Any amendments initiated by the applicant during the licensing process must be submitted to SBA in draft form as early as possible. SBA will not consider amendments to an Early Stage SBIC's LPA for a minimum of six months after licensing.

B. *Organization.* Early Stage SBIC applicants must adhere to the following rules regarding organizational structure:

1. Applicant cannot be a BDC or other public entity or a subsidiary of any such entity.

2. All provisions governing the operation of the SBIC must be included in the limited partnership agreement. A side letter between the applicant (or its general partner) and an investor may supplement the limited partnership agreement but may not supersede it. In the event of a conflict between the limited partnership agreement and the side letter, the limited partnership agreement shall control. If an investor requests a side letter provision that is of general interest to all investors (e.g., a provision regarding the fund's efforts to invest in certain geographic areas), that provision should be incorporated into the limited partnership agreement. All side letters require SBA's prior written approval.

3. Applicant must adopt SBA Model Valuation Guidelines.

4. Drop-down SBICs

a. The drop-down structure should be used only when it has a clear business purpose:

i. Example 1—Parent fund has already raised capital and begun operating and wants to commit a portion of its capital to an Early Stage SBIC.

ii. Example 2—Substantial capital will be retained for investment at the parent level (SBA suggests that managers consider the alternative of structuring a non-SBIC fund side by side with the SBIC).

b. Drop-down funds must have one parent fund only and the parent fund must be a U.S. entity.

c. Parent must qualify as a traditional investment company based on established SBA precedent.

d. Parent must disclose the identity of all of its investors.

e. All of the investors in the parent fund (the SBIC's ''Class A'' limited partner) must agree to be ''Class B'' limited partners of the SBIC with an obligation to fund the Early Stage SBIC capital calls if the Class A limited partner does not. The obligation of the

Class B limited partners to the Early Stage SBIC is reduced dollar for dollar as the parent fund contributes capital to the SBIC. The Model LPA contains required provisions for drop-down funds.

f. The Class B limited partners' commitments to the SBIC applicant must be expressed as a specific dollar amount (not just as the ''proportionate share'' of parent fund's commitment).

g. The total dollar amount of Class B commitments must be equal to the Class A limited partner's unfunded commitment to the SBIC. SBA will not require Class B commitments if the SBIC's Regulatory Capital will not include any unfunded commitments from the Class A limited partner.

C. *Capitalization.* Applicants must raise the minimum $20 million in Regulatory Capital by the time the license application is submitted.

1. Capital commitments from limited partners must be made directly to the SBIC (and its parent fund, in the case of a drop-down) with no intermediaries involved.

2. The Early Stage SBIC applicant must have the unconditional ability to legally enforce collection of each capital commitment.

3. Capital Certificate. Capital commitments must be documented in the capital certificate (Exhibit K of SBA Form 2183) and comply with the following:

a. A signed Capital Certificate must be submitted with the license application.

b. The only permitted condition on private capital commitments is:

i. Receipt of Early Stage SBIC license.

c. Individual investors must list primary residence address, not a business address.

d. Street addresses are required (no P.O. Box addresses).

4. A dual commitment may be obtained to back up the commitment of any direct investor in the SBIC who is not an Institutional Investor.

5. Capital commitments by the principals, general partner, or their affiliates must be payable in cash when called (cannot be satisfied with notes or management fee waivers).

D. *General Partner*

1. All principals must:

a. Hold direct ownership interests in and be the direct individual managers of the general partner, with no intervening entities.

b. Receive carried interest directly from the general partner; for drop-down SBICs, carried interest may be received from the parent fund's general partner.

2. A maximum of 25% of the carried interest may be allocated to non-principals.

3. Any provision to remove or terminate a principal must be spelled out within the general partner's organizational document and must not be tied to events occurring under other agreements (e.g., a principal's employment agreement with the management company).

E. *Investment Advisor (''Management Company'').* Ownership of the Management Company that is highly disproportionate to the ownership of the general partner (e.g., one principal is the 100% owner) is not viewed favorably by SBA, but may be acceptable if there are adequate checks and balances on the powers of the dominant owner. Areas that cannot be subject to unilateral decision-making include the following:

1. Power to remove or terminate other principals.

2. Power to change the composition of the Early Stage SBIC's investment committee.

V. Early Stage SBIC Licensing Evaluation Criteria

A. *General Criteria.* SBA will evaluate an Early Stage SBIC license applicant based on the submitted application materials, Investment Committee interviews with the applicant's management team, and the results of background investigations, public record searches, and other due diligence conducted by SBA and other Federal agencies. SBA will evaluate an Early Stage SBIC license applicant based on the same factors applicable to other license applicants, as set forth in 13 CFR § 107.305, with particular emphasis on managers' skills and experience in evaluating and investing in early stage companies. As discussed in the Final Rule, evaluation criteria fall into four areas: (A) Management Team; (B) Track Record; (C) Proposed Investment Strategy; and (D) Organizational Structure and Fund Economics. You should review these regulations prior to completing your MAQ.

B. *Managing SBA Leverage.* SBA will pay particular attention to how a team's investment strategy works with proposed SBA leverage. Early Stage Debenture leverage either requires a 5 year interest and annual charge reserve from the date of issue or is structured with an original issue discount that covers the interest and annual charges for the first 5 years. In either case, Early Stage SBICs must identify how quarterly interest payments beginning in the 6th year from Debenture issue will be met. Sources of liquidity to make interest payments may include (a) private capital; (b) realizations; or (c) current income. As part of your plan of operations, you should carefully consider how your investment strategy will work with SBA leverage and make appropriate suggestions to manage risk. Risk mitigation strategies might include making some investments in current pay instruments, taking down less than a full tier of leverage (i.e., leverage less than 100% of Regulatory Capital), taking leverage down later in the fund's life, lowering management expenses, and reserving more private capital. The strategies you choose to employ should be appropriate for your management team's track record and investment strategy.

C. *SBA Diversification Rights.* Per 13 CFR 107.320, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to (i) the year in which they commence operations (''vintage year'') and (ii) geographic location.

1. Vintage Year Diversification. Vintage year has a major impact on the return expectations of a fund and excessive concentration in a single year could substantially increase program risk. Therefore, SBA reserves the right, when licensing Early Stage SBICs, to maintain diversification across vintage years. SBA believes that it will be able to manage vintage year diversification through its call process. If SBA receives an extraordinary number of qualified applicants in FY 2014, it may not approve all such applicants.

2. Geographic Diversification. All Early Stage SBICs must first meet SBA's basic licensing criteria. After those criteria are met, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to the geographic location in which the Early Stage SBIC expects to invest.

Javier Saade,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2014–02225 Filed 2–3–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8619]

In the Matter of the Designation of Ziyad al-Nakhalah Also Known as Ziyad Rushdi al-Nakhalah Also Known as Ziyad Rushdi Husayn Also Known as Abu Tariq as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive

Order 13284 of January 23, 2003, I hereby determine that the individual known as Ziyad al-Nakhalah, also known as Ziyad Rushdi al-Nakhalah, also known as Ziyad Rushdi Husayn, also known as Abu Tariq, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: January 28, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–02287 Filed 2–3–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 8618]

Department of State FY12 Service Contract Inventory

AGENCY: Department of State.

ACTION: Notice of the release of the Department of State FY 12 Service Contract Inventory.

SUMMARY: The Department of State has publically released its Service Contract Inventory for FY 13 and its analysis of the FY 12 inventory. They are available here: *http://csm.state.gov/content.asp?content_id=135&menu_id=71.*

Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, requires Department of State, and other civilian agencies, to submit an annual inventory of service contracts. A service contract inventory is a tool to assess an agency in its ability to contract services in support of its mission and operation and whether the contractors' skills are being utilized in an appropriate manner.

DATES: The FY 13 inventory and FY 12 analysis is available on the Department's Web site as of January 30, 2014.

FOR FURTHER INFORMATION CONTACT: Barry Thomas, Division Chief, A/EX/CSM, 202–485–7190, *BarryTD2@state.gov.*

Dated: January 30, 2014.

Barry Thomas,

Division Chief, A/EX/CSM, Department of State.

[FR Doc. 2014–02286 Filed 2–3–14; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification: Pilots and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 27, 2013, vol. 78, no. 229, page 71023–71024. 14 CFR part 61 prescribes certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility.

DATES: Written comments should be submitted by March 6, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0021.

Title: Certification: Pilots and Flight Instructors.

Form Numbers: FAA Form 8710–1.

Type of Review: Renewal of an information collection.

Background: Title 14 of the Code of Federal Regulations part 61 (14 CFR part 61) Certification: Pilots, Flight Instructors, and Ground Instructors prescribes minimum standards and requirements for the issuance of airman certificates, and establishes procedures for applying for airman certificates. The Airman Certificate and/or Rating Application form and the required records, logbooks and statements required by the federal regulations are submitted to Federal Aviation Administration (FAA) Flight Standards District Offices or its representatives to determine qualifications of the applicant for issuance of a pilot or instructor certificate, or rating or authorization.

Respondents: Approximately 175,000 certificated pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Approximately 2.15 hours.

Estimated Total Annual Burden: 301,344 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 29, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–02326 Filed 2–3–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Air Taxi and Commercial Operator Airport Activity Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 27, 2013, vol. 78, no. 229, page 71024. Enplanement data collected from air taxi and commercial operators are required for the calculation of air carrier airport sponsor apportionments as specified by the Airport Improvement Program (AIP), and 49 U.S.C. part A, Air Commerce Safety, and part B, Airport Development and Noise.

DATES: Written comments should be submitted by March 6, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0067.

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Form Numbers: FAA Form 1800–31.

Type of Review: Renewal of an information collection.

Background: The data collected serves as the only source of data for charter and nonscheduled passenger data by Part 135 operators (air taxis). The data received on the form is then incorporated into the Air Carrier Activity Information System which is used to determine whether an airport is eligible for AIP funds and for calculating primary airport sponsor apportionment as specified by Title 49 U.S.C. The data collected on the form includes passenger enplanements by carrier and by airport.

Respondents: Approximately 300 Part 135 operators.

Frequency: Information is collected annually.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: 450 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on January 29, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–02325 Filed 2–3–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–07]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 24, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0028 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for 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).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alphonso Pendergrass (202) 493–5260.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 29, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0028

Petitioner: Gulfstream Aerospace Corporation, Inc. (''Gulfstream'')

Section of 14 CFR Affected: § 145.107(a)(1)

Description of Relief Sought: Gulfstream Aerospace Corporation, Inc. (''Gulfstream'') petitions the FAA for a permanent exemption from 14 CFR 145.107(a)(1) to allow Gulfstream to form a satellite repair station

organization without the repair station with managerial control having all of the same ratings as its satellite repair stations.

[FR Doc. 2014–02249 Filed 2–3–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA—2014–0014]

2014–2018 Strategic Plan

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of public listening session and request for comment.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is currently finalizing its 2014–2018 strategic plan, and announces that it will hold a public listening session to solicit public comment on emerging or potential traffic safety problems and solutions. Public feedback will assist the agency in preparing to meet the challenges it faces in the next 5 years on improving motor vehicle and traffic safety in the United States. This notice invites comments, suggestions and recommendations from all individuals and organizations that have an interest in motor vehicle and highway safety, consumer programs (e.g., fuel economy, vehicle theft, odometer fraud, tire performance) administered by the agency, and/or other NHTSA activities. NHTSA will give a brief overview of the plan, and then interested organizations will be provided 10 minutes to present comments to the agency. Alternately, organizations and individuals may provide comments to the docket.

DATES: The listening session will be held on February 24, 2014, from 8:30 a.m.–5:00 p.m., EDT. If all participants have had an opportunity to comment, the session may conclude earlier. Pre-registration is required for in-person participation. Register by emailing your name, organization and contact information to *nhtsa_strategic_plan@dot.gov* by February 19, 2014. Written comments must be submitted by February 24, 2014.

ADDRESSES: The listening session will be held at the U. S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. In addition to attending the session in person, the Agency offers several ways to provide comments as enumerated below. You may submit comments bearing the Federal Docket Management System Docket ID NHTSA–2014–0014 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Send comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Fax:* Written comments may be faxed to (202) 366–2106
- *Hand Delivery:* If you plan to submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays.

Whichever way you submit your comments, please remember to mention the agency and the docket number of this document within your correspondence. Please 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 comments (or signing the comments, 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*.

FOR FURTHER INFORMATION CONTACT: For information concerning the listening session, please contact Melanie O'Donnell, Office of Governmental Affairs, Policy, and Strategic Planning, NHTSA (telephone: 202–366–0689 or email: *melanie.odonnell@dot.gov*). Register by emailing your name, organization and contact information to *nhtsa_strategic_plan@dot.gov* by February 19, 2014.

If you need sign language assistance to participate in this listening session, contact Ms. O'Donnell by February 17, 2014, to allow us to arrange for such services. NHTSA cannot guarantee that interpreter services requested on short notice will be provided.

SUPPLEMENTARY INFORMATION: NHTSA requests comments, suggestions and recommendations that will assist the agency in assessing and understanding the potential effects and implications that changes in demographic, economic, environmental, institutional, and technological factors will have on motor vehicle and highway traffic safety. The agency is particularly interested in learning about emerging or potential safety problems, gaps in current strategies and approaches, and in receiving recommendations for addressing traffic safety problems effectively. NHTSA will consider all comments received but may not necessarily include all comments into the strategic plan due to inconsistency with NHTSA's mission, budget constraints, and data driven priority areas.

I. Background

NHTSA was established as the successor to the National Highway Safety Bureau in 1970, to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 (Chapter 301 of Title 49, United States Code) and the Highway Safety Act of 1966 (Chapter 4 of Title 23, United States Code). The agency also administers consumer programs established by the Motor Vehicle Information and Cost Saving Act of 1972 (Part C of Subtitle VI (Chapters 321, 323, 325, 327, 329 and 331) of Title 49, United States Code). NHTSA's mission is to save lives, prevent injuries, and reduce traffic-related health care and other economic costs due to road traffic crashes through education, research, safety standards, and enforcement activity.

In order to address these public health issues and economic costs of highway crashes, the agency seeks to improve public health by helping to make highway travel safer. The agency develops, promotes and implements educational, regulatory, enforcement and emergency medical service programs aimed at ending preventable tragedies and reducing the economic costs associated with motor vehicle use and highway travel. A multi-disciplinary approach that draws upon diverse fields such as epidemiology, engineering, biomechanics, emergency medicine, the social sciences, human factors, economics, education, law enforcement, and communication science to address one of the most complex and challenging public health problems facing our society.

NHTSA is a leader in collecting and analyzing motor vehicle crash data, in conducting research, and in developing countermeasures designed to prevent and mitigate vehicle crashes, thereby reducing associated fatalities and traumatic injury. The agency improves traffic safety through its regulation and enforcement of motor vehicle and motor

vehicle equipment; develops evidence-based education and enforcement programs and promotes their use by States, localities, and other safety partners; sponsors critical research; conducts innovative projects to improve traffic and motor vehicle safety; provides leadership in understanding and assessing the safety impact of advanced technologies; and, works to develop harmonized international safety standards. All aspects of engineering, education, enforcement and evaluation are incorporated into programs to address the challenges of crash and injury prevention involving people, vehicles, and the roadway environment.

II. Meeting Participation and Information NHTSA Seeks From the Public

The listening session is open to the public. NHTSA will open the meeting by providing a brief presentation on the current status of the strategic plan. Speakers' remarks will be limited to 10 minutes each. Pre-registration is required for in-person participation. Register by emailing your name, organization and contact information to *nhtsa_strategic_plan@dot.gov* by February 19, 2014. For questions contact Melanie O'Donnell at *melanie.odonnell@dot.gov* or 202–366–0689. In-person participants need to bring photo identification and should plan to arrive 45 minutes before the session starts to allow time to clear building security. The public may submit material to the NHTSA staff at the session for inclusion in the public docket, NHTSA–2014–0014.

Chan Lieu,

Director, Office of Governmental Affairs, Policy and Strategic Planning.

[FR Doc. 2014–02241 Filed 2–3–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

United States Mint

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice of Stakeholder Meeting.

SUMMARY: Pursuant to the Coin Modernization, Oversight, and Continuity Act of 2010 (Pub. L. 111–302), the United States Mint announces a stakeholder meeting for the purpose of obtaining direct, first-hand input on the impacts of alternative metal compositions for circulating coinage from interested members of businesses, industries, and agencies.

Date: Thursday, March 13, 2014.

Time: 10:30 a.m. to 3:30 p.m. (EDT).

Location: United States Mint; 801 Ninth Street NW.; Washington, DC, 2nd floor.

Subject: The purpose of this meeting is to invite members of stakeholder organizations to directly share their perspectives concerning circulating coins and the impacts of alternative metal compositions. This input will support the Secretary of the Treasury in understanding the balance of interests and impacts to the public, private industry stakeholders, and the Government.

Information: Attendees are invited to the following link for a copy of the United States Mint's bi-annual report to Congress, December 2012 and the Alternatives Metals study, completed August 2012. *http://www.usmint.gov/about_the_mint/?action=biennialreport.* The study discusses alternative metals that could potentially change the following attributes: Weight, color, electromagnetic signature. The study also touches on implementation and transition periods.

SUPPLEMENTARY INFORMATION: Under the Coin Modernization, Oversight, and Continuity Act of 2010, in conducting research and development on circulating coins, the Secretary of the Treasury is required to consider:

(A) Factors relevant to the potential impact of any revisions to the composition of the material used in coin production on the current coinage material suppliers;

(B) Factors relevant to the ease of use and ability to co-circulate new coinage materials, including the effect on vending machines and commercial coin processing equipment and making certain, to the greatest extent practicable, that any new coins work without interruption in existing coin acceptance equipment without modification; and

(C) Such other factors that the Secretary of the Treasury, in consultation with merchants who would be affected by any change in the composition of circulating coins, vending machine, and other coin acceptor manufacturers; vending machine owners and operators; transit officials; municipal parking officials; depository institutions; coin and currency handlers; armored-car operators; car wash operators; and American-owned manufacturers of commercial coin processing equipment, considers to be appropriate and in the public interest.

Special Accommodations: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other related accommodations should be directed to the Office of Coin Studies (see **FOR FURTHER INFORMATION CONTACT**) as soon as possible but no later than March 3, 2014.

This is not a public meeting. Attendance is by invitation only. Persons interested in attending the meeting should use the contact information provided in this notice no later than Monday, March 10, 2014 to request an invitation and obtain additional meeting information. Seating will be available on a first-come, first-served basis.

Input will be gathered orally, at the stakeholder meeting, and in writing via a subsequent **Federal Register** notice requesting comment. The oral comments will be documented by a transcription service provider.

FOR FURTHER INFORMATION CONTACT: Leslie Schwager, Office of Coin Studies at *OfficeofCoinStudies@usmint.treas.gov,* or by calling 202–354–6600.

Authority: 31 U.S.C. 5112(p)(3)(A); Public Law 111–302, section 2(a)(2).

Dated: January 29, 2014.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2014–02332 Filed 2–3–14; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 23 February 4, 2014

Part II

Federal Reserve System

12 CFR Part 229

Availability of Funds and Collection of Checks; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1409]

RIN 7100–AD68

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule, request for comment.

SUMMARY: On March 25, 2011, the Board published a notice of proposed rulemaking (''2011 proposal'') intended to facilitate the banking industry's ongoing transition to fully electronic interbank check collection and return. Based on its analysis of the comments received in response to the 2011 proposal, the Board is revising its proposed amendments to subparts C and D of Regulation CC and is requesting comment on a revised proposed rule that would, among other things, encourage depositary banks to receive and paying banks to send returned checks electronically. The Board is requesting comment on two alternative frameworks for return requirements. Under Alternative 1, the expeditious-return requirement currently imposed on paying banks and returning banks for returned checks would be eliminated; a paying bank returning a check would be required to provide the depositary bank with a notice of nonpayment of the check—regardless of the amount of the check being returned—only if the paying bank sends the returned check in paper form. Under Alternative 2, the current expeditious-return requirement—using the current two-day test—would be retained for checks being returned to a depositary bank electronically via another bank, but the notice-of-nonpayment requirement would be eliminated. The Board is proposing to retain, without change, the regulation's current same-day settlement rule for paper checks. In addition, the Board is also requesting comment on applying Regulation CC's existing check warranties to checks that are collected electronically and on new warranties and indemnities related to checks collected electronically and to electronically-created items.

DATES: Comments must be submitted by May 2, 2014.

ADDRESSES: You may submit comments, identified by Docket No. R–1409 and RIN No. 7100 AD 68, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Sophia Allison, Senior Counsel (202/452–3565), Legal Division; Samantha Pelosi, Manager, Financial Services (202/530–6292); or Tyler Standage, Financial Services Analyst (202/452–2087), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act of 1987 (EFA Act) and the Check Clearing for the 21st Century Act of 2003 (Check 21 Act).[1] The Board implemented the EFA Act in subparts A, B, and C of Regulation CC and the Check 21 Act primarily in subpart D.

The EFA Act was enacted to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes. Subpart A of Regulation CC contains general information, such as definitions of terms. Subpart B of Regulation CC implements the EFA Act's funds-availability provisions and specifies availability schedules within which banks must make funds available for withdrawal. Subpart B also implements the EFA Act's rules regarding exceptions to the schedules, disclosure of funds-availability policies, and payment of interest. As part of its 2011 proposal, the Board requested comment on proposed amendments to subpart B. This notice of proposed rulemaking, however, does not address the proposed amendments to subpart B.[2] Because amendments to Subpart B must now be made jointly with the Consumer Financial Protection Bureau (CFPB), the Board does not propose amendment to Subpart B in this document.

Subpart C of Regulation CC implements the EFA Act's provisions regarding forward collection and return of checks. Subpart C of Regulation CC includes provisions to speed the collection and return of checks, such as requirements for the expeditious return responsibilities of paying and returning banks, authorization to send returns directly to depositary banks, notification of nonpayment of large-dollar returned checks, standards for check indorsement, and specifications for same-day settlement of checks presented to the paying bank. The provisions of subpart C were adopted by the Board pursuant to section 609(b) and (c) of the EFA Act.[3] Section 609(b) directs the Board to consider requiring depository institutions and Federal Reserve Banks to take certain steps to improve the check-processing system, such as steps to automate the check-return process.[4] Section 609(c) authorizes the Board to regulate any aspect of the payment system and any related function of the payment system with respect to checks in order to carry out the provisions of the EFA Act.[5] In addition, section 611(f) of the EFA Act authorizes the Board to impose on or allocate among depository institutions

[1] Expedited Funds Availability Act, 12 U.S.C. 4001 *et seq.;* Check Clearing for the 21st Century Act, 12 U.S.C. 5001 *et seq.*

[2] Section 1086 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the EFA Act to make the Board's authority for the EFA Act's provisions implemented in Subpart B joint with the Consumer Financial Protection Bureau.

[3] EFA Act section 609(b) and (c); 12 U.S.C. 4008 (b) and (c).

[4] EFA Act section 609(b)(4) states that ''[i]n order to improve the check processing system, the Board shall consider (among other proposals) requiring, by regulation, that . . . the Federal Reserve banks and depository institutions take such actions as are necessary to automate the process of returning unpaid checks.'' 12 U.S.C. 4008(b)(4).

[5] EFA Act section 609(c)(1) states that ''[i]n order to carry out the provisions of this title, the Board of Governors of the Federal Reserve System shall have the responsibility to regulate—(A) any aspect of the payment system, including the receipt, payment, collection, or clearing of checks; and (B) any related function of the payment system with respect to checks.'' 12 U.S.C. 4008(c)(1).

the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Such liability may not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability.[6]

The current provisions of subpart C presume that banks generally handle checks in paper form. For example, the current expeditious-return provisions presume that banks are able to satisfy the expeditious-return requirement by using the same modes of transportation for paper returned checks that they used for forward collection of paper checks and that they can deliver returned paper checks at the same time that they deliver paper forward-collection checks.

B. Electronic Check Collection and Return

The Check 21 Act, which became effective in October 2004, facilitated electronic collection and return of checks by permitting banks to create a paper ''substitute check'' from an electronic image of a paper check and from electronic information related to the paper check. The Check 21 Act authorized banks to provide substitute checks to a bank or a customer that had not agreed to electronic exchange. At the end of 2005, the Reserve Banks received about 4 percent of checks deposited for forward collection in electronic form and presented approximately 28 percent of their checks in electronic form.[7] Virtually all returned checks sent to and from Reserve Banks at that time were in paper form. Reserve Banks estimate that, by the end of 2013, more than 99.9 percent of all forward checks, 99.0 percent of FedReturn checks, and 97.0 percent of FedReciept Return checks will be processed in electronic form.

II. Overview of the 2013 Proposal

In 2011, the Board proposed amendments to subparts C and D of Regulation CC intended to facilitate the banking industry's ongoing transition to fully-electronic interbank check collection and return (''2011 proposal'').[8] Based on its analysis of the comments received on the 2011 proposal, the Board has revised its proposed amendments to subparts C and D and is requesting comment on a revised proposed rule (''2013 proposal'' or ''current proposal''). Under the current proposal, As under the 2011 proposal, the Board proposes to exercise its authority under section 609(b) and (c) of the EFA Act to amend subparts C and D, and, in connection therewith, subpart A, of Regulation CC to provide incentives for depositary banks to receive, and paying banks to send, returned checks electronically.

This section describes the primary issues presented in the current proposal. A more detailed analysis of the proposed amendments is provided in the Section-by-Section analysis that follows this section. The Board requests comment on all aspects of the current proposal.

A. Return Requirements

The EFA Act, as implemented by subpart B of Regulation CC, establishes maximum time periods for the holds that depositary banks may place on funds deposited into checking accounts, including funds deposited by check, before making the deposited funds available to the customer. When the EFA Act was enacted in 1987, the time required for delivery of returned checks to the depositary bank was often longer than the maximum hold periods to which the banks would be subject under the EFA Act. At that time, checks typically were collected and returned in paper form, and returned checks were typically returned back through the path used for forward collection. Returning a check could take long periods of time if a paying bank were returning a check to a bank to which it was not sending checks for forward collection. In such situations, paying banks might not have the dedicated transportation infrastructure and in such cases would typically send the returned check by mail, which could significantly slow the return process.[9] To speed the return of checks and to reduce the risk that depositary banks would make funds from a check available before learning of the check's nonpayment, the Board exercised its authority under the EFA Act to eliminate the requirement that the check be returned through the forward endorsement chain and to adopt the expeditious return requirement in Regulation CC.[10]

Today, even more so than in 2011, checks are both collected and returned electronically. Electronic check-return methods substantially reduce risk to the check system because they result in returned checks being delivered to depositary banks more quickly and with fewer errors. In addition, electronic return methods are less costly than paper methods. The full benefits and cost savings of electronic check-return methods cannot be realized, however, if paying banks and returning banks must incur time and expense to deliver paper returned checks to depositary banks that have not agreed to electronic returns. Moreover, as technology has improved, the initial implementation and ongoing costs incurred by a depositary bank to receive and paying banks to send returned items electronically have decreased substantially.[11] Over time, these electronic delivery methods could become even faster and less expensive than they are today.

A check returned electronically can generally be delivered to a depositary bank within two business days of the check's presentment to the paying bank, even if the returned check is sent through more than one returning bank. Therefore, the barriers to faster return of checks that existed in 1988, when the expeditious-return requirement was first adopted, generally do not exist today, because checks need not be returned solely in paper form.

In addition, since the time when the expeditious-return requirement was first adopted, the forward collection of checks today is almost entirely electronic. A paying bank or returning bank that sends a paper returned check today typically must use the mail, because the dedicated air and ground transportation systems for paper checks have largely been discontinued. Therefore, if a paper check must be delivered to a depositary bank that does not accept returned checks electronically, or if the paying bank sends a paper returned check, the depositary bank is unlikely to receive the returned check within the expeditious-return deadline (i.e., by 4 p.m. on the second business day following presentment of the check to the paying bank).

1. Current Rule

Under the current expeditious-return provisions of Regulation CC, a paying bank determines not to pay a check must return the check in an expeditious manner, as provided under either the

[6] EFA Act section 611(f); 12 U.S.C. 4010(f).

[7] Prior to the Check 21 Act, the Reserve Banks presented about 20 to 25 percent of their check volume electronically, primarily under MICR line presentment programs.

[8] 76 FR 16862 (Mar. 25, 2011).

[9] 52 FR 47112, 47118 (Dec. 11, 1987).

[10] 52 FR 47112, 47119 (Dec. 11, 1987).

[11] For example, the Reserve Banks provide electronic copies of returned checks in .pdf files to small depositary banks, which can use the files to print substitute checks on their own premises if necessary. After printing the substitute checks, the depositary bank can process them in the same way it processes paper checks that are physically delivered to it.

''two-day test'' [12] or the ''forward-collection test''.[13] To meet the two-day test, a paying bank must send a returned check in a manner such that the check would normally be received by the depositary bank not later than 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank. To meet the forward-collection test, a paying bank must send the returned check in a manner that a similarly situated bank would send a check (i) of similar amount as the returned check, (ii) drawn on the depositary bank, and (iii) deposited for forward collection in the similarly situated bank by noon on the banking day following the banking day on which the check was presented to the paying bank. Regulation CC also permits a paying bank to send a returned check either directly to the depositary bank or to any bank agreeing to handle the return expeditiously.[14]

In addition to requiring a paying bank to send a returned check expeditiously, Regulation CC currently requires a paying bank that determines not to pay a check in the amount of $2,500 or more to provide a notice of nonpayment to the depositary bank. The notice of nonpayment must be sent such that the notice is received by the depositary bank by 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank. Return of the check itself satisfies the notice of nonpayment requirement if the return meets the timeframe requirement for a notice of nonpayment.

2. 2011 Proposal

By the end of 2010, the Reserve Banks received and sent virtually all forward-collection checks electronically. Although at that time the Reserve Banks received about 97.1 percent of returned checks electronically, they delivered only 76.7 percent of returned checks electronically. The 2011 proposal considered the Reserve Banks' check collection and return statistics to be representative of the industry-wide experience, and proposed amendments to subpart C to encourage depositary banks to accept returned checks electronically. The 2011 proposal would place the risk of non-expeditious return on a depositary bank that chooses not to accept electronic returns because of the prevalence of electronic check-return methods and the declining costs to a depositary bank to receive returned checks electronically.

Accordingly, the 2011 proposal proposed to revise the expeditious-return requirement in § 229.30 of Regulation CC to apply only to a depositary bank that agreed to receive returned checks in electronic form from the paying bank.[15] Under the 2011 proposal, a depositary bank would be deemed to agree to receive a returned check in electronic form from the paying bank if the depositary bank agreed to receive an ''electronic return'' (i) directly from the paying bank; (ii) directly from a returning bank that holds itself out as willing to accept electronic returns directly or indirectly from the paying bank and has agreed to return checks expeditiously; or (iii) as otherwise agreed with the paying bank (e.g., through a network provided by a clearing house or other third party). Under the 2011 proposal, a paying bank would still be subject to Regulation CC's current midnight deadline provisions for all returned checks.[16]

The Board proposed in the 2011 proposal to retain the two-day test for expeditious return, and to delete the four-day test and the forward-collection test from Regulation CC. The Board also proposed in the 2011 proposal to eliminate the current notice-of-nonpayment requirement in Regulation CC [17] because the two-day timeframe for a notice of nonpayment would be the same as the proposed two-day timeframe for expeditious return in situations where the depositary bank has agreed to receive returned checks electronically. As a result, a depositary bank that did not agree to receive returned checks electronically from the paying bank under the 2011 proposal would not have been entitled to expeditious return of the check and also would not have been entitled to a notice of nonpayment. The Board specifically requested comment in the 2011 proposal on whether the notice-of-nonpayment requirement should be retained for checks being returned to depositary banks that do not agree to accept electronic returns in a nearly all-electronic environment.

The Board also requested comment in the 2011 proposal on two alternative approaches to revising the expeditious-return requirement to encourage electronic returns. Under the first alternative, a bank that holds itself out as a returning bank would be required to accept a returned check electronically from any other bank that holds itself out as a returning bank (referred to in the 2011 proposal as the ''ACH-operator-like'' approach).[18] As noted in the 2011 proposal, this approach was intended to ensure that an electronic return could reach the depositary bank even if the paying bank and the depositary bank had electronic-return agreements with different returning banks. The 2011 proposal stated that this approach could be costly for returning banks to implement, because they would have to establish electronic return connections and agreements with every other returning bank. The second alternative would have required an electronic return to be returned through the forward-collection chain, essentially reverting to the pre-Regulation CC rule (referred to as the ''Uniform-Commercial-Code (UCC)-like'' approach). The 2011 proposal noted that some depositary banks might have agreements under which returned checks are delivered to a different location than that from which the depositary bank sends its checks for forward collection, and that the second alternative could interfere with the operation of those agreements. The Board also requested comment on whether there might be other approaches preferable to those set forth in the 2011 proposal.

3. Summary of Comments

a. Expeditious-Return Requirement

About 25 commenters specifically addressed the 2011 proposed amendments to eliminate the expeditious-return requirement. Almost all of these commenters broadly supported the proposal to eliminate the requirement for a paying bank or a returning bank if the depositary bank had not agreed to accept an electronic return directly or indirectly from the paying bank. A few commenters, however, opposed the elimination of the expeditious-return requirement, stating that eliminating a depositary bank's right to expeditious return if the depositary bank had not agreed to accept returns electronically would be too severe of a penalty. These commenters opposed using amendments to Regulation CC to

[12] 12 CFR 229.30(a)(1).

[13] 12 CFR 229.30(a)(2). 12 CFR 229.31(a) sets forth similar tests for returning banks for expeditious return of checks.

[14] 12 CFR 229.30(a).

[15] The Board proposed to retain the two-day test for expeditious return, and to remove the four-day test and the forward-collection test. *See* Proposed § 229.30(a)(1) in the 2011 proposal, 76 FR 16862, 16895 (Mar. 25, 2011)).

[16] 12 CFR 229.12 and 229.30(c); *see* Uniform Commercial Code (UCC) 4–302.

[17] 12 CFR 229.33(a).

[18] This first approach was referred to as the ''ACH-operator-like'' approach because ACH network rules specify that an ACH operator must exchange files and entries with all other ACH operators. *See* Section 4.1.7 of the 2012 NACHA Operating Rules.

encourage electronic check processing and stated that the marketplace should be allowed to determine how and when banks choose to accept returned checks electronically.

Almost all of the commenters that broadly supported eliminating the expeditious-return requirement, however, expressed concern with its practical implementation. In particular, commenters were concerned with two implementation challenges raised by the provisions in the 2011 proposal that would deem a depositary bank to have agreed to accept electronic returns from a paying bank if the depositary bank agrees to accept electronic returns directly from a returning bank that ''has held itself out'' as willing to accept electronic returns. First, some of these commenters believed that it would not always be practical for a paying bank to determine from which returning bank the depositary bank has agreed to accept electronic returns. One commenter, however, stated that depositary banks that accept electronic returns from Federal Reserve Banks would not have to make such a determination.[19] Second, commenters were concerned that a paying bank might be subject to the expeditious-return requirement in circumstances where the paying bank did not have an *actual* electronic-return agreement in place with the returning bank that ''has held itself out'' as willing to accept electronic returns. These commenters stated that in such circumstances, it would be impractical for the paying bank both to establish a connection for electronic return to that returning bank and to return the check within the proposed two-day timeframe for expeditious return.

To address the second concern, one comment letter submitted by a group of institutions and trade associations (''group letter'') proposed deeming a depositary bank to have agreed to receive electronic returns from the paying bank if the depositary bank has either (1) an agreement to receive electronic returns from a returning bank that, in turn, has an actual agreement in place with the paying bank to accept electronic returns, or (2) an agreement for expeditious return by means of an electronic return through the Federal Reserve Banks, regardless of whether the paying bank has an arrangement to send electronic returns through the Federal Reserve Banks. As an alternative to specifying that a depositary bank may agree to accept electronic returns from the Reserve Banks, the group letter suggested that a depositary bank could agree to accept electronic returns from a minimum percentage of all paying banks, or through a returning bank(s) that accepts electronic returns from a minimum percentage of all paying banks.[20]

The group letter acknowledged that the second alternative, in particular, could provide an incentive for depositary banks to accept returns electronically through the Reserve Banks, as opposed to other returning banks. The group letter stated, however, that the alternative recognized the nature of the paper and electronic check return system in which the Reserve Banks serve as the default returning bank for paying banks sending returned checks to depositary banks that the paying banks cannot reach electronically.

The Board also received comments on the ACH-operator-like approach and the UCC-like approach set forth in the 2011 proposal. All of these commenters opposed both alternatives. Commenters stated that the ACH-operator-like approach would be too costly, and with no certain benefit, because of the need to develop and implement operational integration between returning banks that does not exist today. Commenters also stated that the ACH-operator-like approach might undesirably lock the banking industry into using specific returning banks. In addition, commenters stated that the UCC-like approach likewise would be very disruptive to banks' existing check-collection processes, because not all banks that receive checks for collection in electronic form from depositary banks have comparable agreements in place to send returned checks in electronic form to the depositary banks from which they received presentment in electronic form.

b. Notice-of-Nonpayment Requirement

Approximately 20 commenters specifically addressed the provisions of the 2011 proposal regarding elimination of the notice-of-nonpayment requirement. About half of these comments supported the proposal and half opposed it. Commenters that supported the proposal stated that eliminating the requirement would encourage depositary banks to receive returns electronically and agreed that a depositary bank that receives electronic returns typically would receive the returns within the time in which it would otherwise receive the notice, thereby rendering a separate notice unnecessary. These commenters also stated that maintaining the notice-of-nonpayment requirement for checks being returned to depositary banks that do not agree to accept electronic returns would impose on paying banks the expense and operational burden of establishing processes to identify depositary banks that have not agreed to electronic return and of providing separate notices of nonpayment (i.e., in addition to the electronic return itself) to those banks.

In general, commenters opposing elimination of the notice-of-nonpayment requirement stated that the notice remains an important loss-prevention tool for depositary banks. Of the commenters opposed to the elimination, about half stated that depositary banks that have not agreed to receive returned checks electronically should continue to be entitled to receive a notice of nonpayment. Other commenters stated that even those institutions that receive electronic returns may receive the notice of nonpayment sooner than the electronic return, and that the faster receipt of the notice can make a difference regarding the depositary bank's ability to charge back its customer's account before the funds are withdrawn.

4. 2013 Proposal

The Board has considered the comments received on its 2011 proposal and is now requesting comment on two alternative approaches to the requirements imposed on paying banks and returning banks that return checks. These alternatives are intended to recognize that, in today's virtually all-electronic check processing environment, requiring expeditious return of paper checks imposes substantial cost on banks returning checks. The two alternatives also are intended to eliminate some of the concerns that commenters identified with the 2011 proposal.

a. The two alternatives in the 2013 proposal, described in greater detail below, are intended to identify the optimal incentives to impose on banks returning checks to encourage the broadest possible implementation of electronic check return. One alternative—Alternative 1—is intended

[19] This commenter suggested that the Board designate the Reserve Banks' listing of the depositary-bank endpoints (routing numbers) to which they deliver returned checks electronically as the determinative source for paying banks to ascertain whether or not a depositary bank has agreed to accept electronic returns from Reserve Banks.

[20] The group letter was signed by four groups representing depository institutions: The Electronic Check Clearing House Organization, The Clearing House, the Independent Community Bankers Association (''ICBA''), and the Technology Policy Division of the Financial Services Roundtable (''BITS''). Several other commenters stated that they supported the group letter, at least with respect to the suggested alternate approaches.

to impose incentives on depositary banks to accept electronic returns by eliminating the expeditious-return requirement. Under this alternative, depositary banks that do not currently accept electronic returns would have a greater incentive to do so because only by receiving returns electronically would they be likely to learn about nonpayment of a deposited check within the current expeditious-return timeframes. The other alternative—Alternative 2—is intended to impose incentives on depositary banks to accept electronic returns by generally retaining the expeditious-return requirement except where the depositary bank had not agreed to accept electronic returns. Under this alternative, depositary banks that do not currently receive electronic returns would have a greater incentive to do so because they would not otherwise be entitled to expeditious return of unpaid checks and would therefore be at a greater risk of having to make funds available to their customers before learning that the deposited check was returned unpaid.

Alternative 1—No Expeditious Return Requirement

Proposed Alternative 1 would eliminate the expeditious-return requirement imposed on paying banks and returning banks. Paying banks would continue to be subject to the UCC's midnight deadline for returning checks (including checks in electronic form), and returning banks would continue to be required to use ordinary care when returning the item.[21]

At the time that the Board initially adopted the expeditious-return requirement, the methods used for forward collection of checks were often were faster than those used to return checks.[22] The Board initially adopted the expeditious-return requirement in Regulation CC to speed the check-return process by encouraging paying banks to return checks to the depositary bank using the same transportation methods as they used for forward collection. In today's virtually all-electronic check-processing environment, a check returned electronically should be received by the depositary bank as a practical matter within two business days of the check's presentment to the paying bank even without an expeditious-return requirement.[23]

Paper returned checks, however, are generally not delivered to depositary banks as quickly as checks returned electronically, and the UCC does not specify timeframes within which returned paper checks must be received by a depositary bank.[24] Therefore, Alternative 1 would require paying banks that return checks in paper form to provide notice of nonpayment to the depositary bank by 2 p.m. on the second business day following presentment of the check to the paying bank, regardless of the amount of the returned check.[25] The requirement for notice of nonpayment under Alternative 1 would not apply to a paying bank that sends the returned check electronically (either directly to the depositary bank or to a returning bank). The Board also proposes under Alternative 1 to move up the deadline for receipt of notice of nonpayment by the depositary bank from 4 p.m. to 2 p.m. (local time of the depositary bank) on the second business day following presentment of the check to the paying bank. The proposed 2 p.m. deadline would correspond to the earliest cutoff hour a bank may set under the UCC for items to be considered received on that banking day, rather than the next banking day.[26]

Alternative 1 is intended to create incentives for a depositary bank that still demands paper returns to transition to accept returns electronically, because the depositary bank still would be subject to the funds-availability timeframes in subpart B of Regulation CC even though it would not be entitled to expeditious return. Under Alternative 1, neither the paying bank nor the returning bank would be subject to an expeditious-return requirement or to a notice-of-nonpayment requirement if the paying bank sent the returned check electronically to a returning bank. This would be the case under Alternative 1 even if the returning bank had to create a substitute check to mail to the depositary bank. A depositary bank under Alternative 1 could reduce its risk of having to make funds available before learning whether a check has been returned unpaid by accepting returns electronically.

Alternative 1 also proposes, however, to impose a notice-of-nonpayment requirement on paying banks that choose to send a paper return. This provision of Alternative 1 is intended to impose on the paying bank the increased costs of providing notice of nonpayment to the depositary bank within the same amount of time that it would take for a check returned electronically to reach the depositary bank. Imposing this requirement on paying banks that send paper returns, regardless of the amount of the returned paper check, is intended to provide paying banks with an incentive to return checks electronically in order to avoid the costs and burdens associated with providing the notice of nonpayment.

The Board requests comment on whether eliminating the expeditious-return requirement might result in a slower check-return process, albeit one that is still electronic. The return process could be slowed, for example, if returning banks adjust return-processing timeframes or if multiple returning banks are involved in the return. The Board also requests comment on whether Alternative 1 should eliminate the notice-of-nonpayment requirement in addition to eliminating the expeditious return requirement. Commenters on the 2011 proposal stated that, in some cases, a paying bank with the capability to send returns electronically nonetheless must send a paper return.[27] In these cases, a paying bank would be unable to choose to send a returned check electronically in order to avoid the cost of sending notices of nonpayment. The Board requests comment on whether there continue to be circumstances under which a paying bank cannot avoid sending a returned check in paper form. The Board also requests comment on whether Alternative 1 should retain the notice-of-nonpayment requirement only for paper returned checks in amounts greater than $2,500. Retaining the $2,500 threshold for notice of nonpayment in such cases should reduce the number of notices that the paying bank would have to send, because the vast majority of checks are less than $2,500. The Board also

[21] UCC 4–302 provides that a payor bank is accountable for the amount of a check if the paying bank fails to return the item before its midnight deadline (i.e., by midnight of the banking day following the banking day on which the payor bank received the check). UCC 4–202 states that a collecting bank exercises ordinary care ''by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute ordinary care, but the bank has the burden of establishing timeliness.''

[22] *See* 53 FR 19372 (May 27, 1988).

[23] The time for receipt of the electronic return by the depositary bank could change if returning banks were to change their processing timeframes. It appears unlikely, however, that returning banks would change such processing timeframes given that their processes for electronic returns and there would not appear to be any benefit in changing them to allow for slower electronic processing.

[24] While the UCC imposes deadlines for when paying banks and returning banks must initiate returns, the UCC does not require returned checks to be received by depositary banks within a specified timeframe. *See* UCC 4–202. Rather, UCC 4–202 requires a returning bank to exercise ordinary care in returning checks to its transferor.

[25] Proposed 12 CFR 229.31(d).

[26] UCC 4–108.

[27] The group letter stated that electronically-enabled paying banks must send paper returns in some cases, citing as an example a check that does not qualify for handling as an image return under an electronic-return agreement, through no fault of the paying bank.

requests comment on whether the threshold for notices of nonpayment should be increased to an amount above $2,500, such as $5,000.

b. Alternative 2—Expeditious Return Requirement

Proposed Alternative 2 would preserve a requirement that a returned check reach the depositary bank within a specified timeframe similar to that proposed in the 2011 proposal. Specifically, § 229.31(b) in Alternative 2 would require a paying bank that determines not to pay a check return the check in a manner such that the returned check would normally be received by the depositary bank by 2 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.[28] As under Alternative 1, the Board proposes under Alternative 2 to eliminate the forward-collection test and the four-day test and to retain only the two-day test for expeditious return.

A paying bank would not be subject to the expeditious-return requirement under Alternative 2 if the paying bank did not have an agreement to send electronic returns (1) directly to the depositary bank or (2) to a returning bank that is subject to the expeditious return requirement. Returning banks under Alternative 2 would be subject to a similar duty of expeditious return unless the returning bank did not have an agreement to send electronic returned checks to the depositary bank or to another returning bank that has an agreement to send electronic returned checks to the depositary bank, and the returning bank had not otherwise agreed to handle the returned check expeditiously.[29] Thus, similar to Alternative 1 and to the 2011 proposal, neither a paying bank nor a returning bank would have a duty of expeditious return under Alternative 2 if the depositary bank had not agreed to accept electronic returned checks from any returning bank.

Alternative 2 recognizes that in some cases a paying bank and a depositary bank use different returning banks, and that in these cases the returning bank from which the depositary bank has agreed to accept electronic returned checks may have an agreement to receive electronic returned checks from the paying bank's returning bank. Under Alternative 2, the paying bank and the paying bank's returning bank would be subject to the expeditious-return requirement in those cases.[30] Alternative 2 assumes that an electronic returned check that must be returned through multiple returning banks would still be delivered to a depositary bank within the proposed deadline for expeditious return. The Board requests comment on the extent to which an electronic returned check that must be processed by two returning banks would be unable to be delivered to a depositary bank within the proposed deadline.

Many commenters on the 2011 proposal supported the concept of applying the expeditious-return requirement only to returned checks destined for a depositary bank that has agreed to accept electronic returned checks. Most of these commenters, however, opposed the proposed circumstances under which a depositary bank would be deemed to have agreed to accept an electronic return from a paying bank such that the paying bank would be subject to the expeditious-return requirement. For example, many commenters expressed concern that a paying bank would be subject to the expeditious-return requirement even though the paying bank did not have the necessary agreements or connections for electronic return at the time it would be required to send the return. Under such a situation, a paying bank would have to send a paper returned check in an expeditious manner, which would be very costly. Commenters also expressed concern that paying banks would be unable to determine from which returning bank(s) a depositary bank had agreed to accept electronic returns.

Alternative 2 is intended to address these concerns by generally not imposing an expeditious-return requirement on a paying bank if a returning bank with which the paying bank has an electronic return agreement does not, in turn, have an agreement to send electronic returned checks either directly or indirectly to the depositary bank. Moreover, Alternative 2 would not require a paying bank to determine from which returning bank(s) a depositary bank accepts electronic returns out of the universe of banks. Rather, a paying bank need only determine whether one of its returning banks also has an agreement to send returned checks electronically to the depositary bank.[31]

Many commenters on the 2011 proposal expressed concern with the proposed definition of ''electronic return.'' These commenters stated that the proposed definition would lead to uncertainty as to which items were subject to the expeditious-return requirement. For example, commenters expressed concern that items would be subject to the expeditious-return requirement only if the item complied with the specified industry standard, but not if the paying bank and returning bank had agreed to exchange electronic items in a different format. In the current proposal, the Board is proposing a new term, ''electronic returned check,'' that is not limited to those items that comply with a particular industry format or to items a depositary bank has directly or indirectly agreed to receive from the paying bank. These provisions of the current proposal are intended to address commenters' concerns about varying the application of the expeditious-return requirement based on format or based on whether a depositary bank had agreed to accept the item.

Alternative 2 generally would impose an expeditious-return requirement on paying and returning banks only if the depositary bank has agreed to accept electronic returned checks directly from the paying bank (or returning bank) or from another returning bank with which the paying bank (or returning bank) has an electronic-return agreement. Alternative 2 proposes to eliminate the notice-of-nonpayment requirement for all returned checks. Alternative 2 presumes that the requirement would be redundant in light of the proposed two-day expeditious-return requirement. Alternative 2 is intended to provide depositary banks that accept only paper returns an incentive to accept returns electronically in order to obtain information more quickly about the nonpayment of a returned check. Alternative 2 is also intended to provide a depositary bank with an incentive to agree to accept electronic returned checks from a returning bank that agrees to receive electronic returned checks from a substantial number of paying banks and returning banks. This provision of Alternative 2 is intended to mitigate the likelihood that a depositary bank's returning bank would be able to charge other returning banks or paying banks high check-return fees because

[28] Section 229.31(b)(2) in Alternative 2 would provide that, if the depositary bank is closed on the second business day following presentment to the paying bank, the paying bank must return the check in a manner such that it would normally be received on or before the depositary bank's next banking day.

[29] As discussed in more detail in the Section-by-Section analysis, a returning bank would not be subject to the expeditious-return requirement under Alternative 2 if the returned check is deposited into a bank that is not subject to subpart B of Regulation CC or if the depositary bank is unidentifiable.

[30] *See* proposed 12 CFR 229.31(b) and proposed 12 CFR 229.32(b).

[31] A paying bank could identify the depositary banks to which a returning bank sends returned checks electronically by, for example, a list of such banks published by the paying bank's returning bank.

the returning bank is the only connection to the depositary bank for electronic returned checks.[32] On the other hand, it could be argued that Alternative 2 provides paying banks with an incentive to enter into agreements to send electronic returned checks to returning banks that, in turn, have agreements with very few depositary banks or other returning banks. The Board requests comment on whether Alternative 2 provides the correct incentives for the efficient return of checks.

The Board recognizes that, in rare cases, a paying bank might not have any agreements to send electronic returned checks.[33] In these cases, a paying bank would not be subject to the expeditious return requirement under Alternative 2. The Board requests comment on the extent to which there are paying banks that do not have any agreements to send electronic returned checks. The Board also requests comment on whether Alternative 2 should retain the notice-of-nonpayment requirement in some form, for example, for those situations where the paying bank sends a paper returned check.

c. Other Approaches to Return Requirements

The Board invites comment on whether the approaches suggested in the group letter would be preferable to either Alternative 1 or Alternative 2. One approach suggested in the group letter would entitle a depositary bank to expeditious return if it agreed to accept returns electronically from Reserve Banks. This approach could effectively require banks to route returned checks only to specific returning banks. The other approach suggested in the group letter would entitle a depositary bank to expeditious return if it agreed to accept returns electronically from a minimum percentage of paying banks, or from a returning bank that accepted electronic returns from a minimum percentage of paying banks. If the minimum percentage were too high (the group letter suggested 75 percent as an example) under this approach, then accepting returns electronically through the Reserve Banks could be the only means for a depositary bank to meet the threshold. Under those circumstances, this approach could result in undue regulatory preference for the Reserve Banks' check-return services. Conversely, if the percentage were too low, the suggested approach could still result in a depositary bank accepting electronic returns from a returning bank with which the paying bank does not have an agreement for sending electronic returns.

B. Same-Day Settlement Rule

1. Current Rule

Section 229.36(f) of Regulation CC currently requires a paying bank to provide same-day settlement for checks presented in accordance with reasonable delivery requirements established by the paying bank and presented at a location designated by the paying bank by 8 a.m. (local time of the paying bank) on a business day. A paying bank may not charge presentment fees for checks—for example, by settling for less than the full amount of the checks—that are presented in accordance with same-day settlement requirements.[34] The same-day settlement rule was established in 1994 to reduce the competitive disparity between the Reserve Banks and other presenting banks, and to balance the bargaining power between presenting banks and paying banks more equitably. Today's check-presentment environment is virtually all-electronic, and electronic check presentment is governed by agreements between the banks involved. As a result, it may no longer be necessary to set forth in Regulation CC the terms of presentment for the limited number of checks that continue to be presented in paper. The same-day settlement rule's proscription against paying banks' assessment of presentment fees, however, may continue to help balance the bargaining power between collecting banks and paying banks in entering into electronic-presentment agreements. If, in the future, the Board proposes to eliminate the same-day settlement rule, it could also propose to retain this proscription in order to maintain the current balance of bargaining power, as well as reduce the competitive disparities between Reserve Banks and private-sector banks.

2011 Proposal

Under the 2011 proposal, a paying bank would have been permitted to require checks presented for same-day settlement to be presented electronically as ''electronic collection items,'' provided the paying bank had agreed to receive electronic collection items from the presenting bank.[35] A paying bank would have been deemed to have agreed to receive an electronic collection item if it agreed to do so either directly from the presenting bank or as otherwise agreed with the presenting bank. The timeframes, deadlines, and settlement methods for same-day settlement presentments of electronic collections items under the 2011 proposal would have been the same as those currently in effect for same-day settlement presentments of paper items.

2. Summary of Comments

About 25 commenters addressed the provisions of the 2011 proposal on same-day settlement. The majority of these commenters found the proposal to be unclear, particularly regarding how, and from which banks, a paying bank must agree to receive presentment electronically in order to require same-day settlement presentment to be electronic. These commenters requested that the Board issue a revised proposal for electronic same-day settlement after reviewing the comments received on the 2011 proposal.

A minority of the commenters on the proposed same-day-settlement provisions of the 2011 proposal supported the proposal, stating that most small banks have adopted image-based check-processing technology and are no longer able to receive paper check presentments in large volumes and process them in an automated fashion. One commenter stated that banks' existing agreements for electronic presentment provide a reasonable framework for the electronic same-day settlement presentment contemplated by the Board's proposal. Another commenter supporting the 2011 proposal stated that the Board also should consider establishing a sunset date for paper presentments for same-day settlement because the value of accelerated presentment and settlement is relatively lower today due to the increased efficiency of direct check-image exchange arrangements.

Several commenters stated that any rule governing electronic same-day settlement should preserve the ability of a presenting bank to receive same-day

[32] If a depositary bank chooses to select electronic returned checks only from a single returning bank with few connections to other banks, it will be unlikely that the paying bank or the paying bank's returning bank has an agreement to send electronic returned checks to the returning bank selected by the depositary bank.

[33] The group letter stated that electronically-enabled paying banks must send paper returns in some cases, citing as an example a check that does not qualify for handling as an image return under an electronic-return agreement, through no fault of the paying bank.

[34] *See* paragraph (3)(a) of the commentary to § 229.36(f).

[35] Proposed § 229.2(s) defined an ''electronic collection item'' as an electronic image of and information related to a check that a paying bank sends for forward collection that (1) a paying bank has agreed to receive under proposed § 229.32(a), (2) is sufficient to create a substitute check, and (3) conforms with applicable industry standards for electronic images of and information related to checks. 76 FR 16862, 16887 (Mar. 25, 2011).

settlement for the checks without being charged fees by the paying bank (either presentment fees or fees for sending electronic collection items), as is the case for checks presented in paper form under the current same-day settlement rule. These commenters expressed concern that paying banks and presenting banks might be unable to reach an agreement as to the terms of electronic same-day settlement, or that paying banks would only enter into agreements where the designated electronic presentment point charged fees to the presenting bank. Some commenters stated that banks should continue to have the option to present paper checks for same-day settlement under the existing terms in the event that banks were unable to reach agreement on electronic presentment terms, even if the paying bank had already designated an electronic presentment point or had agreed to receive presentment electronically from another presenting bank.[36]

3. 2013 Proposal

The Board proposes to retain, without change, the regulation's current same-day settlement rule. The 2011 proposal to incorporate electronic same-day settlement provisions into Regulation CC was intended to address the preference of many paying banks to receive all of their interbank check presentments electronically. At the time of the 2011 proposal, some presenting banks continued to present paper checks for same-day settlement under Regulation CC. Almost all checks are now presented electronically, however, and paying banks' prior concerns about paper-check presentments appear to have been ameliorated. The Board no longer believes it is necessary or appropriate to specify terms for electronic same-day settlement in Regulation CC because banks currently use electronic check presentment on a nearly universal basis. Instead, the terms of electronic presentment can be determined by banks' agreements, as they are under current industry practice. This approach is consistent with the approach taken elsewhere in the current proposal, under which a bank's acceptance of a check or returned check in electronic form is governed by the receiving bank's agreement with the sending bank (discussed below).

The Board requests comment on whether paying banks are continuing to receive paper checks presented for same-day settlement, and in particular requests comment on whether presenting banks that generally use electronic check-collection methods still present checks in paper form to a paying bank that has already established the capability to receive check presentments electronically. The Board also requests comment on whether it should apply the same-day settlement rule to electronic checks and, if so, how it might address the concerns of the commenters raised in connection with the 2011 proposal.

C. Framework for Electronic Checks and Electronic Returned Checks

1. Current Rule

Regulation CC applies to paper checks.[37] Therefore, subpart C's provisions related to acceptance of returned checks, presentment, and warranties do not apply to electronic images of checks (''electronic images'') or to electronic information related to checks (''electronic information''). Rather, the collection and return of checks in electronic form is governed by agreements between the banks. These agreements may be bilateral, or in the form of a Reserve Bank operating circular or a clearinghouse agreement. The agreements often include, among other terms, warranties for electronic checks similar to those made for substitute checks under the Check 21 Act (''Check-21-like warranties''); that is, warranties that a bank will not be asked to pay an item twice and that the electronic image and electronic information are sufficient to create a substitute check.[38]

2. 2011 Proposal

The Board's 2011 proposal would have added provisions that, in combination, created a default framework governing the collection and return of electronic images and electronic information.

a. Checks Under Subpart C

In addition to applying the expeditious-return requirement and same-day-settlement provisions of Regulation CC to electronic items, the 2011 proposal would have applied the other provisions of subpart C to electronic images and electronic information that a depositary bank agreed to receive from a paying bank (''electronic return'') and that a paying bank agreed to receive from a presenting bank (''electronic collection item''). Under the 2011 proposal, an item would be an ''electronic collection item'' or an ''electronic return'' only if (1) the item contained both an electronic image of a check and electronic information related to a check (or returned check), (2) the electronic image and electronic information were sufficient to create a substitute check, (3) the electronic image and electronic information conformed in format to American National Standard Specifications for Electronic Exchange of Check and Image Data—X9.100–187, in conjunction with its Universal Companion Document (hereinafter collectively referred to as ANS X9.100–187), unless the parties otherwise agree or the Board otherwise determines, and (4) the depositary bank or paying bank agreed to accept the electronic image and electronic information. The 2011 proposal would have specified under what circumstances a paying bank or depositary bank would be deemed to have agreed to receive electronic collection items and electronic returns and when they would be deemed to have been received.

b. Warranties

In the 2011 proposal, the Board proposed that § 229.34's existing warranties would be made by banks sending and receiving electronic collection items and electronic returns. In addition, the Board proposed new warranties that would apply specifically to electronic collection items and electronic returns. First, the Board proposed new Check-21-like warranties that would be made by a bank that transfers or presents an electronic collection item or an electronic return and receives consideration. In brief, the sending bank would warrant that the electronic image accurately represents all of the information from the original check, that the electronic information contains an accurate record of all the MICR line information required for a substitute check, and that no person will be charged twice for the same item.

c. Electronically-Created Items

The 2011 proposal also contained provisions for warranties specifically related to ''electronically-created items.'' Electronically-created items are electronic images that resemble images

[36] Several commenters also expressed concern with the definition of ''electronic presentment point'' (and the related definition of ''electronic return point'') used in the proposed definition of ''electronic collection item.'' The revised proposal would not define the terms ''electronic presentment point'' and ''electronic return point'' and therefore does not address these comments in detail.

[37] Current § 229.2(k) generally follows the definition of ''check'' from the EFA Act, and does not include an electronic image of a check or electronic information related to a check within the definition of ''check.''

[38] With respect to checks and returned checks handled by the Reserve Banks, Regulation J (12 CFR part 210) provides similar protections to banks receiving electronic items from a prior bank. Clearinghouse rules also typically include such protection.

of the fronts and backs of paper checks but that were created electronically and not from, for example, scanning a paper check in order to create the electronic image. Electronically-created items are also sometimes referred to as ''electronic payment orders'' or ''EPOs.'' For example, a corporate customer sending payments might, rather than printing and mailing a paper check, electronically create an image that looks exactly like an image of the corporate customer's paper checks, and email the image to the payee. Alternatively, a consumer might use a smart-phone application through which the consumer is able to fill in the payee and amount, and provide a signature, on the phone's screen. The application then electronically sends the image to the payee.

Because these items never existed in paper form, they do not meet the definition of electronic images of checks or of electronic information related to checks and therefore they cannot be used to create substitute checks that are the legal equivalent of original paper checks. Nonetheless, electronically-created items are often sent through the check-collection system as if they are electronic images of paper checks.

The 2011 proposal would have provided a bank receiving an electronically-created item with certain warranty claims against a prior bank. Specifically, the Board proposed that a bank that transfers or presents an electronic image and related electronic information ''as if'' they were derived from a paper check would make the all warranties in current § 229.34, even if the electronic image and information were not derived from a paper check. For example, a bank sending an electronically-created item to another bank would be liable to that bank if that bank was asked to pay the item twice. The 2011 proposal also provided that the existing warranties applicable to paper remotely created checks (RCCs) would apply to electronically-created items that visually resemble RCCs.[39]

3. Summary of Comments

a. Checks Under Subpart C

Three commenters, including the group letter, explicitly addressed the Board's proposal generally to apply the terms of subpart C to electronic collection items and electronic returns as if they were checks or returned checks. All three commenters generally supported this aspect of the 2011 proposal, because banks' agreements for the electronic collection and return of checks generally already treat images of and information related to checks as if they were checks or returned checks under Regulation CC, the UCC, and other applicable law. No commenter opposed applying subpart C of the regulation to these items as if they were checks.

Commenters, however, expressed numerous concerns with specific items that would be treated as checks under subpart C by virtue of the Board's proposed definitions of ''electronic collection item'' and ''electronic return.'' At least one commenter believed that the Board's definitions were too limited in that they included only those images and information that a paying bank or depositary bank had agreed to receive directly or indirectly from certain banks, and not those items that, for example, a returning bank agreed to receive from a paying bank without the depositary bank, in turn, agreeing to receive the item from the returning bank. Commenters noted that the item sent between the paying bank and returning bank would not be an ''electronic return'' because the depositary bank would not have agreed to receive it from the paying bank under the 2011 proposal. These commenters stated that the proposal therefore created uncertainty as to the applicability of subpart C's provisions, because a bank might not know at the time it transfers an electronic image whether that image is an ''electronic collection item'' because the bank might not know whether the depositary bank or paying bank has agreed to receive the item electronically.

No commenter opposed, in concept, that an ''electronic collection item'' or ''electronic return'' be sufficient to create a substitute check. The group letter, however, suggested that banks may wish to agree to exchange electronic images and electronic information even though the images or information are insufficient to create substitute checks (for example, if the image is not readable by the machine that images checks). This letter suggested that the Board clarify that banks could agree to collect electronic images or electronic information that would otherwise be insufficient to create a substitute check, and that the provisions of Regulation CC would not apply to those images or information.[40] Another commenter, however, opposed this suggestion, stating that it would result in a bifurcated system that would create even greater uncertainty.[41]

The Board received comments both supporting and opposing the provisions of the 2011 proposal that would specify the industry standard for ''electronic collection items'' and ''electronic returns.''[42] Some commenters stated that the regulation need not incorporate a standard, but should specify that banks handling electronic images must agree to a technical standard (for example, ANS X9.100–187), so long as the standard permits the receiving bank to create a substitute check.

b. Warranties

Eight commenters addressed the proposed Check-21-like warranties in the 2011 proposal. No commenter opposed, in concept, extending the existing warranties to electronic collection items and electronic returns, and four commenters explicitly supported it. Two commenters, including the group letter, wanted the Board to clarify that the parties may vary these warranties by agreement. Another commenter opposed varying the warranties by agreement, stating that it would create uncertainty.

c. Electronically-Created Items

Eight commenters addressed the provisions of the 2011 proposal for applying existing warranties in Regulation CC to electronically-created items. Six commenters, including the group letter, explicitly supported the proposal. Three commenters, again including the group letter, requested that the Board clarify that the parties may vary the warranties by agreement. Another commenter opposed varying the warranties by agreement. One Reserve Bank commenter suggested that the Board expand its proposal to require a bank that introduces an electronically-created item into the check collection system indemnify all subsequent persons handling the electronically-created item against any loss or damage

[39] Section 229.2(fff) of the regulation defines ''remotely created check'' as a paper check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. Although the regulation's remotely created check warranty does not extend to the drawer, the drawer may be able to recover from the paying bank for an unauthorized remotely created check under UCC 4–401.

[40] To distinguish between electronic images and information that are ''electronic collection items'' and those that are not, some commenters suggested that clearinghouse rules could require items that are not ''electronic collection items'' to include a ''flag.''

[41] In some cases, typically those involving a small depositary bank, the depositary bank may not know how a subsequent correspondent bank or other collecting bank handles, or ''flags,'' the item, and therefore may not know which warranties are applying to the item as it proceeds through the check-collection chain.

[42] Some commenters supported incorporating that standard, but thought that the phrase ''as amended from time to time by ANS'' should be added.

resulting from the fact that the electronically-created item was not captured from a paper check.

Eighteen commenters addressed the provisions of the 2011 proposal relating to ''eRCCs'' (electronically-created items that visually resemble RCCs).[43] Six commenters explicitly supported and no commenters opposed applying existing RCC warranties to eRCCs. The group letter recommended that the Board clarify that eRCCs would be subject to the RCC warranty. Most commenters that addressed eRCCs suggested that the Board apply all of subpart C's provisions to eRCCs.[44] Two commenters opposed that approach, believing that further study by the Board and the public are necessary to determine an appropriate regulatory framework for eRCCs.[45]

Commenters were split on whether subpart C's provisions should apply to an electronically-created item that is created by the paying bank's customer. These electronically-created items resemble images of checks drawn by the paying bank's customer, rather than remotely created checks. Four commenters, including the group letter and one Reserve Bank commenter, stated that items created by a paying bank's customer are a potentially useful payment innovation, that their development has been impeded by uncertainty about the applicable legal framework, and that coverage under subpart C would be an enabling first step in the development of new products. Three commenters stated that it was too soon to determine whether these products should be treated as ''checks'' or whether they should be treated as a different type of payment instrument.

4. 2013 Proposal

The Board is proposing a revised regulatory framework for the collection and return of checks in electronic form based on its analysis of the comments received on the 2011 proposal. Under the 2013 proposal, electronic images and electronic information will be treated as checks under subpart C (with proposed simplifications to the applicable definitions). The 2013 proposal would apply Check-21-like warranties to electronic images and electronic information. The 2013 proposal would also require a bank sending an electronically-created item to indemnify subsequent transferees for losses caused by the fact the item was not derived from a paper check.[46] The 2013 proposal also provides for a new indemnity relating to remote deposit capture services. The proposed new indemnity would cover depositary banks that receive deposit of an original paper check that is returned unpaid because it was previously deposited (and paid) using a remote deposit capture service.

a. Checks Under Subpart C

Under proposed § 229.30(a) of the 2013 proposal, electronic images of checks and electronic information related to checks that banks send and receive by agreement would be subject to the provisions of subpart C as if they were checks, unless otherwise agreed by the sending and receiving banks. In general, the Board proposes to use the terms ''electronic check'' and ''electronic returned check,'' set forth in proposed § 229.2(ggg), instead of ''electronic collection item'' and ''electronic return'' as in the 2011 proposal. An item would be an ''electronic check'' or an ''electronic returned check'' based on whether the sending bank and the receiving bank have an agreement to send the item electronically, and not based on whether a paying bank or depositary bank has agreed to receive the item electronically. A sending bank must have an agreement with the receiving bank in order to send an electronic check or electronic returned check. Like the 2011 proposal, the 2013 proposal would not require a bilateral agreement between the receiving bank and the sending bank; a Reserve Bank operating circular, clearinghouse rule, or other interbank agreement may serve as an ''agreement'' to send and receive items electronically.

The 2013 proposal would permit sending banks and receiving banks to agree to send and receive electronic images and electronic information that do not conform with ANS X9.100–187. Therefore, unlike the 2011 proposal, electronic checks and electronic returned checks could include electronic images of checks sent without accompanying electronic information and electronic information sent without an accompanying image.

Proposed § 229.30(a) would provide that electronic checks and electronic returned checks are subject to subpart C as if they were checks or returned checks, unless otherwise provided in that subpart. Specifically, other provisions of subpart C would specify that the parties' agreements govern the receipt of electronic checks and electronic returned checks,[47] and proposed § 229.34 would set forth warranties (discussed below) that would be given with respect to electronic checks and electronic returned checks. Pursuant to existing § 229.37 of subpart C, the parties could, by agreement, vary the effect of the provisions of subpart C as they apply to electronic checks and electronic returned checks.

b. Warranties

Proposed § 229.30(a) would apply the provisions of subpart C to electronic checks and electronic returned checks. Specifically, proposed § 229.30(a) would apply the existing paper-check warranties in § 229.34 to electronic checks and electronic returned checks (as in the 2011 proposal). These warranties would include the returned-check warranties[48] in proposed § 229.34(e), the warranty of notice of nonpayment in proposed § 229.34(f) of Alternative 1,[49] the warranty and associated offset provisions for settlement amount and encoding in proposed § 229.34(d),[50] and the transfer and presentment warranties related to a remotely created check in proposed § 229.34(c).[51]

The current proposal would provide for additional warranties relating to electronic checks and electronic returned checks. For example, proposed § 229.34(a) would set forth the Check-21-like warranties for electronic checks and electronic returned checks,[52] and proposed § 229.37(a) would permit a sending and receiving bank by agreement to vary the warranties the

[43] An ''eRCC'' is an electronically-created item that does not bear the drawer's signature, that resembles an image of a remotely created check, and that would meet the regulation's definition of ''remotely created check'' (*See* current § 229.2(fff)), but for the fact that the item never existed in paper form prior to the depositary bank receiving the item electronically.

[44] A few commenters suggested that the Board apply the provisions of subpart C to eRCCs by modifying the definition of either ''original check'' or ''remotely created check'' to include remotely created checks that never existed as paper.

[45] A few commenters indicated that eRCCs are in limited use within the check-collection system. For example, telemarketers, on-line businesses, or other payees that would normally use remotely created checks use eRCCs instead to avoid the cost of printing and then truncating the remotely created check.

Some commenters questioned whether there are legitimate reasons for merchants or billers to use eRCCs, as opposed to using ACH debits.

[46] The 2011 proposal would have applied the warranties set forth in current 229.34 to electronically-created items instead of providing for an indemnity.

[47] *See* proposed § 229.33(a) (depositary bank acceptance of electronic returned checks) and proposed § 229.36(a) (paying bank acceptance of electronic checks).

[48] *See* current § 229.34(a).

[49] *See* current § 229.34(b).

[50] *See* current § 229.34(c).

[51] *See* current § 229.34(d).

[52] These warranties are substantively equivalent to those set forth in the 2011 proposal.

sending bank makes to the receiving bank for electronic checks and electronic returned checks.[53] As in the 2011 proposal, the Board proposes that these warranties flow, for electronic checks, to the drawer and, for electronic returned checks, to the owner, in addition to the banks receiving the items.

c. Electronically-Created Items

The Board is proposing to add indemnities related to electronically-created items, rather than to expand the § 229.34 warranties to those items, as in the 2011 proposal. Proposed § 229.34(b) would provide that a bank that transfers an electronic image or electronic information that is not derived from a paper check (i.e., an electronically-created item) indemnifies each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against any loss, claim, or damage that results from the fact that the image or information was not derived from a paper check. Proposed § 229.34(i) would limit the amount of the indemnity so that it would not exceed the amount of the loss of the indemnified bank, up to the amount of settlement or other consideration received by the indemnifying bank and interest and expenses of the indemnified bank (including costs and reasonable attorney's fees and other expenses of representation).

An electronically-created item cannot be used to create a substitute check that meets the legal equivalence requirements of the Check 21 Act and Regulation CC[54] because an electronically-created item is not derived from a paper check. As a practical matter, however, a bank (including perhaps the depositary bank) receiving an electronically-created item might be unable to distinguish the item from any other image of a check that it receives electronically. Accordingly, the bank unknowingly may transfer the image as if it were an electronic check or electronic returned check (i.e., as if it were derived from a paper check), or produce a paper item that is indistinguishable from a substitute check (although not a valid substitute check because it was not derived from a paper check). The indemnity in proposed § 229.34(b) would protect a bank that receives an electronically-created item, creates a substitute check from it, and incurs losses because the substitute check it created was not the legal equivalent of the original check. The Board is proposing an indemnity for harm caused by the fact that an electronically-created item was not derived from a paper check instead of applying the warranties of current § 229.34 to electronically-created items because the Board believes that these items do not fit well into the existing warranty framework of § 229.34.[55] Banks may still incur losses on these items, however, that they are unable to recover from the sending bank because check warranties do not apply.[56] Accordingly, proposed § 229.34(b) would provide a bank that is unable to make a warranty claim (i.e., because the image and information was not derived from a paper check) with an indemnity claim against a prior sending bank for losses caused from the fact that the item was not derived from a paper check.

The Board requests comment on its proposal to provide an indemnity claim related to electronically-created items instead of extending the check warranties of current § 229.34 to electronically-created items. The Board further requests comment on whether losses proximately caused from not being able to make the warranty claim should be interpreted to cover damages awarded for violations of Regulation E.

d. Indemnity Related to Remote Deposit Capture

Remote deposit capture is a practice where a bank permits its customer to make a deposit by sending an electronic image of the front and back of a check. Depositary banks typically set forth the terms of the remote deposit capture service in their agreements with their customers. Subpart C of Regulation CC does not explicitly address issues related to remote deposit capture, and the Board did not propose any related amendments as part of its 2011 proposal. In recent years, remote deposit capture has become more prevalent, particularly for consumer accounts.

Once a customer has used a depositary bank's remote deposit capture service to send an image of the front and bank of a check for deposit, the customer typically retains the original check for the time specified under the agreement with the depositary bank. The Board has become aware of situations where a deposit is made at one bank using a remote deposit capture service and the original check is deposited at another bank. In these situations, if the original check is deposited after the image deposited through a remote deposit capture service, the original check typically would be returned to the depositary bank unpaid because the paying bank has already paid the check.[57]

If the paying bank returns the original check to the depositary bank that accepted it for deposit, that depositary bank might be unable to charge the returned check back to its customer's account (for example, the customer may have already withdrawn the funds). It is not clear whether the depositary bank that accepts the original check would be able to identify or recover directly from a depositary bank that accepted and received settlement for a deposit made through a remote deposit capture service.

Accordingly, the Board proposes to add a new indemnity in § 229.34(g) related to remote deposit capture services. Proposed § 229.34(g) would cover situations where a depositary bank that is a truncating bank under § 229.2(eee)(2) (i.e., because its customer created an image of the front and back of the check and deposited it through a remote deposit capture service) accepts and receives settlement or other consideration for the check deposited through remote deposit capture, but does not receive the original check and does not receive a return of the check unpaid. Under these circumstances, proposed § 229.34(g) would indemnify another depositary bank that accepts the original check for deposit for that bank's losses due to the check having already been paid.[58] This indemnity would allow a depositary bank that accepts

[53] Such an agreement could provide, for example, that the bank transferring the electronic check does not warrant that the electronic image or information are sufficient to create a substitute check. The agreement would not, however, vary the effect of the warranties with respect to banks and persons not bound by the agreement.

[54] A substitute check is the legal equivalent of the original check only if the substitute check accurately represents all of the information on the front and back of the original check when the original check was truncated. Truncate, as defined in the Check 21 Act and Regulation CC, means removing an original *paper* check from the check collection or return process. In the case of an electronically-created item, there is no original check of which a substitute check can be a reproduction.

[55] For example, it is not clear whether the midnight deadline provisions of the UCC apply to electronically-created items.

[56] In some cases, sending and receiving banks may have incorporated indemnities related to electronically-created items into their electronic check exchange agreement. In these cases, the receiving bank may be able to recover from the sending bank through a breach-of-contract claim.

[57] Alternatively, it is possible that the original check is deposited first, followed by subsequent remote deposit capture.

[58] A depositary bank is a truncating bank under § 229.2(eee)(2) if a person other than a bank truncates the original check, but the depositary bank is the first bank to transfer, present, or return, in lieu of the original check, a substitute check or, by agreement with the recipient, information relating to the original check (including data taken from the MICR line of the original check or an electronic image of the original check).

deposit of an original check to recover directly from a bank that permitted its customer to deposit the check through remote deposit capture.

The Board believes that the depositary bank that accepts an original paper check should not bear the loss if that check has been deposited multiple times. Rather, the depositary bank that introduced the risk of multiple deposits of the same check by offering a remote deposit capture service should bear the losses associated with multiple deposits of a check. A depositary bank that receives the benefit of permitting its customers to use remote deposit capture should also internalize any risk or cost to other banks that may result from remote deposit capture. One such risk is that the customer will deposit the original check at another bank. That bank that accepted the check by remote deposit capture is in a better position than any other bank to minimize those costs and risks through the terms of its contract with its customer.

The Board requests comment on all aspects of this indemnity, including any unintended consequences that might result. The Board also requests comment on whether the depositary bank that accepts the original check for deposit would be able to identify the depositary banks against which it may bring a claim for indemnity (i.e., those banks that accepted the check through remote deposit capture from their customers) and whether there are other more efficient or practical remedies to address the underlying problem.

III. Section-by-Section Analysis

The paragraph citations in this section are to the paragraphs of the proposed rule unless otherwise stated. The Board requests comment on all aspects of the proposed rule.

D. Definitions

1. Section 229.2(dd)—Routing Number

In the 2011 proposal, the Board proposed to revise the definition of the term ''routing number'' to include a bank-identification number contained in an electronic image or electronic information. In the current proposal, the Board is proposing substantively identical revisions to the definition of ''routing number'' and to the related commentary.[59]

One commenter on the 2011 proposal stated that the proposed revisions to the commentary incorrectly stated that the number appearing in the electronic information related to a payable-through check was that of the ''paying bank,'' as opposed to ''payable-through bank.'' Accordingly, the Board is proposing revisions to the commentary to the definition of ''routing number'' to clarify that, in the case of payable-through checks, the routing number appearing on the check is that of the payable-through bank.

2. Section 229.2(vv)—MICR Line

Regulation CC currently defines ''MICR line'' as the numbers printed near the bottom of a check in magnetic ink, in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document—IRD, ANS X9.100–140 (hereinafter ANS X9.100–140) for a substitute check, unless the Board by rule or order determines that different standards apply.[60] The 2011 proposal did not propose any amendments to this definition. In the current proposal, the Board proposes to amend the definition of ''MICR line'' for purposes of subpart C and subpart D so that it includes the numbers contained in an electronic image or electronic information in accordance with American National Standard Specifications for Electronic Exchange of Check Image Data—Domestic, X9.100–187 (hereinafter ANS X9.100–187), unless the Board determines by rule or order that different standards apply.

The 2011 proposal proposed to add the new defined terms ''electronic collection item'' and ''electronic return'' to Regulation CC. In commenting on these provisions of the 2011 proposal, commenters recommended that the Board not specify a standard for electronic images and electronic information, in part because commenters stated that parties should have the flexibility to agree to exchange electronic images and electronic information that did not satisfy a specified standard. For example, banks may agree to different standards or practices, including that, for purposes of subpart C, the MICR line information may be in a format other than that required by ANS X9.100–187.

In the current proposal, the Board proposes to revise the commentary to the definition of ''MICR line'' to state that the banks exchanging electronic checks may agree to specify the applicable standard for electronic checks and electronic returned checks. The Board requests comment on whether the ''MICR line'' definition should specify an industry standard at all, given that the exchange of electronic items between banks is by agreement.

3. Section 229.2(bbb)—Copy and Sufficient Copy

The terms ''copy'' and ''sufficient copy'' were added to Regulation CC in 2004 in connection with the adoption of the final rule implementing the Check 21 Act.[61] The term ''copy'' is used throughout subpart C (for example, in connection with the notice in lieu of return provisions). The Board did not propose any revisions to the definitions of ''copy'' and ''sufficient copy'' as part of the 2011 proposal.

Currently, the definition of ''copy'' in Regulation CC is limited to paper reproductions of checks. In the current proposal, the Board is proposing to expand the definition of ''copy'' to include an electronic reproduction of a check that a recipient has agreed to receive from the sender instead of receiving a paper reproduction.

Regulation CC currently defines a ''sufficient copy'' as a copy of an original check that accurately represents all of the information from the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim (such as an indemnity claim or an expedited recredit claim) is valid. The current proposal does not contain any proposed revisions to the definition of ''sufficient copy.'' The Board, however, is proposing to clarify in the commentary to the definition of ''sufficient copy'' that a ''sufficient copy'' must be a copy must be of the original check (and not of a substitute check).[62]

4. Section 229.2(ggg)—Electronic Check and Electronic Returned Check

The current definition of ''check'' (§ 229.2(k)) does not include electronic images and electronic information. In the 2011 proposal, the Board proposed to define the new terms ''electronic collection item'' and ''electronic return''. In the current proposal, the Board proposes to include two new defined terms, ''electronic check'' and ''electronic returned check,'' in Regulation CC. The current proposal would define ''electronic check'' and

[59] Although the term ''routing number'' is used in subpart B, amendments to subpart B must be joint with the CFPB. Accordingly, the proposed amendments would apply only for purposes of subparts C and D.

[60] The commentary to the definition of ''MICR line'' currently provides that industry standards may vary the requirements for printing the MICR line, such as by indicating the circumstances under which the use of magnetic ink is not required.

[61] 69 FR 47290, 47309 (Aug. 4, 2004).

[62] *See* proposed commentary to § 229.2(bbb) at paragraph 2.

''electronic returned check'' as (1) an electronic image of a check, or returned check, or electronic information related to a check, or returned check, that a bank sends to a receiving bank pursuant to an agreement with the receiving bank, and (2) that conforms with ANS X9.100–187, unless the Board determines that a different standard applies or the parties otherwise agree. The current proposal, unlike the 2011 proposal, would permit the sending and receiving banks to agree that an ''electronic check'' or an ''electronic returned check'' need not contain both an electronic image and electronic information. Under the current proposal, an ''electronic check'' or ''electronic returned check'' need not be sufficient to create substitute checks in order to meet the definitions. Under proposed § 229.34(a), however, parties sending and receiving electronic checks and electronic returned checks would warrant that such items are sufficient to create substitute checks, unless the parties otherwise agree.

The proposed commentary to the definition of ''electronic check'' and ''electronic returned check would clarify that the terms of the agreements for sending and receiving electronic checks and returned checks may vary. For example, banks may agree that both an electronic image and electronic information for presentment, or they may agree that the electronic information alone is sufficient for presentment. Additionally, the agreements may differ as to what constitutes receipt of an electronic check or electronic returned check.

E. Subpart C—Collection of Checks

As noted above, the Board is proposing two alternative approaches to the requirements that apply to the return of checks. Generally speaking, the expeditious-return provisions that the Board proposes to delete in Alternative 1 would be retained (in some form) in Alternative 2. Likewise, the notice-of-nonpayment provisions that the Board proposes to retain in Alternative 1 would be deleted in Alternative 2.

1. Section 229.30—Electronic Images and Electronic Information

b. Section 229.30(a)—Checks Under This Subpart

The Board proposes a new § 229.30(a), which would provide that electronic checks and electronic returned checks are subject to the provisions of subpart C as if they were checks or returned checks, unless the subpart provides otherwise. Examples of where subpart C would provide otherwise include proposed §§ 229.33(a) and (b) and §§ 229.36(a) and (b), because these provisions differentiate between checks in electronic form and checks in paper form for purposes of where depositary banks and paying banks must receive checks. Another example is proposed § 229.37, which would permit the parties to vary by agreement the effect of the provisions of subpart C as they apply to electronic checks and electronic returned checks.

Some commenters on the 2011 proposal, such as the group letter, suggested that banks be allowed to agree to collect electronic check images or electronic check information that do not conform to ANS X9.100–187.[63] These commenters stated that, in such cases, the provisions of Regulation CC should not apply to the exchanged images or information.

In the current proposal, however, the Board proposes in proposed § 229.30(a) to apply the provisions of subpart C to electronic check images and electronic check information notwithstanding the suggestions of commenters on the 2011 proposal. The Board believes that its proposed approach creates a uniform default framework for all electronic images and information that parties agree to exchange. As noted in the proposed commentary to § 229.30(a), § 229.37 permits banks to agree to vary the application of subpart C with respect to electronic checks. For example, as noted in paragraph A.3. of the proposed commentary to § 229.34(a), banks that exchange electronic checks may agree to vary the warranties in proposed § 239.34(a) to provide that the bank transferring the electronic image or electronic information does not warrant that the image or information is sufficient to create a substitute check.

e. Section 229.30(b)—Writings

The Board proposes a new § 229.30(b) that would permit certain writings to be provided in electronic form. Specifically, proposed § 229.30(b) would permit a bank to satisfy a writing requirement under subpart C by providing the information in electronic form if the receiving bank has agreed to receive that information electronically from the sending bank. For example, under proposed § 229.30(b), a bank could send a notice in lieu of return required by proposed § 339.31(f) electronically if the receiving bank agreed to receive the notice electronically.

2. Section 229.31—Paying Bank's Responsibility for Return of Checks and Notices of Nonpayment

a. The provisions of proposed § 229.31 are the same under Alternative 1 and Alternative 2 unless otherwise indicated. Section 229.31(a)—Return of Checks

Currently, § 229.30(a) sets forth a paying bank's expeditious return requirement. The undesignated paragraph in § 229.30(a) provides that a paying bank may send a returned check to the depositary bank or to any other bank agreeing to handle the returned check expeditiously. The undesignated paragraph also provides that a paying bank may create a qualified return check (and sets forth format standards for qualified returned checks) and provides that § 229.30(a) does not affect a paying bank's responsibility to return a check within the deadlines required by the UCC, Regulation J (12 CFR part 210), or § 229.30(c).

In proposed § 229.31(a), the Board proposes to retain the provisions currently set forth in the existing undesignated paragraph of § 229.30(a), subject to the revisions discussed below. Under Alternative 1, proposed § 229.31(a)(1) eliminates the expeditious return requirement imposed on a paying bank. Accordingly, in Alternative 1, the Board proposes to remove the provisions setting forth the two-day/four-day test and the forward-collection test, as well as remove all references to expeditious return from the rule text and the commentary. Under Alternative 2, proposed § 229.31(a)(1) retains a modified expeditious return requirement as set forth in proposed § 229.31(b), while proposed § 229.31(b) under Alternative 2 would provide for only a two-day test for expeditious return. Alternative 2, like proposed Alternative 1, would permit a paying bank that is returning a check to send the returned check directly to the depositary bank, to any other bank agreeing to handle the returned check, or as provided in proposed § 229.31(a)(2) (unidentifiable depositary bank). In Alternative 2, however, a paying bank's choice of return path would be subject to the requirement for expeditious return. The Board is proposing to eliminate the restriction that a paying bank may send the returned check only to a returning bank that agrees to handle the return expeditiously (except in cases where the depositary bank is unidentifiable). The Board believes that this is redundant in

[63] For example, banks may wish to exchange an electronic image of a check that is readable but insufficient to create a substitute check due to incomplete MICR line information.

light of the overall condition in proposed § 229.31(a)(1) (and current § 229.30(a)) that the choice of return path is subject to the expeditious-return requirement.

Proposed § 229.31(a)(1) under both Alternative 1 and Alternative 2 would permit a paying bank to send a returned check to the depositary bank, to any other bank agreeing to handle the returned check, or as provided in proposed § 229.31(a)(2) if the depositary bank is unidentifiable. Retaining these provisions in Regulation CC permits paying banks to continue to return checks using more direct paths to depositary banks than otherwise permitted under UCC 4–301(d).

Proposed § 229.31(a)(2) would set forth the provisions of current § 229.30(b) that permit a paying bank to send a return check to any bank that handled the check for forward collection when the paying bank is unable to identify the depositary bank.[64] In 2011, the Board proposed to revise the commentary to this provision to provide that, for purposes of an electronic image and electronic information, a depositary bank is unidentifiable only if the depositary bank's indorsement is not in either an addenda record or in the image of the check. The depositary bank would not be unidentifiable, however, merely because the depositary bank's indorsement is not attached as an addenda record, such that the paying bank must retrieve and visually review the image. The group letter expressed support for this approach. The Board proposes to retain this approach in the proposed commentary to § 229.31(a)(2).

The 2011 proposal also proposed commentary on how a paying bank returning a check for which it cannot identify the depositary bank must advise the bank to which it is sending the check that it is unable to identify the depositary bank. Specifically, in the case of an electronic return, the Board proposed that the advice requirement may be satisfied by the paying bank inserting the routing number of the bank to which it is sending the return where the paying bank otherwise would have inserted the routing number of the depositary bank. Three commenters addressed this aspect of the 2011 proposal and stated that such an approach would cause confusion at returning banks that may also serve as depositary banks. These commenters suggested the Board continue to leave to industry standards and interbank agreements the matter of how to advise a receiving bank that the depositary bank is unidentifiable within an electronic return. The current proposal adopts the approach suggested by these commenters in the proposed commentary to proposed § 229.31(i) which provides that, in the case of an electronic returned check, the advice requirement may be satisfied in such a manner as the parties agree.

One Reserve Bank commenter suggested that the Board further revise this provision to preclude a bank that receives a returned check that it handled for forward collection and that is properly advised that the depositary bank is not identifiable from sending the returned check back to the returning bank or the paying bank or from claiming that the item is ''not our item'' (NOI) through a process like the Reserve Banks' adjustment procedures. The Board requests comment on whether it should incorporate such a provision into the regulation.

In proposed § 229.31(a)(3), the Board proposes to retain the portions of the undesignated paragraph in current § 229.30(a) that permit paying banks to qualify returned checks and that instruct paying banks on how to do so. In the 2011 proposal, the Board requested comment on whether the regulation's provisions for qualifying of paper returned checks by paying banks and returning banks should be deleted. All four commenters responding to this aspect of the 2011 proposal, including the group letter, indicated that the need still exists for qualified returns and carrier envelopes, and that there would be costs associated with implementing alternative methods for returning checks which currently are prepared as qualified returns or use carrier envelopes.

In proposed § 229.31(a)(4), the Board proposes to retain a portion of the undesignated paragraph in current § 229.30(a) regarding the effect of proposed § 229.31 on a paying bank's deadlines. Proposed § 229.31(a)(4) provides that proposed § 229.31 does not affect a paying bank's responsibility to return a check within the deadlines required by the UCC, Regulation J (12 CFR part 210), or current § 229.30(c) relating to the midnight deadline extension.

b. Section 229.31(b)—Expeditious Return of Checks by Paying Bank (or Reserved)

Proposed § 229.31(b) under Alternative 1 would be reserved. Proposed § 229.31(b) under Alternative 2 would incorporate the provisions of current § 229.30(a) imposing the duty of expeditious return on paying banks. Proposed § 229.31(b)(1) under Alternative 2 would set forth the general rule for expeditious return of checks: a paying bank must return the check in an expeditious manner such that the check would normally be received by the depositary bank not later than 2 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank. Proposed § 229.31(b) under Alternative 2 would move up the cutoff hour for receipt of a returned check from 4 p.m. to 2 p.m. (local time of the depositary bank), consistent with similar changes elsewhere in the current proposal.

Proposed § 229.31(b)(2) under Alternative 2 would provide that, where the second business day following presentment is not a banking day for the depositary bank, a paying bank must send the returned check in a manner such that the depositary bank would *normally* receive the returned check on or before the depositary bank's next banking day.

c. Section 229.31(c)—Exceptions to Expeditious Return by Paying Bank (or Reserved)

Proposed § 229.31(c) under Alternative 1 would be reserved. Proposed § 229.31(c) under Alternative 2 would incorporate provisions from current § 229.30(b) and current § 229.30(e) regarding exceptions for paying banks to the duty of expeditious return. Specifically, Alternative 2 would include three exceptions to the expeditious-return rule: (1) The paying bank does not have an agreement to send electronic returned checks directly to the depositary bank or to a returning bank that is subject to the expeditious return requirement under proposed § 229.32(b); (2) the check is being returned to a depositary bank that is not subject to subpart B; and (3) the check is being returned to an unidentifiable depositary bank. As in the 2011 proposal, proposed § 229.31(c) would group the exceptions to the expeditious return requirement together in one paragraph.

No agreements for direct or indirect electronic return. Under Alternative 2, a paying bank would not be subject to the expeditious-return requirement if the paying bank did not have an agreement to send electronic returned checks to the depositary bank or to a returning bank that is subject to the expeditious return requirement under § 229.32(b).[65] A

[64] As with other provisions of the 2013 proposal, under Alternative 1, the Board would remove all references to the expeditious return requirement.

[65] *See* the discussion of proposed § 229.32(b) in Alternative 2 below for how returning banks

Continued

paying bank would not be subject to the expeditious-return requirement where the depositary bank did not agree to accept return checks electronically. In addition, a paying bank would not be subject to the expeditious-return requirement where the paying bank did not agree to send returned checks electronically. Thus, a paying bank could avoid the expeditious-return requirement under Alternative 2 by choosing to send returned checks only in paper form. The possibility that a paying bank would choose to send returned checks only in paper form in order to avoid the expeditious-return requirement, however, seems unlikely given that paying banks will have a cost incentive to return checks electronically whenever possible. In addition, a paying bank would be subject to the expeditious-return requirement under Alternative 2 if it had the necessary agreements to send electronic returned checks but nevertheless chose to send paper returned checks.

For example, assume that the paying bank has an agreement to send electronic returned checks to Returning Bank A. Returning Bank A, however, does not have an agreement to send electronic returned checks directly or indirectly to the depositary bank. Returning Bank A has not otherwise agreed to handle the returned check expeditiously. Under these facts, the paying bank would not be subject to the expeditious return requirement under § 229.31(b). The paying bank, however, must comply with any deadlines under the UCC, Regulation J (if sent through the Reserve Banks), or proposed § 229.31(e) (Extension of deadline).

The UCC and Regulation J (if sent through the Reserve Banks) impose requirements on when a returned check must be dispatched by the paying bank, but do not impose requirements as to when the returned check must be received by the depositary bank. Proposed § 229.31(g), discussed below, would impose requirements on the timing of receipt of a returned check by the depositary bank, but only to the extent the paying bank wishes to avail itself of the extension—that is, if the paying bank sends the returned check after its midnight deadline. Therefore, the Board requests comment on whether Alternative 2 should impose a limit—longer than two business days—on the timeframe within which a *paper* returned check must be received by the depositary bank.

otherwise agree to handle returned checks expeditiously.

d. Section 229.31(d)—Notice of Nonpayment (or Reserved)

Proposed § 229.31(d) under Alternative 1 would set forth provisions from current § 229.33(a) and current § 229.33(b) relating to notice of nonpayment. Proposed § 229.31(d) under Alternative 2 would be reserved.

Alternative 1 would retain a notice of nonpayment requirement. Proposed § 229.31 under Alternative 1 would set forth the provisions pertaining to a paying bank's responsibility to provide notice of nonpayment, and proposed § 229.33 would set forth the provisions pertaining to a depositary bank's responsibility to accept such notice.

Notice-of-nonpayment requirement (§ 229.31(d)(1)). Regulation CC currently requires that, if a paying bank determines not to pay a check in the amount of $2,500 or more, it must provide notice of nonpayment such that the notice is received by the depositary bank by 4 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank. Under Alternative 1 of the current proposal, the notice of nonpayment requirement would apply only if the paying bank sends the returned check in paper form. The notice requirement, however, would apply regardless of the dollar amount of the check being returned.

Also under Alternative 1, the Board also proposes to move up the deadline by which a notice of nonpayment must be received by the depositary bank from 4 p.m. to 2 p.m. (local time of the depositary bank), on the second business day following the banking day of presentment. The proposed 2 p.m. deadline would be consistent with banks' generally applicable cutoff hour for receipt of checks under section 4–108 of the UCC, after which a bank may consider an item to be received on its next banking day.

The Board recognizes that the proposed earlier deadline by which the notice must be received by the depositary bank may impose additional cost on the paying bank sending the notice. The Board believes it is appropriate, however, for this cost to rest with a paying bank that sends a paper return in order to encourage paying banks to send returns electronically (and thereby avoid the notice requirement). At the same time, the proposed earlier time of 2 p.m. would benefit depositary banks, because they would learn sooner of the nonpayment of returned paper checks. The Board requests comment on whether the earlier deadline is likely to impose additional costs on paying banks and the extent of any such additional costs.

The proposed 2 p.m. deadline should also speed up the time within which the depositary bank's *customer* learns of a check's nonpayment. Regulation CC currently requires a depositary bank receiving a returned check or notice of nonpayment to notify its customer of the fact of return by midnight of the banking day following the banking day on which it received the returned check or notice. If the depositary bank receives notice at 3 p.m. on Monday—a time of day that is permissible under the current rule—then it may consider the notice received on its next banking day, Tuesday, such that it need not give notice to its customer until midnight of the night between Wednesday and Thursday. Under Alternative 1, however, a depositary bank receiving notice of nonpayment by 2 p.m. on Monday would be required to consider that notice received on Monday and therefore would be required to give notice to its customer by midnight of the night between Tuesday and Wednesday. This faster notice of nonpayment to the depositary bank's customer may benefit the customer by facilitating the customer's ability to contact, and obtain payment from, the drawer of the returned check.

Regulation CC currently permits a paying bank to satisfy the notice-of-nonpayment requirement by returning the returned check itself, provided that the returned check reaches the depositary bank by the deadline for receipt of such notices. The commentary to current § 229.33 [66] provides that ''[i]n determining whether the returned check will satisfy the notice requirement, the paying bank may rely on the availability schedules of returning banks as the time that the returned check is expected to be delivered to the depositary bank, unless the paying bank has reason to know the availability schedules are inaccurate.'' This statement in the commentary, however, appears inconsistent with the regulatory text providing for a fixed deadline for the depositary bank's receipt of notice of nonpayment. Therefore, the proposed commentary to proposed § 229.31(d) at paragraph 1.d. would delete this statement. The Board requests comment on whether the fixed deadline is appropriate or whether the paying bank should be able to comply with the notice requirement by relying on a returning bank's availability schedule.

[66] 12 CFR Part 229, Appendix E, at paragraph XIX.A.3.

The last sentence of current § 229.33(a) provides that notice of nonpayment may be provided by any reasonable means, including Fedwire, telex, or other form of telegraph. The Board believes that Fedwire, telex, or other form of telegraph are very seldom, if ever, used, and accordingly proposed § 229.31(d)(1) would delete those references. The use of these means of providing notice would nonetheless remain acceptable under the Board's proposal, and a depositary bank's acceptance of such notices would be governed by proposed § 229.33(a) and proposed § 229.33(b), discussed *infra.*

The commentary to current § 229.33(a)[67] refers to current § 229.38(b). As discussed in more detail in connection with proposed § 229.38, Alternative 1 would eliminate current § 229.38(b). Accordingly, the proposed commentary to proposed § 229.31(d) at paragraph 1.e. deletes the reference to § 229.38(b).

Content of notices (§ 229.31(d)(2)). Current § 229.33(b) requires a paying bank to include the following information in a notice of nonpayment: (1) The name and routing number of the paying bank; (2) the name of the payee; (3) the amount of the check being returned; (4) the date of the indorsement of the depositary bank; (5) the account number of the depositary bank's customer; (6) the depositary bank's branch name or number; (7) the trace number associated with the indorsement of the depositary bank; and (8) the reason for nonpayment. Proposed § 229.31(d)(2)(i) would revise this provision to state that a paying bank must include the specified information in a notice of nonpayment only to the extent it is available to the paying bank.[68]

Proposed § 229.31(d)(2)(i) would further revise the provisions of current § 229.33(b) to include, to the extent available to the paying bank, the information contained in the check's MICR line when the check is received by the paying bank. The 2011 proposal requested comment on whether notices in lieu of return should include, if available, the information from the original check's MICR line. The current proposal would require the MICR line information as specified above to be included in both notices of nonpayment and notices in lieu of return. Accordingly, the comments received on the 2011 proposal with respect to inclusion of MICR line information in notices in lieu of return are addressed here in the context of proposed § 229.31(d)(2)(i).

The Board received nine comments on the provisions of the 2011 proposal related to the information that is required to be included in a notice in lieu of return. All of these commenters, including the group letter, suggested that information from the original check's MICR line be included when providing notices. The current proposal adopts this suggestion of the commenters.

As noted above, proposed § 229.31(d)(2) would require that a notice of nonpayment include the information from the MICR line of the check at the time the check is received by the paying bank, if such information is available. The check's MICR line would typically include the account number of the paying bank's customer, the check's serial number, and, if the check is a corporate-sized check, the auxiliary-on-us field. Proposed § 229.31(d)(2)(i)(A) would therefore delete the reference in current § 229.33(b)(1) to including the paying bank's routing number, because the paying bank's routing number would already be set forth in the MICR line of the check. In addition, proposed § 229.31(d)(2)(i)(F) would set forth the provisions of the undesignated paragraph following current § 229.33(b)(8) requiring that the branch name or number of the depositary bank from its indorsement.

The Board recognizes that requiring MICR line information (if available) to be included in a notice of nonpayment may impose additional cost on a paying bank providing such notices. The Board believes, however, that requiring the information from the MICR line in the notice of nonpayment would benefit the depositary bank by improving its ability to research the check and determine the account into which the check was deposited.

Proposed § 229.31(d)(2)(i)(E) retains the provision of current § 229.33(b)(5) requiring a notice of nonpayment to include the account number of the customer(s) of the depositary bank. The Board requests comment on how often that information is available to the paying bank returning a check. In addition, proposed § 229.31(d)(2)(i)(A) retains the provision of current § 229.33(b)(1) requiring a notice of nonpayment to include the name of the paying bank. Under proposed § 229.31(h), however, a check payable at or through a paying bank would be considered to be drawn on that bank. The Board requests comment on whether a depositary bank receiving a notice of nonpayment or a notice in lieu of return would ever need to know the name of the bank holding the account on which the check is drawn. More generally, the Board requests comment on whether any of the information in current § 229.33(b) or proposed § 229.31(d)(2)(i) required to be included in a notice of nonpayment (if available) should no longer be required.

Depositary banks that are not subject to subpart B (§ 229.31(d)(3)(i)). Proposed § 229.31(d)(3)(i) would provide that the notice-of-nonpayment requirement would not apply with respect to checks that were deposited ''in a depositary bank that is not subject to subpart B of this part.'' The commentary to current § 229.30(e) clarifies that depositary banks without ''transaction-type 'accounts' '' need not comply with the funds-availability requirements of subpart B.[69] In addition, although Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not subject to the funds-availability requirements of subpart B because they are not ''depository institutions'' under EFA Act, Regulation CC currently imposes an expeditious-return requirement[70] and a notice-of-nonpayment requirement[71] on checks being returned to those banks. Proposed § 229.31(d)(3)(i) would provide that a paying bank would have no notice-of-nonpayment requirement if the check is being returned to a depositary bank that is not subject to subpart B, either because the depositary bank does not maintain ''accounts'' or because the depositary bank is not a ''depository institution'' under the EFA Act. Proposed § 229.31(d)(3)(i) is intended to recognize that these institutions do not bear the same risk of untimely notice of return as banks that are subject to the funds-availability requirement.

Unidentifiable depositary bank (§ 229.31(d)(3)(ii)). Current § 229.30(b) provides that the expeditious-return requirement of that section does not apply to the paying bank's return of a check if the depositary bank is unidentifiable. However, current

[67] 12 CFR Part 229, Appendix E, at paragraph XIX.A.4.

[68] Proposed § 229.31(d)(2)(ii) would retain the provisions of the undesignated portion of current § 229.33(b) stating that, if the paying bank is not sure of the accuracy of an item of information, it shall include the required information to the extent possible and identify any item of information for which the bank is not sure of the accuracy.

[69] 12 CFR Part 229, Appendix E, at paragraph XVI.E.1. (''Subpart B of this regulation applies only to 'checks' deposited in transaction-type 'accounts.' Thus, a depositary bank with only time or savings accounts need not comply with the availability requirements of Subpart B'').

[70] See 12 CFR Part 229, Appendix E, at paragraph XVI.E.2. (expeditious return).

[71] Current § 229.33(e) exempts only depositary banks without transaction-type accounts from the notice-of nonpayment requirement.

§ 229.33 does not exempt a paying bank from the notice-of-nonpayment requirement even if the paying bank is unable to identify the depositary bank.

Proposed § 229.31(d)(3)(ii) would provide that the notice-of-nonpayment requirement does not apply if the paying bank cannot identify the depositary bank with respect to the returned check.[72] It is unlikely that a paying bank would be able to send a notice-of-nonpayment within the timeframe specified by proposed § 229.31(d) if the paying bank cannot identify the depositary bank. The Board requests comment on the proposed approach, as well as on whether any timing requirement should apply for delivery of notices of nonpayment in connection with a returned check for which the depositary bank is unidentifiable.

e. Section 229.31(e)—Identification of Returned Check

Current § 229.30(d) states that ''[a] paying bank returning a check shall clearly indicate on the face of the check that it is a returned check and the reason for return. If the check is a substitute check, the paying bank shall place this information within the image of the original check that appears on the front of the substitute check.'' In the 2011 proposal, the Board proposed that, if a returned check is a substitute check or electronic return, the paying bank must indicate the reason for the return in such a manner that the information would be retained on any subsequent substitute check, instead of requiring the reason for the return to be placed within the image of the original check. The Board intended with this proposal to provide the industry with greater flexibility as to the placement of the reason for return while also ensuring that the reason for return would be retained on any subsequent substitute check.[73] The two commenters responding to this aspect of the proposal, including the group letter, both supported it.

The provisions of the current proposal are very similar to those of the 2011 proposal with regard to the identification of returned checks. Proposed § 229.31(e) would provide that, if the paying bank is returning a substitute check or an electronic returned check, the paying bank shall identify the check as a returned check and include the reason for return such that the information be retained on any subsequent substitute check.

The Board also proposed in the 2011 proposal to amend the commentary to current § 229.30(d)[74] to state that ''refer to maker'' is insufficient by itself as a reason for return, because ''refer to maker'' is an instruction to the recipient of the returned check and not a reason for return (e.g., insufficient funds). One commenter on this aspect of the 2011 proposal agreed that ''refer to maker'' is insufficient as a reason for return. The other approximately 20 commenters on this aspect of the proposal, including the group letter, uniformly opposed the proposed revision. Commenters noted that ''refer to maker'' is used as a catch-all to cover various reasons for return, such as for suspected fraud, no match in a positive-pay file provided by the drawer, or in connection with registered warrants issued by states.[75] These commenters noted that industry standards do not currently permit using ''refer to maker'' as a reason for return in addition to another reason, and that, therefore, accommodating the proposed elimination of the ''refer to maker'' reason for return would require system and process modifications by both the banks and the customers that use these systems. These commenters stated that these changes would be costly and take about two years to implement. A few commenters recognized that, in the past, there has been some abuse of using ''refer to maker,'' but that such abuse is less of a problem in recent years. Other commenters stated that the Board did not sufficiently explain any changes in circumstances that would warrant no longer permitting ''refer to maker'' to be used as a reason for return.

After consideration of the comments received in response to the 2011 proposal, the Board continues to believe that ''refer to maker'' is an instruction to the recipient of the returned check, but recognizes that there may be circumstances in which it may be necessary for ''refer to maker'' to be used as the reason for return. Accordingly, the commentary to proposed § 229.31(e) would provide greater clarity on the circumstances in which ''refer to maker'' by itself may be used as a reason for return, such as when a drawer with a positive pay arrangement instructs the bank to return the check. Additionally, the commentary to proposed § 229.31(e) would include an example of when ''refer to maker'' would not be permissible; specifically, in cases where a check is being returned due to the paying bank having already paid the item. The Board believes that, in such cases, the payee and not the drawer would have more information as to why the check is being returned.

f. Section 229.31(f)—Notice in Lieu of Return

Current § 229.30(f) provides that, if a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in current § 229.33(b). The 2011 proposal would have revised the commentary to the notice-in-lieu provisions to provide that a bank may send a notice in lieu of return only where neither the check itself nor an image of and information related to the check sufficient to create a substitute check is available. In addition, the 2011 proposal would have amended the commentary to provide that, if no image of both sides of the check is available, the notice in lieu may be sent by written electronic transmission,[76] so long as it contained the required information. The 2011 proposal, like the current regulation, would not have permitted notice in lieu of return by telephone or other similar oral transmission. The 2011 proposal proposed to leave the information requirements for a notice in lieu of return unchanged. The Board requested comment, however, on whether the information-content specifications for a notice in lieu of return should be revised to include the information from the original check's MICR line. Further, as an alternative approach, the Board requested comment on whether the regulation's provision for notice in lieu of return should be deleted.

All 12 commenters that addressed the 2011 proposal's provisions related to notices in lieu of return believed that the notices remain necessary in certain circumstances and recommended that the Board retain the provisions related to notices in lieu of return. Nine of these commenters, including the group letter, stated that the notices should include

[72] Proposed § 229.31(d)(3)(ii) is consistent with the statement in the commentary to current § 229.33(b), stating that if a paying bank cannot identify the depositary bank, it may wish to send the notice to the earliest collecting bank it can identify, but that the collecting bank is under no duty to identify the depositary bank and forward the notice. 12 CFR Part 229, Appendix E, at paragraph XIX.B.2.

[73] 76 FR 16862, 16877 (Mar. 25, 2011).

[74] 12 CFR Part 229, Appendix E, at paragraph XVI.D.1.

[75] Commenters stated that in some cases in which a positive-pay system is used, the paying bank does not know its customer's factual basis for instructing the paying bank to return the check and, in these cases, ''refer to maker'' serves as a necessary means to instruct the payee to contact the drawer to determine the reason the check was not paid.

[76] E.g., by being sent electronically through the ACH system or the check system, if permitted by applicable rules and standards.

the information from the original check's MICR line, if available, because that information is helpful to the depositary bank in locating the item. The group letter suggested that the Federal Reserve work with the banking industry to develop common standards for electronic notices in lieu of return in order to facilitate their use. Most commenters opposed sending notices in lieu of return through the ACH network.[77]

After considering the comments received on the 2011 proposal, the Board currently proposes to revise the information required to be included in a notice in lieu of return and in a notice of nonpayment. Specifically, proposed § 229.31(f) under Alternative 1 would require the paying bank to send a copy of the front and back of the returned check or, if no such copy is available, a written notice of nonpayment containing the information required in proposed § 229.31(d)(2). Alternative 2, as noted above, does not contain a notice-of-nonpayment requirement. Accordingly, proposed § 229.31(f) under Alternative 2 would require the paying bank to include the information from the original check's MICR line, to the extent that information is available, in such notices. The information from the original check's MICR line typically would be included in electronic information, even if the accompanying electronic image were illegible. The current proposed commentary to proposed § 229.31(f) is the same as that set forth in the 2011 proposal: If no image of both sides of the check is available, the notice in lieu may be sent by electronic transmission, so long as it contains the required information. As under current § 229.30(f), proposed § 229.31(f) would require notice in lieu to be in writing and would not permit notice in lieu of return by telephone or other similar oral transmission. In addition, the proposed commentary to proposed § 339.31(f) would clarify that a bank may send a notice in lieu of return as an electronic image of both sides of the check only if it has an agreement to do so with the receiving bank.

a. Section § 229.31(g)—Extension of Deadline

Current § 229.30(c) provides that a paying bank's deadline (as set forth in either the UCC, Regulation J (12 CFR part 210), or § 229.36 of Regulation CC) to initiate the return of a check is extended to the time at which a paying bank dispatches the return, if the paying bank uses a means of delivery that ordinarily would result in receipt by the bank to which the return is sent on or before the receiving bank's next banking day following the day of the applicable deadline by the earlier of the close of that banking day or a 2 p.m. cutoff hour (or such later time as set by the receiving bank under UCC 4–108).[78] The 2011 proposal would have extended a paying bank's return deadline only if the paying bank sent the return such that the returned check would be ordinarily received by the depositary bank within the two-day timeframe mandated in the proposed expeditious-return test; that is, by 4 p.m. (local time of the depositary bank) on the second business day following presentment to the paying bank. The 2011 proposal requested comment, however, on whether the deadline extension should require the return *actually* to reach the depositary bank within the two-day timeframe for the extension to apply.

All seven commenters addressing this aspect of the proposal, including the group letter, supported requiring actual receipt by the depositary bank within the specified timeframe, on the grounds that paying banks should use the extension sparingly; requiring actual receipt of the check would place squarely on the paying bank the risk associated with using the extension.

Current § 229.30(c) provides for extension of the deadline where the paying bank uses a means of delivery that would ordinarily result in receipt by the bank to which it is sent within the specified timeframe. Proposed § 229.31(g) would provide that a paying bank may avail itself of the extension of the deadline only if the returned check is *actually* received by the depositary bank (or in the case of an unidentifiable depositary bank, the bank to which the return is sent) within the specified timeframe.[79] Proposed § 229.31(g) would establish that returned checks must be received by the depositary bank or receiving bank by the earlier of the close of the banking day or a cutoff hour of 2 p.m. (local time of the depositary bank or receiving bank) or later set by the depositary bank or receiving bank.

Proposed § 229.31(g) would also provide that the extension of the deadline applies to the extension of deadlines for return of the check or notice of dishonor or nonpayment under the UCC. Proposed § 229.31(g) is intended to distinguish notice of dishonor or nonpayment under the UCC from notice of nonpayment under Regulation CC. The Board does not intend any substantive change. Proposed § 229.31(g) would also eliminate the provisions of current § 229.30(c)(1) providing for further extension of the deadline if the paying bank uses a ''highly expeditious'' means of transportation. Electronic delivery of returned checks by paying banks has become the norm, and such delivery of a returned check results in its receipt by a returning bank even faster than does the commentary's current examples of ''highly expeditious'' transportation.[80] Therefore, the Board believes that a paying bank should no longer be afforded an additional deadline extension if it ships a returned check by air courier.

b. Section 229.31(h)—Payable-Through and Payable-at Checks

Current § 229.36(a) provides that a check payable at or through a paying bank is considered to be drawn on that bank for purposes of subpart C's expeditious-return and notice-of-nonpayment requirements. The Board proposes to move these provisions to proposed § 229.31(h), and, under Alternative 1, to remove the paragraph's reference to expeditious return. Under Alternative 1, notice of nonpayment would be the only subpart C requirement to which § 229.31(h) would apply to payable-at and payable-through banks.[81]

c. Section 229.31(i)—Reliance on Routing Number

Current § 229.30(f) provides that a paying bank may return a check based on any routing number designating the depositary bank appearing on the check in the depositary bank's indorsement. The 2011 proposal would have revised the commentary to current § 229.30(f) to provide that a paying bank may rely on any routing number designating the

[77] The National Automated Clearing House Association (NACHA) noted in its comment letter that it had found there to be insufficient support for this possibility from financial institutions to begin considering revising its rules to support it.

[78] The current paragraph provides a further extension if the paying bank uses a ''highly expeditious'' means of return, or if the paying bank's deadline for return falls on a Saturday that is a banking day for the paying bank under the UCC. (Saturday is never a banking day under Regulation CC.)

[79] Proposed § 229.31(g) is included in both Alternative 1 and Alternative 2, even though Alternative 1 would eliminate the expeditious-return requirement.

[80] The example of ''highly expeditious'' means of transportation in the current commentary is a West Coast paying bank using an air courier to ship a returned check directly to an East Coast returning bank. 12 CFR Part 229, Appendix E, at paragraph XVI.C.1.a.

[81] A check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of UCC 4–301.

depositary bank in the electronic image of or information related to the check. The group letter supported that proposed addition, and the Board's current proposal includes substantially similar language in the proposed commentary to § 229.31(i).

One Reserve Bank commenter stated that, in addition to permitting the paying bank to rely on any routing number designating the depositary bank that appears on the check or in the associated electronic image or information, the Board should prohibit any bank that is identified as a depositary bank on the returned check or in the electronic returned check from sending the return back to the returning bank or the paying bank or otherwise treating the returned item as ''not our item'' (an NOI), such as through the Reserve Banks' adjustment procedures. The Board requests comment on whether such a prohibition should be incorporated into the regulation.

3. Section 229.32—Returning Bank's Responsibility for Return of Checks

a. Section 229.32(a)—Return of Checks

Current § 229.31(a) sets forth a returning bank's expeditious-return requirement. The undesignated paragraph in current § 229.31(a) provides that a returning bank may send a returned check to the depositary bank or to any other bank agreeing to handle the returned check expeditiously. The same undesignated paragraph also provides that a returning bank may create a qualified returned check (and sets forth format standards for qualified returned checks) and provides a one-business-day extension under the forward-collection test and deadline for return under the UCC and Regulation J if the returning bank creates a qualified returned check. The extension does not apply to the two-day/four-day test or to checks returned directly to the depositary bank.

Proposed § 229.32(a) would retain the provisions of the undesignated paragraph in current § 229.31(a) described above, subject to the revisions discussed below. For the reasons discussed above, Alternative 1 would eliminate the requirement that a returning bank return a check expeditiously. Accordingly, Alternative 1 would delete the two-day/four-day and forward-collection tests of current § 229.31(a), and would eliminate all references to expeditious return from the regulation and accompanying commentary. Alternative 2 would retain a modified expeditious-return requirement in proposed § 229.32(b).

Under Alternative 1, proposed § 229.32(a)(1) would permit a returning bank to send a returned check to the depositary bank, to any bank agreeing to handle the returned check, or as provided in proposed paragraph § 229.32(a)(2) if the depositary bank is unidentifiable. Retaining this provision continues to permit returning banks to return checks using more direct paths to depositary banks than permitted under the UCC 4–301(d). Proposed § 229.32(a)(1) under Alternative 2 would be the same as under Alternative 1, subject to the duty of expeditious return.

The Board proposes to clarify in the commentary that a returning bank may send an electronic returned check directly to the depositary bank only if the returning bank has an agreement with the depositary bank to do so. The Board proposes to retain the language in the current commentary stating that a returning bank agrees to handle a returned check if the returning bank publishes or distributes availability schedules for the return of checks and accepts the returned check for return; handles a returned check that it did not handle for forward collection; or otherwise agrees to handle a returned check for expeditious return.[82] The Board proposes to add that a returning bank agrees to handle a returned check if it agrees with the paying bank to handle electronic returned checks sent by the paying bank.

Under both Alternative 1 and Alternative 2, proposed § 229.32(a)(2) would set forth provisions relating to a returning bank's responsibility for a returned check with an unidentifiable depositary bank. Proposed § 229.32(a)(2) would revise the provisions of current § 229.31(b) and accompanying commentary to provide that the returning bank's responsibility is similar to that of a paying bank, for the reasons discussed above in connection with proposed § 229.31(a)(2). Under either Alternative 1 or Alternative 2, a returning bank's return of a check to an unidentifiable depositary bank would not be subject to the expeditious return requirement. Proposed § 229.32(a)(3) would retain the provisions of the undesignated paragraph in current § 229.31(a) that permit returning banks to qualify returned checks and that instruct returning banks on how to do so. As noted above, all commenters on the qualified return check provisions of the 2011 proposal indicated that the need still exists for qualified returns and carrier envelopes, and that there would be costs associated with implementing alternative methods for returning checks that currently are prepared as qualified returns or use carrier envelopes. Like the 2011 proposal, however, the current proposal would delete the provisions of the undesignated paragraph of current § 229.31(a)(2) permitting a one-business-day extension for return for converting a returned check to a qualified returned check. The Board received no comments addressing the proposed elimination of the extension in response to the 2011 proposal. The extension, if retained, might benefit returning banks that choose to qualify and send paper returned checks destined for depositary banks that have agreed to accept returns electronically, a result that is inconsistent with the policy of encouraging electronic return of checks. In addition, if a returned check is destined for a depositary bank that does not accept returned checks electronically, the Board believes that a returning bank's midnight deadline affords it sufficient time to process and send the returned check, irrespective of whether the returning bank qualifies the returned check or not.[83]

b. Section 229.32(b)—Expeditious Return of Checks by Returning Bank (or Reserved)

Under Alternative 1, § 229.32(b) would be reserved. Under Alternative 2, proposed § 229.32(b)(1) would set forth the general rule for expeditious return of checks: A returning bank must return the check in a manner such that the check would normally be received by the depositary bank not later than 2 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.[84] Proposed § 229.32(b)(2) would parallel proposed § 229.31(b)(2), which sets forth the return deadline for paying banks under circumstances where the second business day following presentment is not a banking day for the depositary bank. Alternative 2 would delete the provisions of current § 229.31(a) setting forth the four-day test and the forward-collection test, as well as remove all references to those tests

[82] In Alternative 2, the commentary to proposed § 229.32(b) describes the circumstances under which a returning bank agrees to handle a returned check expeditiously.

[83] The Board is proposing to delete the return-deadline extensions for creating qualified returned checks under proposed Alternatives 1 and 2.

[84] Consistent with the other proposed changes to the receipt deadlines, the Board proposes to move up the cutoff hour for receipt of a returned check from 4 p.m. to 2 p.m. (local time of the depositary bank).

throughout the regulation and related commentary.

The proposed commentary to § 229.32(b) under Alternative 2 would provide examples of when a returning bank is subject to the expeditious return requirement with respect to a returned check. The first examples are situations in which the returning bank itself is subject to the expeditious return requirement, specifically, where the returning bank has an agreement to send electronic returned checks directly to the depositary bank, to another returning bank that has an agreement to send electronic returned checks to the depositary bank, or to another returning bank that otherwise agrees to handle the returned check expeditiously under § 229.32(b). Additionally, a returning bank could agree to handle a returned check for expeditious return if the returning bank publishes or distributes availability schedules for the return of returned checks to the depositary bank and accepts the returned check for return. A returning bank also could agree with the paying bank or another returning bank to handle returned checks sent by the paying bank or other returning bank for expeditious return to certain depositary banks. Like the 2011 proposal, the proposed revisions to the commentary on proposed § 229.32(b) would explain that a returning bank could accept a paper returned check that it did not handle for forward collection without being deemed to have agreed to handle the returned check for expeditious return.

The proposed commentary would retain the language in the current commentary [85] stating that a returning bank agrees to handle a returned check if the returning bank publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return; handles a returned check for return that it did not handle for forward collection; or otherwise agrees to handle a returned check for expeditious return. The proposed commentary to proposed § 229.32(b) would include a clarification that a returning bank agrees to handle a returned check if it agrees with the paying bank to handle electronic returned checks sent by the paying bank.

(c) Section 229.32(c)—Exceptions to Expeditious Return of Checks by Returning Bank (or Reserved)

Proposed § 229.32(c) would be reserved under Alternative 1. Proposed § 229.32(c) under Alternative 2 would include exceptions to the expeditious-return requirement similar to those set forth forth for paying banks in proposed § 229.31(c) under Alternative 2: The expeditious-return requirement would not apply if (1) the returning bank does not have an agreement to send electronic returned checks directly or indirectly to the depositary bank; (2) the check is being returned to a depositary bank that is not subject to subpart B of this regulation; and (3) the check is being returned to an unidentifiable depositary bank. As in the 2011 proposal, proposed § 229.32(c) under Alternative 2 would be grouped together in one paragraph.

No agreements for direct or indirect electronic return. For the reasons set forth in more detail above with respect to paying banks, proposed § 229.32(c) would not subject a returning bank to the expeditious-return requirement if the returning bank did not have an agreement to send electronic returned checks to the depositary bank, to a returning bank that has an agreement to send electronic returned checks to the depositary bank, or to a returning bank that otherwise agrees to handle the returned check expeditiously under proposed § 229.32(b) under Alternative 2. As with paying banks in proposed § 229.31(c) under Alternative 2, a returning bank would be subject to the expeditious-return requirement if the returning bank had the necessary agreements to send electronic returned checks but chose to send paper returned checks.

The proposed commentary to § 229.32(c)(1) would explain that the expeditious-return requirement would not apply to a returning bank if: The returning bank did not have an agreement to send electronic returned checks to the depositary bank, and did not have an agreement to send electronic returned checks to another returning bank that had an agreement to send electronic returned checks to the depositary bank. By contrast, if the returning bank to which the paying bank sent the returned check had an agreement to send electronic returned checks directly to the depositary bank or to another bank that had an agreement to send electronic returned checks directly to the depositary bank, the first returning bank would be subject to the expeditious-return requirement under proposed § 229.32(b). Under the latter circumstances, a check is presented to the paying bank on Monday would have to be sent by the returning bank in a manner such that the depositary bank normally would receive the returned check by 2 p.m. (local time of the depositary bank) on Wednesday.

Depositary bank not subject to subpart B and unidentifiable depositary bank. Proposed § 229.32(c)(1) under Alternative 2 would retain the exceptions to the expeditious-return requirement for checks deposited into a depositary bank that does not maintain ''accounts'' and checks where the paying bank (or returning bank) is unable to identify the depositary bank. Additionally, for the same reasons as set forth in connection with proposed § 229.32(c)(2) under Alternative 2 (and in connection with the exceptions to the notice-of-nonpayment requirement set forth in proposed § 229.32(d)(3) under Alternative 1), proposed § 229.32(c) under Alternative 2 would expand the circumstances under which a returning bank is not subject to the expeditious-return requirement to include circumstances where a returning bank is returning a check to a depositary bank that is not subject to subpart B of Regulation CC because the bank is not a ''depository institution'' within the meaning of the EFA Act.

Similar to the provisions of the 2011 proposal, proposed § 229.32(c) under Alternative 2 would provide that a returning bank that receives a returned check for which the paying bank was unable to identify the depositary bank would not be subject to the expeditious-return requirement, even though the returning bank may be able to identify the depositary bank. Under those circumstances, it likely would be difficult for the returning bank to meet the two-day test because the paying bank likely would have sent the returned check as if it were not subject to the expeditious-return requirement. A returning bank would still be required to use ordinary care when returning the item.[86] The proposed commentary to proposed § 229.32(c) under Alternative 2 would include the revised examples of the circumstances under which a returning bank is unable to identify the depositary bank, discussed in connection with proposed § 229.31(a)(2) for paying banks.

d. Section 229.32(d)—Notice in Lieu of Return

The notice in lieu of return requirements for returning banks are the same for returning banks as they are for paying banks. Under both Alternative 1 and Alternative 2, proposed § 229.32(d) and the related proposed commentary would make changes that parallel those discussed in connection with proposed § 229.31(f) for paying banks, for the

[85] 12 CFR Part 220, Appendix E, at paragraph XVII.A.2.a.

[86] UCC 4–202.

reasons discussed above in connection with proposed § 229.31(f).[87]

e. Section 229.32(e)—Settlement

Like the 2011 proposal, the current proposal at proposed § 229.32(e) would not amend the current provisions of Regulation CC setting forth a returning bank's settlement obligation for returned checks.[88] The proposed commentary to proposed § 32(e) would provide clarifying revisions.

f. Proposed § 229.32(f)—Charges

The 2011 proposal would have clarified that the party on which a returning bank may impose a charge for handling a returned check is the bank that sent the returned check to it, rather than another party. One commenter supported the proposed clarification. One Reserve Bank commenter, however, suggested that the Board should eliminate prohibitions on fees that banks may charge to each other for handling checks. The commenter was concerned that prohibitions on fees might stifle innovation in the development of bank-to-bank practices and services related to handling checks electronically.

Proposed § 229.32(f) would not amend the provisions of current § 229.31(d) related to charges a returning bank may impose for handling returned checks. The Board requests comment on whether it should eliminate regulatory prohibitions on returning bank fees for returning checks.

g. Section 229.32(g)—Reliance on Routing Number

The proposed commentary to proposed § 229.32(g) would provide that a returning bank, when returning a check, may rely on any routing number designating the depositary bank in the electronic returned check received by the returning bank. These proposed revisions are similar to those described in connection with the proposed commentary to proposed § 229.31(i), discussed above.

4. Section 229.33—Depositary Bank's Responsibility for Returned Checks and Notices of Nonpayment

As in the 2011 proposal, the Board proposes to consolidate the regulation's provisions related to a depositary bank's responsibility for returned checks and notices of nonpayment in one section.

a. Section 229.33(a)—Acceptance of Electronic Returned Checks and Electronic Notices of Nonpayment

Proposed § 229.33(a) would provide that a depositary bank's agreement with the transferor bank governs its acceptance of electronic returned checks and electronic written notices of nonpayment (as opposed to oral notices of nonpayment, i.e., those provided over the telephone, which are discussed below under proposed § 229.33(c)). The transferor bank may be either the paying bank or a returning bank. Under Alternative 2, the reference to notice of nonpayment would be omitted. The proposed commentary to proposed § 229.33(a) under both Alternative 1 and Alternative 2 would provide that the agreement normally would specify the electronic address or receipt point at which the depositary bank accepts returned checks and written notices of nonpayment electronically, as well as what constitutes receipt of the returned checks and written notices of nonpayment.

b. Section 229.33(b)—Acceptance of Paper Returned Checks and Paper Notices of Nonpayment

Current § 229.32(a)specifies that the locations where a depositary bank must accept returned checks and notices of nonpayment.[89] Similar to the provisions of the 2011 proposal, proposed § 229.33(b) would not incorporate the provisions of current § 229.32(a)(2)(iii), addressing situations where the address in the depositary bank's indorsement is not in the same check-processing region as the address associated with the routing number in its indorsement because there is a single national check-processing region. Proposed § 229.33(b) under both Alternative 1 and Alternative 2 would require a depositary bank that includes its address in its indorsement to receive paper returned checks at a location consistent with that address and at a location, if any, at which it requests presentment of paper checks. The Board received no comments on the similar provisions of the 2011 proposal.

c. Section 229.33(c)—Acceptance of Oral Notices of Nonpayment

Current § 229.33(c) requires a depositary bank to accept oral notices of nonpayment at the telephone or telegraph number of its return check unit indicated in the indorsement (or the general purpose number if no such number appears), as well as at any other number held out by the bank for receipt of notice of nonpayment.[90] Under Alternative 1, proposed § 229.33(c) would provide that a depositary bank must accept oral notices of nonpayment at any telephone number that appears in its indorsement, rather than refer solely to the telephone number of the returned check unit. Under Alternative 2, proposed § 229.33(c) would be reserved.

The commentary to current § 229.33(c) states that the depositary bank may not refuse to accept notices at the telephone numbers provided in this section, but may transfer calls or use a recording device.[91] The Board requests comment on whether a depositary bank that has agreed to accept written notices of nonpayment electronically should be required to also accept oral notices of nonpayment.

d. Section 229.33(d)—Payment for Returned Checks by Depositary Banks

Proposed § 229.33(d) sets forth, with minor technical amendments, the provisions of current § 229.32(b) governing a depositary bank's payment for returned checks.

e. Section 229.33(e)—Misrouted Returned Checks and Written Notices of Nonpayment

Proposed § 229.33(e) would retain the provisions of current § 229.32(c) requiring a bank that receives a misrouted returned check or written notice of nonpayment on the basis that it is the depositary bank to send the returned check or notice to the correct depositary bank, to a returning bank agreeing to handle the returned check or notice, or back to the bank from which it received the misrouted return or notice. The Board expects that depositary banks and their transferor banks should be able to address in their agreements the appropriate actions to be taken by the depositary bank in the event it receives a misrouted electronic returned check or written electronic notice of nonpayment. The Board requests comment on what actions depositary banks typically take when they receive a misrouted written electronic notice of nonpayment.

f. Section 229.33(f)—Charges

Proposed § 229.33(f) sets forth without change the provisions of current § 229.32(d) prohibiting a depositary bank from imposing charges for accepting and paying checks being returned to it.

[87] Were the Board to adopt proposed Alternative 2, a returning bank's sending of a notice in lieu of return would be subject to the expeditious return requirement.

[88] 12 CFR 229.31(c).

[89] Current § 229.33(c) provides that § 229.32(a) governs where a depositary bank must accept written notices of nonpayment.

[90] Similar to proposed § 229.31(d), proposed § 229.33(c) would delete references to using the telegraph as a means of accepting notices.

[91] 12 CFR Part 229, Appendix E, at paragraph XIX.C.1.

g. Section 229.33(g)—Notification to Customer

Proposed § 229.33(g) would amend the provisions of current § 229.33(d) to include the requirement that a depositary bank notify its customer under circumstances where a depositary bank receives notice of recovery under current § 229.35(b) (liability of bank handling a check), which the current proposal does not propose to amend. Currently, this requirement is set forth only in the commentary to current § 229.32(d).[92] Under Alternative 1, proposed § 229.33(g) would refer to both returned checks and notices of nonpayment. Under Alternative 2, proposed § 229.33(g) would refer only to returned checks.

5. Section 229.34—Warranties and Indemnities

Proposed § 229.30(a) provides that electronic checks and electronic returned checks are subject to the provisions of subpart C as if they are checks. Accordingly, proposed § 229.34 would apply all of the warranties and indemnities in that section to a bank that handles an electronic check or electronic returned check. In addition to those warranties, the Board is proposing that new warranties be made with respect to electronic checks and electronic returned checks.

Content of warranties. Proposed § 229.34(a)(1) would add new warranties to the regulation that would be made by a bank that transfers or presents an electronic check or electronic returned check and receives a settlement or other consideration for it. Under proposed § 229.34(a)(1), the bank would warrant that the electronic image accurately represents all of the information from the original check as of the time the original check was truncated, that the electronic information contains an accurate record of all the MICR line information required for a substitute check under the regulation's substitute check definition,[93] and that no person will receive transfer, presentment, or return of, or otherwise be charged for, the electronic image of or electronic information related to the check or returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.

These warranties are substantively the same as those set forth in the 2011 proposal, which commenters supported. All but one commenter suggested that the parties exchanging the electronic image or electronic information should be able to vary the warranties by agreement. The current proposal would clarify in the proposed commentary to proposed § 229.34(a) that the sending bank and receiving bank may vary by agreement the warranties the sending bank makes to the receiving bank for electronic images of or electronic information related to checks. The effect of the variation, however, would extend only to the parties that are bound by the agreement. For example, the banks' agreement may provide that the bank transferring the check does not warrant that the image and information are sufficient for creating a substitute check.

Parties to whom the warranties are made. Similar to the provisions of the 2011 proposal, proposed § 229.34(a)(2)(i) would provide that these warranties would flow, in the case of electronic checks sent for forward collection, to the transferee bank, any subsequent collecting bank, the paying bank, and the drawer of the check. Proposed § 229.34(a)(2)(ii) would provide that, in the case of an electronic returned check, the warranties would flow to the transferee returning bank, any subsequent returning bank, the depositary bank, and the owner of a returned check.

Some commenters on the 2011 proposal opposed extending the warranties to the drawers and the owners, believing that the warranties should be made only between the parties exchanging the items. These commenters stated that, absent the proposed warranties, banks' customers are adequately protected under the UCC for improper charges to their account (such as paying an item twice). The group letter supported extending the warranties to drawers and owners only if banks were permitted to vary the application of the warranties through operating circular, clearinghouse rules, or customer agreement. The group letter also suggested that the drawer should not be able to recover from a collecting bank unless the drawer first has made a claim against its bank.

The Board believes that proposed § 229.34(a)(2) is consistent with the warranty flow set forth by section 5 of the Check 21 Act and implemented by § 229.52(b) of subpart D, which was intended to protect parties outside the banking system from any undesirable consequences resulting from check truncation. In particular, existing laws, including the UCC, may not adequately protect drawers from harm resulting from illegible images or incorrect MICR lines on electronic checks or returned checks derived from original checks. For example, if the image is illegible, a drawer may not be able to prove that a check charged to the account for $1,500 was in fact written for $150. Moreover, extending the warranties to drawers could protect drawers against losses incurred from being asked to pay an item twice. Finally, extending the warranties to drawers and owners of checks could help the drawer or the owner, respectively, in the event of the failure of the paying bank or depositary bank. The Board requests comment on whether the drawer or owner of a check should be required to make a claim against his or her bank before making a breach of warranty claim against a prior collecting bank.

Under current § 229.37, the banks exchanging electronic checks may vary the effect of the warranties as between themselves, but not with respect to subsequent transferees that are not bound by the agreement. If, however, one of the parties to the agreement must create a substitute check from the electronic check or electronic returned check, such a reconverting bank would not be able to disclaim or vary the substitute check warranties it makes.

6. Section 229.34(b)—Indemnity With Respect to an Electronic Image or Electronic Information Not Related to a Paper Check

Proposed § 229.34(b) would provide that a bank that transfers an electronic image or electronic information that is not derived from a paper check indemnify the transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against any loss, claim, or damage that results from the fact that the image or information was not derived from a paper check. This proposed indemnity would protect a bank that receives an electronically-created item from a sending bank against any loss or damage that results from the fact that there was no original check corresponding to the item that the sending bank transferred. For example, a paying bank that receives an electronic check file that contains an eRCC might not know the eRCC was not derived from a paper RCC. That paying bank might try to recover losses from an unauthorized eRCC from prior banks that handled the item through procedures offered by collecting banks and check clearinghouses, or the paying bank might make a warranty claim. The paying bank's claims might fail as invalid claims because the eRCC never existed in paper form. The paying bank could seek to be indemnified by the

[92] 12 CFR Part 229, Appendix E, at paragraph XIX.D.1.

[93] 12 CFR 229.2(aaa).

depositary bank under the proposed indemnity in § 229.34(b) for the losses caused by the fact that the item was electronically created. The proposed amount of this indemnity is set forth in proposed § 229.34(i).

Indemnity recipients. The indemnity in proposed § 229.34(b) would not flow to the drawer, payee or depositary bank of the item. The Board believes that the payee and the depositary bank are in the best position to know whether an item is electronically created and to prevent the item from entering the check-collection system. For electronically-created items, the payee should reasonably be aware that the item was electronically created (either because the payee might have created the item or because the payee received an image instead of a paper check). The Board believes that a depositary bank that accepts an item for deposit electronically should assume the risk that the item was not derived from a paper check. The Board expects that the depositary bank can contractually protect itself by, if necessary, modifying the terms of its agreement with its depositor that permits items to be deposited electronically. Additionally, for items electronically created by the paying bank's customer, the customer introduces the item into the check collection system. Therefore, the Board does not believe it is appropriate for subsequent banks handling the item to indemnify those parties for losses.

In the case of an eRCC, the paying bank's customer, whose account will be debited, may not be aware that the payee created an electronic item rather than a paper item. The warranties in proposed § 229.34(b) would protect the person whose account will be debited because the item never existed in paper. The paying bank's customer, however, should normally be made whole by the paying bank for the unauthorized debit in accordance with UCC 4–401 or Regulation E (12 CFR part 1005), assuming either is applicable. The Board requests comment on whether it is appropriate for the proposed indemnity to flow to the person whose account will be debited.

7. Section 229.34(c)—Transfer and Presentment Warranties With Respect to a Remotely Create Check

Proposed § 229.34(c) sets forth without substantive change the provisions of current § 229.34(d) relating to the transfer and presentment warranties made with respect to remotely created checks.[94] The proposed commentary to proposed § 229.34(c) would revise the current commentary to current § 229.34(d) to correspond to the Federal Trade Commission's proposed changes to its Telemarketing Sales Rule, were the FTC to adopt the rule as proposed. Among other things, the FTC's proposed amendments would bar sellers and telemarketers from creating RCCs as payment for goods or services.[95] Accordingly, the references in the commentary to the Telemarketing Sales Rule's authorization requirements would be unnecessary if the FTC were to adopt its proposed rule.

8. Section 229.34(d)—Settlement Amount, Encoding, and Offset Warranties

In the 2011 proposal, the Board proposed that the information encoded after issue include information placed ''in the electronic information'' of an electronic item. This change would have included information in an electronic check or an electronic returned check within the scope of the warranty. Two commenters, including the group letter, supported that proposal. One Reserve Bank commenter noted, however, that the language of the 2011 proposal might be too broad, because it could be read to include data in portions of an item's electronic information other than the MICR line, such as indorsement records. Proposed § 229.34(d)(3) would provide that the information encoded after issue in the MICR line of a check—which is the information to which the warranty applies—means any information that could be encoded in the MICR line of a paper check.

The current proposal, like the 2011 proposal, would provide that a bank warrants that the information encoded after issue is ''accurate,'' instead of ''correct.'' The Board does not intend this change to be substantive.

9. Section 229.34(e)—Returned Check Warranties

Proposed § 229.34(e), like the similar provisions of 2011 proposal, would remove the warranty in current § 229.34(a)(1) that the paying bank has returned a check within the deadline specified in the Board's Regulation J (12 CFR part 210), because that deadline applies only to checks returned through Reserve Banks, and need not be specified in Regulation CC. The group letter supported this provision of the 2011 proposal.

10. Section 229.34(f)—Notice of Nonpayment Warranties

Proposed § 229.34(f) under Alternative 1 would retain warranties similar to those set forth in current § 229.34(b) relating to notices of nonpayment. By contrast, the 2011 proposal would have eliminated the notice of nonpayment requirement and related warranties. Similar to the provisions of proposed § 229.34(e), proposed § 229.34(f) would delete the paying bank's warranty that it will return the check within its deadline under Regulation J, because that deadline applies only to checks returned through Reserve Banks and need not be specified in Regulation CC.

Proposed § 229.34(f)(2) would state explicitly that the notice of nonpayment warranties are not made with respect to checks drawn on the Treasury of the United States or U.S. Postal Service money orders. The U.S. Treasury and Postal Service are not ''paying banks'' for purposes of subparts B and C of the regulation; therefore, the notice-of-nonpayment, same-day settlement, and (current) expeditious-return requirements do not apply to checks drawn on the U.S. Treasury or U.S. Postal Service money orders.[96] Proposed § 229.34(f)(2) is consistent proposed § 229.34(e) and current § 229.34(a), providing that returned check warranties are not made with respect to checks drawn on the Treasury of the United States or U.S. Postal Service money orders.

Under Alternative 2, proposed § 229.34(f) would be reserved, because Alternative 2 does not include provisions relating to notice of nonpayment.

11. Section 229.34(g)—Truncating Bank Indemnity

Proposed § 229.34(g) would incorporate a new indemnity to be provided by a depositary bank that accepts a deposit of an electronic check related to an original check. If such a bank does not receive the original check, receives settlement or other consideration for an electronic check or substitute check related to the original check, and does not receive the check returned unpaid, then that bank must indemnify a depositary bank that accepts the original check for deposit for

[94] A bank that transfers or presents a remotely created check and receives settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. *See* proposed § 229.34(c) (current § 229.34(d)).

[95] The FTC's proposed rule is available on the FTC's Web site at *http://www.ftc.gov/os/2013/05/130521telemarketingsalesrulefrn.pdf.*

[96] *See* current commentary to the definition of ''paying bank'' in current § 229.2(z). *See also* current § 229.42.

that depositary bank's losses due to the check having already been paid.

The Board's reasons for proposing this new indemnity are set forth in detail above in connection with the discussion on the framework for electronic checks and returned checks within the Overview of the 2013 Proposal. In brief, the Board believes that a depositary bank that receives the benefit of permitting its customers to use remote deposit capture should also internalize any risk or cost to other banks (specifically banks that accept original checks) that may result from that practice.

12. Section 229.34(h)—Damages for Breach of Warranties

Proposed § 229.34(h) sets forth without substantive change the provisions of current § 229.34(e) relating to damages for breach of the warranties set forth in the section.

13. Section 229.34(i)—Indemnity Amounts

Proposed § 229.34(i) would specify the maximum amounts of the new indemnities in proposed § 229.34(b) and (g). Specifically, proposed § 229.34(i) would provide that the indemnity amount not exceed the sum of the amount of the loss, up to the amount of the settlement or other consideration received by the indemnifying bank, and interest and expenses (including costs and reasonable attorney's fees and other expenses of representation). In addition, proposed § 229.34(i) would subject the indemnity to comparative negligence, i.e., the indemnity amount would be reduced by the portion of the indemnified bank's loss that is attributable to the indemnified bank's negligence or failure to act in good faith. Furthermore, proposed § 229.34(i) would provide that the indemnity not reduce the rights of a person under the UCC or other applicable provision of state or federal law, including Regulation E.

Proposed § 229.34(i) is similar to the indemnity amount in current § 229.53(b)(1)(ii) of subpart D with respect to a substitute-check indemnity claim in the absence of a substitute-check warranty breach and the damages for breaches of warranties in § 229.34. The Board requests comment on whether losses proximately caused from not being able to make the warranty claim should be interpreted to cover damages awarded for violations of Regulation E.

14. Section 229.34(j)—Tender of Defense

Proposed § 229.34(j) would set forth, without change, the provisions of current § 229.34(f) relating to tender of defense.

15. Section 229.34(k)—Notice of Claim

Proposed § 229.34(j) would set forth, without change, the provisions of current § 229.34(g) relating to notice of claim.

16. Section 229.35—Indorsements

Current § 229.35(a) requires a bank (other than the paying bank) that handles a check to indorse the check in a manner that permits a person to interpret the indorsement in accordance with the indorsement standard set forth in appendix D to the regulation. Current Appendix D pertains to indorsements that banks apply to original checks and substitute checks.

In 2011, the Board proposed to amend Appendix D to require banks that transfer electronic collection items or electronic returns to other banks to apply their indorsements electronically in accordance with ANS X9.100–187, unless the parties otherwise agree. The 2011 proposal would have amended the related commentary to provide that, if a depositary bank included an email address or other electronic address in its indorsement for delivery of electronic returns, and had agreed to accept electronic returns from the paying bank or returning bank, the paying bank or returning bank could send electronic returns to such address. The 2011 proposal also would have clarified that if the reconverting bank (the bank that creates a substitute check) is a bank that rejected a check submitted for deposit, it must identify itself by applying its routing number to the back of the check and that, in this instance, the routing number would be for identification purposes only, and not an indorsement or acceptance.

Two commenters, including the group letter, generally supported the Board's proposed changes. One of these commenters supported using ANS X9.100–187 as the standard for applying indorsements electronically; the other stated that ANS X9.100–187 should merely be an example of a permissible agreed-upon standard. Five commenters, including the group letter, opposed the suggestion that a depositary bank might include an email address or electronic address in its indorsement. One commenter supported the clarification that a bank that rejects a check submitted for deposit and creates a substitute check must identify itself as the reconverting bank on the back of the check.

The current proposal would eliminate Appendix D. The current proposal instead would incorporate the substance of the indorsement standards by referring to them into proposed § 229.35(a). Specifically, proposed § 229.35(a) would require a bank (other than a paying bank) that handles a check during forward collection or a returned check to indorse the check in accordance with American National Standard Specifications for Check Indorsements, X9.100–111 (hereinafter ANS X9.100–111) for a paper check, ANS X9.100–140 for creating a substitute check, and ANS X9.100–187 for an electronic check or electronic returned check, unless the Board by rule or order determines that different standards apply or the parties otherwise agree. The current proposal would also delete substantial portions of the commentary to current § 229.35(a) discussing substantive aspects of indorsements, such as the location and content of banks' indorsements, because those specifics are set forth in the applicable industry standard (or by the agreement of the parties). Proposed § 229.35(d) would delete the reference to Appendix D in current § 229.35(d). The current proposal would not amend current §§ 229.35(b) or (c).

When the current indorsement standard in Appendix D became effective in 2004 (concurrently with the Check 21 Act), substitute checks were new and banks were in the early stages of establishing processes and systems to create, indorse, and handle them. Banks were also in the early stages of learning how to apply indorsements and bank identifications electronically, such that they could later be applied to any substitute check created. Since that time, however, banks' processes related to substitute checks and applying indorsements and identifications electronically have become well established. Further, industry standards now set forth the specifics for how banks should indorse, or identify themselves on, original checks and substitute checks they handle, substitute checks that they create, and electronic items they handle.

The proposed commentary to proposed § 229.35(a) commentary notes that ANS X9.100–187 is an industry standard for handling checks electronically, but that multiple electronic check standards may exist that would enable a receiving bank to create a substitute check, and that the parties may agree to send and receive checks as electronic images and

information that conform to a different standard.

The proposed commentary to proposed § 229.35(a) would also remove the portions of the current commentary that discuss allocation of liability under § 229.38(d), because those matters are discussed in the proposed commentary to proposed § 229.38. Finally, the proposed commentary to proposed § 229.35(a) would move those portions of the commentary that discuss reconverting banks' obligations at the time they create a substitute check into the proposed commentary to § 229.51(b), which discusses reconverting-bank duties. For example, as proposed in 2011, the proposed § 229.51(b) commentary notes that if the reconverting bank is a bank that rejected a check submitted for deposit, then its routing number (with asterisks) on the back of the check is for identification only, and is not an indorsement or acceptance.

The current proposal would make clarifying changes throughout the proposed commentary to proposed § 229.35. For example, in paragraph 5 in the proposed commentary to § 229.35(b), the Board is proposing to clarify the regulation's use of the term ''final settlement.''

17. Section 229.36—Presentment and Issuance of Checks

The current proposal would amend current § 229.36(a), (b) and (f) and would eliminate current § 229.36(e).

a. Section 229.36(a)—Receipt of Electronic Checks

Proposed § 229.36(a) would provide that a paying bank's receipt of an electronic check is governed by the paying bank's agreement with the presenting bank. The proposed commentary to proposed § 229.36(a) would state that the terms of the agreement are determined by the parties and may include, for example, the electronic address or electronic receipt point at which the paying bank agrees to accept electronic checks, as well as when presentment occurs. The Board does not believe that banks' existing practices for electronic check presentment need be changed as a result of the Board's proposal.

b. Section 229.36(b)—Receipt of Paper Checks

The current proposal would amend current § 229.36(b) and its commentary to make changes that are substantively identical to those set forth in the 2011 proposal. The Board received no comments in response to the changes in the 2011 proposal that are set forth in proposed § 229.36(b)(1) regarding the locations at which a check in paper form is considered received by the paying bank. The Board also is proposing to amend the commentary to delete the statement about the tradeoff between including an address on a check, versus simply stating the name of the bank to encourage wider currency of the check, because the physical location of a bank no longer limits the acceptance of its checks.

Proposed § 229.36(b)(2) would permit a paying bank to require that forward-collection checks be separated from returned checks, a provision that is not in the current regulation but that was included in the 2011 proposal. Two commenters supported that aspect of the 2011 proposal. One Reserve Bank commenter opposed it, stating that it benefits a paying bank that requires presentment of paper checks in a way that contradicts the broader intent of the proposal to encourage banks to send and receive checks electronically. Proposed § 229.36(b)(2) accordingly would permit a depositary bank to require that returned checks be separated from forward-collection checks. A paying bank that has agreed to accept electronic presentment might nonetheless receive presentment in paper form (see proposed § 229.36(d)), and having the ability to require that paper forward-collection checks be separated from paper returned checks may benefit the paying bank in such cases. The Board requests comment on whether paying banks should be permitted to require that forward-collection checks be separated from returned checks, and consequently, whether depositary banks should continue to be permitted to require that forward-collection checks be separated from returned checks.

c. Section 229.36(d)—Same-Day Settlement

For the reasons discussed above in the Overview of the 2013 Proposal, the Board proposes to retain, without substantive change, the current same-day settlement provisions. The Board proposes to clarify throughout proposed § 229.36(d) (current § 229.36(f)) that the same-day settlement provisions apply only to presentments of checks in paper form. As described above under proposed § 229.36(a), electronic check presentment is governed by the paying bank's agreement with the presenting bank.

Proposed § 229.36(d)(1), like the 2011 proposal, would remove the requirement in that a paying bank accept presentment for same-day settlement at a location that is in the check-processing region consistent with the routing number on the check, because there is only one check-processing region and there are no longer any checks considered nonlocal. The Board received no comments on this aspect of the 2011 proposal.

Proposed § 229.36(d)(2) would set forth the provisions of current § 229.36(f)(2) permitting a paying bank to require that checks presented for same-day settlement be separated from other forward-collection checks or returned checks. The 2011 proposal would have deleted this provision and eight commenters, including the group letter, objected to its removal. No commenters supported removing the provision. The Board believes that retaining the provisions of proposed § 229.36(d)(2) is consistent with the proposal to retain § 229.36(b)(2), which permits paying banks more generally to require that forward-collection checks be separated from returned checks.

d. Current § 229.36(e)—Issuance of Payable-Through Checks

The 2011 proposal would have deleted current § 229.36(e) as unnecessary because there is now a single national check-processing region.[97] The Board received no comments on this portion of the 2011 proposal, and the current proposal would also delete current § 229.36(e) and reserve the paragraph.

18. Section 229.37—Variation by Agreement

Current § 229.37 permits parties to vary by agreement the effect of the provisions in subpart C, and the current commentary to § 229.37(a) provides examples of situations where variation by agreement is permissible. In general, the Board is proposing to revise the commentary to conform to the provisions of the current proposal (for example, by referring to agreements varying the notice-of-nonpayment timeframes in Alternative 1, rather than the timeframes for return of checks).[98]

In 2011, the Board proposed to revise its examples in the commentary to § 229.37(a) related to returning and presenting checks electronically in order to conform the examples to the 2011 proposal. The Board also proposed removing current comment C.7 related to acceptance of checks presented for

[97] The purpose of § 229.36(e) was to alert the depositary bank that it could not rely on the routing number in the MICR line of the check for purposes of determining whether the check was local or nonlocal.

[98] The Board proposes these changes in proposed paragraphs A and C.5 in the commentary to § 229.37. Alternative 2 would continue to refer to the timeframes for expeditious return instead of notice of nonpayment.

same-day settlement at a location that is not in the same check-processing region as the routing number on the checks. (*See* discussion in connection with proposed § 229.36(d)(1)). The two commenters that addressed the proposed revisions to the examples, including the group letter, both supported them, and the Board's revised proposal includes them with non-substantive changes. The Board also proposes to add, as an example of permissible variation by agreement. that a depositary bank or returning bank may agree with another returning bank or paying bank to set a cutoff hour earlier than 2 p.m. for receipt of returned checks.

Two commenters, including the group letter, requested the Board include an example providing that it would be permissible for banks to agree to vary the warranties in proposed § 229.34(a). One commenter broadly opposed that approach because it could result in the risk allocation under the proposed warranties not applying if collecting and presenting banks agree to accept items not meeting the definition of an electronic collection item or electronic return, which would create uncertainty. As mentioned above, the proposed commentary to proposed § 229.34(a) that a sending bank and receiving bank may vary by agreement the warranties the sending bank makes to the receiving bank for electronic images of or electronic information related to checks, for example, to provide that the bank transferring the check does not warrant that the electronic image or information are sufficient for creating a substitute check. Such variation by agreement, however, would not extend to banks, drawers, and owners that are not bound by the agreement.

The Board believes that the current proposal's provisions that would broaden the definitions of ''electronic check'' and ''electronic returned checks'' removes the uncertainty as to whether the proposed risk-allocation framework will apply to a given electronic item. Through its agreement with the sending bank, a receiving bank should be able to determine whether the Board's proposed warranties apply to an item.

One commenter on the 2011 proposal expressed concern with a practice related to electronic presentment agreements. This commenter believed that several banks have agreed to a practice described as follows: The depositary bank and the paying bank agree (either directly or through clearinghouse rules) to send electronic information related to a check prior to sending the accompanying electronic image of the check. Under the agreement, presentment would require receipt of both the electronic information and the electronic image. The paying bank debits its customer's account based on receiving the electronic information.[99] Further, the commenter stated that the depositary bank and the paying bank agree to split between them the credit float that is generated by debiting the paying bank's customer before the depositary bank's customer is credited.[100] The commenter stated that the paying bank then places a portion of its customer's funds in a suspense account on its books for the benefit of the depositary bank. Then, once the electronic image of the check is sent to the paying bank, the paying bank credits the remaining amount of the check to the depositary bank. The commenter requested that the Board amend the regulation to provide that such a practice would be an impermissible variation by agreement of the effect of the provisions of subpart C of the regulation.

With respect to the amount of interest accrued by the depositary bank's customer, the practice described by the commenter appears to be governed by § 229.14(a) of subpart B of the regulation, which requires a depositary bank to begin to accrue interest or dividends on funds deposited in an interest-bearing account not later than the business day on which the depositary bank receives credit for the funds.[101]

The Board requests comment on the extent to which, and the specifics of how, banks may be engaging in this practice. The Board also requests comment on whether and how banks have modified their account agreements with their customers to address such a practice. Finally, the Board requests comment on whether it should consider the practice to be an impermissible variation by agreement of the provisions of subpart C of the regulation.

[99] The commenter noted that the paying bank's customer's account was debited for a check at least one business day prior to the day on which the depositary bank's customer's account is credited for the check. Subpart B, which is not subject to this proposal, governs the timeframes within which depositary banks must credit its customer's account for deposited checks. Those timeframes are not linked to the timing of the debit to the drawer's account.

[100] The credit float is generated because the banks have the benefit of the deposited funds overnight between those two days.

[101] The commentary to that section explains that a depositary bank that receives a bookkeeping entry that does not represent funds actually available for the depositary bank's use is not credit for purposes of § 229.14(a).

19. Section 229.38—Liability

a. § 229.38(a)—Standard of Care, Liability, Damages

Proposed § 229.38(a) sets forth the provisions of current § 229.38(a) under Alternative 1. Proposed § 229.38(a) under Alternative 2 is the same as under under Alternative 1, except that the reference to notice of nonpayment is deleted.

b. Current § 229.38(b)—Paying Bank's Failure To Make Timely Return

Alternative 1. Proposed Alternative 1 would remove current § 229.38(b) and its accompanying commentary. Current § 229.38(b) provides that a paying bank that fails to comply with both the expeditious-return requirement and its return deadline under the UCC, Regulation J, or current § 229.30(c) will be liable for one or the other but not both. The Board believes this liability provision is no longer necessary under Alternative 1 because Alternative 1 does not contain an expeditious-return requirement, so that a paying bank will be required to comply only with its return deadline under the UCC (or as extended under current § 229.30(c) or proposed § 229.31(g)). The Board requests comment on whether it is necessary to retain this provision absent an expeditious-return requirement.

Alternative 2. The Board is proposing to retain an expeditious-return requirement under Alternative 2. Therefore, under Alternative 2, the Board would retain current § 229.38(b).

c. Proposed § 229.38(c)—Comparative Negligence

The proposed commentary to proposed § 229.38(c) would revise the examples in the commentary to current § 229.38(c) to discuss the comparative-negligence provision in the context of delay in delivering a notice of nonpayment, as opposed to delay in delivering a returned check. Under Alternative 2, the current examples in the commentary would be retained because Alternative 2 retains the expeditious-return requirement.

d. Section 229.38(d)—Responsibility for Certain Aspects of Checks

Proposed § 229.38(d) would address banks' responsibilities for certain aspects of checks. A paying bank is responsible for damages resulting from an illegible indorsement to the extent that the condition of the check when issued by the paying bank or its customer adversely affected the ability of a bank to indorse the check legibly in accordance with § 229.35. By contrast, the depositary bank is liable to the

extent the condition of the back of a check arising after issuance and prior to acceptance of the check by the depositary bank adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. The current commentary provides examples of these liabilities with multiple references to the indorsement standard in Appendix D. In accordance with the proposed changes to § 229.35 (and the proposed elimination of appendix D), the Board proposes to replace the references to Appendix D with a specific reference to the appropriate industry standard. In addition, the Board proposes to move the substance of paragraphs 12 and 13 in the current commentary to § 229.35(a) to a new paragraph in the proposed commentary to proposed § 229.38(d), and clarify the liability framework when indorsements are unreadable due to markings on the check at issuance, for example, to carbon bands on the checks.[102] The Board requests comment on whether its proposed revisions clarify liability for unreadable indorsements, as well as whether any checks still bear carbon bands.

Current § 229.38(d)(2) makes drawee banks liable to the extent they issue payable-through checks that are payable through a bank located in a different check-processing region and that circumstance causes a delay in return. The 2011 proposal would have deleted this liability provision and its commentary as obsolete, because there is now only one check-processing region. The Board received no comments on that aspect of its proposal, and the current proposal similarly would delete current § 229.38(d)(2).

The current proposal would make no changes to current § 229.38(e), (f), (g) and (h).

20. Section 229.39—Insolvency of Bank

Current § 229.39 addresses what happens when a paying bank, collecting bank, returning bank, or depositary bank suspends payments when a check is in the process of being collected or returned. Current § 229.39(a) requires a receiver, trustee, or agent in charge of a closed bank to return a check to the transferor bank or customer that transferred the check if the check or returned check (1) is in, or comes into, the possession of the paying bank, collecting bank, depositary bank, or returning bank that suspends payment and (2) is not paid. This provision is similar to UCC 4–216(a).

Current § 229.39(b) and (c) provide banks with ''preferred'' claims against a paying bank, collecting bank, returning bank, or depositary bank with respect to checks or returned checks that are not returned by the receiver, trustee, or agent in charge of a closed bank under § 229.39(a). In current § 229.39(b), a bank that is prior to the paying bank in the collection chain has a claim against a paying bank that has finally paid the check, but suspends payment without making a settlement for the check that is or becomes final. Similarly, a bank that is prior to the depositary bank in the return chain has a claim against a depositary bank that has become obligated to pay the returned check. Current § 229.39(c) provides claims to banks in the collection or return chain that have not received settlement that is or becomes final from a collecting bank, paying bank, or returning bank that itself had received final settlement prior to suspending payments. These sections are derived from UCC 4–216(b).

Although both Regulation CC and the UCC use the term ''preferred claim,'' the Official Comment to the UCC provides that purpose of UCC 4–216 ''is not to confer upon banks, holders of items, or anyone else preferential positions in the event of bank failures over general depositors or any other creditors of the failed banks.'' Rather, UCC 4–216 is intended to fix the cut-off point at which an item has progressed far enough in the collection or return process where it is preferable to permit the item to continue the remaining collection or return process, rather than return the item and reverse the associated entries.[103]

Proposed § 229.39(b) would set forth amended provisions from current § 229.39(b) and (c) intended to clarify that the claims do not give a bank a preferential position over depositors or other creditors of the failed banks. The Board does not intend these changes to be substantive.

Proposed § 229.39(c), like current § 229.39(c), would provide a paying bank with a preferred claim against a presenting bank that breaches a settlement amount or encoding warranties in § 229.34. The Board intended that the claim in current § 229.39(d), set forth in proposed § 229.39(c), be a preferred claim, putting the paying bank in the position of a secured creditor.[104] The Board requests comment on whether the Board should continue to provide a preferred claim against the presenting bank for breach of the settlement amount and encoding warranties or whether it should provide only a claim, but not a preferred claim.

21. Section 229.40—Effect of Merger Transaction

The current proposal retains the provisions of the 2011 proposal that would delete as obsolete the provision in § 229.40(b) regarding mergers consummated on or after July 1, 1998, and before March 1, 2000. The Board received no comments on this aspect of the 2011 proposal.

22. Section 229.43—Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

The current proposal, like the 2011 proposal, would modify § 229.43 to reflect how the proposed warranties and indemnities in § 229.34 would apply to checks payable in Guam, American Samoa, and the Northern Mariana Islands (Pacific island checks). For example, a bank that handles a Pacific island check in the same manner as other checks may transfer an electronic image of or electronic information related to a Pacific island check and would make the proposed warranties and indemnities in proposed § 229.34(a), (b), and (g) with respect to the items. The Board received no comments on this aspect of the 2011 proposal.

The current proposal would also amend the commentary proposed § 229.43 to state that bank offices in Guam, American Samoa, and the Northern Mariana Islands are banks for purposes of subpart D (but not subparts B or C) of the regulation, because the Check 21 Act uses a broader definition of state than does the EFA Act.

F. Subpart D—Substitute Checks

23. Section 229.51—General Provisions Governing Substitute Checks

The current proposal would remove all references to Appendix D in § 229.51 and replace them with references to the specific industry standard in the text of proposed § 229.51, where applicable. As discussed in connection with proposed § 229.35, the current proposal would move the portions of the commentary to current § 229.35(a) that address indorsement standards for reconverting banks and substitute checks to the

[102] The current commentary to § 229.35(a) states that the indorsement standard does not prohibit the use of a carbon band or other printed or written matter on the backs of checks and does not require banks to avoid placing their indorsements in these areas. Nevertheless, checks will be handled more efficiently if depositary banks design indorsement stamps so that the nine-digit routing number avoids the carbon band area.

[103] UCC 4–216, cmt. 1.

[104] 57 FR 46596 (Oct. 14, 1992). The Board, however, did not intend this to be a ''preference'' under the Bankruptcy Code (i.e., an avoidable transfer).

commentary to § 229.51(b). In doing so, the Board intends no substantive change.

24. Section 229.52—Substitute Check Warranties

For the reasons set forth in its 2011 proposal, the current proposal would provide that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check (or a paper or electronic representation of a substitute check) would make the warranties in § 229.52(a) regardless of whether the bank received consideration for the substitute check.[105] If a bank makes those warranties, the substitute check provided to the customer would be the legal equivalent of the original check that the bank rejected for deposit, provided that the substitute check meets the requirements for legal equivalence set forth in § 229.51(a). If the substitute check did not meet the requirements for legal equivalence, then the substitute check recipient would have a Check 21 warranty claim against the bank.

Because the bank is both the truncating bank and the reconverting bank with respect to the check, the bank must identify itself on the front of the substitute check as the truncating bank and on the front and back of the check as the reconverting bank, in accordance with the terms of § 229.51(b). The bank is not, however, a depositary bank, collecting bank, or returning bank with respect to the check. Moreover, the bank's identification of itself on the back of the check as a reconverting bank does not constitute the bank's indorsement of the check. To address this point, the current proposal, like the 2011 proposal, would amend the commentary to § 229.51(b).

The proposed commentary to proposed § 229.52 would also provide that a bank that is a truncating bank under § 229.2(eee)(2) because it accepts deposit of a check electronically might be subject to a claim by another depositary bank that accepts the original check for deposit, pursuant to proposed § 229.34(g).

25. Section 229.53—Substitute Check Indemnity

The current proposal, like the 2011 proposal, would provide that a bank that rejects a check submitted for deposit and sends back to its customer a substitute check provide the indemnity set forth in § 229.53(a), regardless of whether the bank received consideration. The proposed commentary would also provide that a bank that transfers and receives consideration for an electronic check or electronic returned check that is an electronic representation of a substitute check is responsible for providing the indemnity in § 229.53.

IV. Other Requests for Comment

A. Effective Date

Most commenters responding to the 2011 proposal generally supported the Board's proposed six-month delayed effective date for the portions of the proposal related to subpart C of the regulation.[106] A few commenters requested a twelve-month delayed effective date, emphasizing in particular that the effective date of the proposed deletion of the notice of nonpayment provision should be so delayed. One of the commenters expressing opposition to the proposed new exception to the expeditious-return requirement (that the requirement not apply if the depositary bank had not agreed to accept an electronic return), however, stated that 18 months between publication of the rule and its effective date would give banks adequate time to make the operational changes necessary to receive returns electronically so as to continue to receive the returns expeditiously.

Under both Alternative 1 and Alternative 2, as under the 2011 proposal, depositary banks would not be required to receive returned checks electronically. Instead, a depositary bank that agrees to receive returns electronically would receive checks more quickly. This approach, like the approach taken in the 2011 proposal, is intended to allow each depositary bank that continues to require paper returned checks to make the decision, based on its own internal cost-benefit analysis, as to when the risk and cost associated with receiving paper returned checks in a ''non-expeditious'' fashion begins to outweigh the continually declining cost of transitioning to receive returns electronically, such that it would then make business sense for that depositary bank to begin to receive returns electronically.[107]

Therefore, the Board proposes that the proposed amendments to subparts A, C and D would become effective six months following publication of a final rule. With respect to Alternative 1 (which would impose a notice-of-nonpayment requirement on all checks returned as paper), the Board requests comment on whether six months is sufficient time for a paying bank to adjust its operations to accommodate sending notices of nonpayment for checks under $2,500.

B. Definition of Remotely Created Check

1. Checks Created by Payee

Regulation CC sets forth transfer and presentment warranties related to ''remotely created checks.'' Current § 229.2(fff) defines a remotely created check as a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. The warranty in current § 229.34(d) (set forth in proposed § 229.34(c)) shifts liability for unauthorized remotely created checks to the depositary bank, which is generally the bank for the person that initially created and deposited the remotely created check.

Although the Board's 2011 proposal did not raise the issue, several commenters, including the group letter, suggested that the Board consider a revised definition of ''remotely created check'' that distinguishes between those checks created by the payee (or payee's agent) and those checks created by a third party (e.g., bill payment service) on behalf of the person on whose account the check is drawn.[108] Specifically, these commenters suggested that only checks created by the payee or payee's agent be considered remotely created checks, instead of all checks that are not created by the paying bank. These commenters believed that checks created by a third party on behalf of the paying bank's customers raise different policy or operational issues as those checks created by the payee or the payee's agent and, thus, should be excluded from the definition of ''remotely created checks.'' Commenters noted that in these types of situations, the depositary bank and its customer (the payee) do not have a contractual relationship with the entity that created the remotely created

[105] *See* 76 FR 16862, 16882–83 (Mar. 25, 2011). Two commenters, including the group letter, supported the Board's March 2011 proposal. None opposed.

[106] Some of these commenters conditioned their support for the six-month delayed effective date on needing more time—*e.g.,* 24 months—to deal with the then-proposed (1) elimination of the ''refer to maker'' reason for return; and (2) references to possible inclusion of email addresses in depositary-bank indorsement records. This proposal permits ''refer to maker'' to be used in certain cases, such as when a drawer with a positive pay arrangement instructs the paying bank to return the check. This proposal does not refer to inclusion of email addresses in indorsements.

[107] Under Alternative 1, however, the depositary bank would receive notice of nonpayment within a two-day timeframe if the paying bank sends a paper returned check.

[108] For example, a consumer may use a third-party bill payment provider to make a payment to a biller (e.g., a utility company). The provider, in turn, may pay create a check to pay the biller. The biller then deposits the check with its bank.

check, and that it is therefore difficult for the bank and its customer to provide evidence, in response to a warranty claim, that the check was authorized by the payor.

The current proposal would narrow the range of items that come within the definition of ''remotely created check.'' When the Board amended Regulation CC in 2006 to add the definition of ''remotely created check'' (as well as the related warranties), the Board declined to adopt its proposed definition, which was essentially identical to what commenters now suggest.[109] Commenters on the 2011 proposal stated that the definition proposed in 2005 was too narrow and should be revised to encompass checks not created by the paying bank.[110] In 2006, the Board determined to apply the warranty to checks that are not created by the paying bank so that the paying bank would be able to determine to which checks the warranty applied. The Board noted that its definition covered certain checks created remotely by bill-payment services (as well as checks that the drawer created but neglected to sign) where there is a less compelling reason for shifting liability for unauthorized checks to the payee's bank. At that time, however, the Board believed that including these checks would be unlikely to result in significantly greater liability for depositary banks as such checks were generally less prone to fraud, and, therefore, less prone to trigger a warranty claim than payee-created checks.

The Board currently requests comment on whether it should narrow the scope of the definition to include only checks created by the payee (or payee's agent), as opposed to the current definition's scope of checks ''not created by the paying bank.'' As a general matter, such a change would reduce the portion of checks with respect to which paying banks could make an unauthorized-check warranty claim against the depositary bank. The Board requests comment on the extent to which banks, in their role as depositary banks, are receiving remotely-created-check warranty claims related to checks that were not created by the depositary banks' customers or their agents. The Board also requests comment on the extent to which banks, in their role as paying banks, may be inadvertently making warranty claims for items the banks believe to be ''remotely created checks,'' but that were actually created by the paying bank, or its agent, such as through the bank's Internet-banking platform. Finally, the Board requests comment on what warranties should apply to checks created by neither the payee (or payee's agent) nor the paying bank were the Board to adopt a more limited definition of ''remotely created check'' as the commenters suggest.

2. Form of Signature

The Board has recently received a comment raising a concern that the spread of technology makes it more likely that the creator of an RCC (or an eRCC) could apply a ''signature'' to the item that was obtained electronically from the drawer and resembles the drawer's handwritten signature. The commenter was concerned that such an item might fall outside the definition of RCC because it bears a signature that is purported to be applied by the drawer. The Board requests comment on whether such items are currently being created and whether the Board should revise the definition of RCC to include items bearing such ''signatures.'' The Board also requests comment on how these ''signatures'' could be distinguished from more traditional ''pen-and-ink'' drawer's signatures, for which paying banks do *not* have a warranty claim on prior collecting banks under Regulation CC.

C. Presumption of Alteration

Under the UCC, an alteration is a change to the terms of a check that is made after the check is issued and that modifies an obligation of a party, for example, changing the payee's name or the amount of the check.[111] By contrast, a forged, or counterfeit, check is a check on which the signature of the drawer (i.e., the actual customer of the paying bank) was forged at the time of the check's issuance. In general, under the UCC as enacted in a given state, the paying bank may charge the drawer's account only for checks that are properly payable. (UCC 4–401.) Neither altered checks nor forged checks are properly payable. In the case of an altered check under the UCC, however, the banks, including the paying bank, have warranty claims against the banks that transferred the check (e.g., a collecting bank or the depositary bank). In the case of a forged check, however, the UCC typically does not provide the banks, including the paying bank, with warranty claims against banks that transferred the forged check.[112] Therefore, the depositary bank typically bears the loss related to an altered check, whereas the paying bank bears the loss related to a forged check.

These provisions of the UCC reflect the rule set forth in *Price v. Neal* that the paying bank must bear the loss when a check it pays is not properly payable by virtue of the fact that the drawer did not authorize the item.[113] The *Price v. Neal* rule reflects the policy that the paying bank, rather than the depositary bank, is in the best position to judge whether the drawer's signature on a check is the authorized signature of its customer. By contrast, the depositary bank is arguably in a better position than the paying bank to inspect the check at the time of deposit and detect an alteration to the face of the check, or determine that the amount of the check is unusual for the depositary bank's customer.

In 2006, two United States Courts of Appeals, the Fourth Circuit and the Seventh Circuit, addressed the issue of evidentiary burden related to proving whether a check was altered or forged (or counterfeit).[114] These two courts reached opposite conclusions as to whether a paid, but fraudulent, check should be presumed to be altered or counterfeit in the absence of evidence (such as the original check). In each of the cases, Wachovia Bank was the paying bank with respect to a fraudulent check of more than $100,000, litigating with the depositary bank about which bank should bear the loss represented by the check. In both cases, the drawer issued a check in the amount at issue, but the name of the payee on the check was different from that on the check as issued. After paying the check, Wachovia then destroyed the check in the ordinary course of business. At issue in both cases was whether the changed payee name on the deposited check had resulted from an alteration of the original check that the drawer issued—in which case the depositary bank would bear the loss—or from the creation of a new, counterfeit check identical to the original check in all respects except that the payee name had

[109] In 2005, the Board proposed to define ''remotely created check'' to mean a check that is drawn on a customer account at a bank, *is created by the payee,* and does not bear a signature in the format agreed to by the paying bank and the customer'' (emphasis added). *See* 70 FR 10509, 10513 (Mar. 4, 2005).

[110] The supplementary information of the **Federal Register** notice announcing the Board's final rule discussed this aspect of the ''remotely created check'' definition in greater detail. *See* 70 FR 71218, 71221–71222 (Nov. 28, 2005).

[111] UCC 3–407.

[112] The presenting bank warrants to the paying bank only that it has no knowledge of an unauthorized drawer's signature. *See* UCC 3–417 and 4–208.

[113] *Price* v. *Neal,* 97 Eng. Rep. 871 (K.B. 1762).

[114] The two court cases are *Chevy Chase Bank* v. *Wachovia Bank, N.A.,* 208 Fed. App'x. 232, 235 (4th Cir. 2006) (''Chevy Chase'') and *Wachovia Bank, N.A.* v. *Foster Bancshares, Inc.,* 457 F.3d 619 (7th Cir. 2006) (''Foster'').

been changed—in which case the paying bank would bear the loss.

In each case, the evidence presented regarding the disputed check was insufficient to determine whether that check was altered or a forgery. In *Foster,* the Fourth Circuit determined that alteration should be presumed, because changing the payee's name was a ''classic'' alteration and there was no evidence that duplicating an entire check was a common method of changing the payee's name. Wachovia (the paying bank) prevailed, and the depositary bank bore the loss.[115] In *Chevy Chase,* the Seventh Circuit determined that Wachovia failed to present any evidence that the check had been altered, and Wachovia (the paying bank) bore the loss.[116]

Although the Board's proposal did not raise the issue, two commenters requested that the Board address the uncertainty that results from these divergent appellate court decisions by incorporating into the regulation a ''presumption of alteration'' that would apply when a fraudulent item is presented to the paying bank electronically or as a substitute check and the paying bank pays the item. Specifically, the commenter requested that the Board adopt the approach taken in Fourth Circuit in *Foster* and presume alteration, such that the depositary bank would bear the loss.[117] The commenter noted that the current UCC loss-allocation framework set forth above was established when, in most cases, original checks were presented to paying banks for payment (or were delivered to the paying bank subsequent to presentment of an electronic image or information), and these checks were retained by the paying bank or its customer such that, if necessary, the check could be examined to determine whether the original check had been altered or an entirely counterfeit check, with a changed payee name, had been created. One commenter stated that in the current check-processing environment, ushered in by Check 21 (in which the paying bank no longer has the right to demand presentment of the original check), it is likely to be the depositary bank or its customer that truncates the original check. This commenter believed that the depositary bank therefore should balance the cost of retaining the original check in certain situations (e.g., a check of large dollar amount), so as to be able to overcome, if necessary, a presumption of alteration suggested.

The Board believes that the substance of the UCC's loss-allocation framework for altered and forged checks, under which the depositary bank generally bears the loss for altered checks and the paying bank generally bears the loss for forged checks, continues to be appropriate in the current check-processing environment. With respect to the evidentiary presumption, the Board requests comment on whether it should adopt an evidentiary presumption in Regulation CC as to whether, in cases of doubt, a check should be presumed to be altered or forged, and, if yes, whether the presumption should be of alteration or of forgery. In particular, the Board requests comment on whether banks are aware of or have information pertaining to whether counterfeit checks are a more common method of committing fraud than altering the payee name or amount on the check. The Board is aware that the Electronic Check Clearing House Organization has incorporated a presumption of alteration into its rules and requests comment on banks' experience with the presumption to date.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is proposed by this rulemaking is found in 12 CFR 229. The Board may not conduct or sponsor, and an organization is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OMB control number for current information collections under Regulation CC is 7100–0235. In addition, as permitted by the PRA, the Board extends for three years the current disclosure requirements in connection with Regulation CC.

The EFA Act and the Check 21 Act authorize the Board to issue regulations to carry out the provisions of those Acts (12 U.S.C. 4008 and 12 U.S.C. 5014, respectively). The Board has implemented the EFA Act and the Check 21 Act in Regulation CC.

Regulation CC applies to all banks, not just state member banks. However, under the PRA, the Board accounts for the burden of the paperwork associated with the regulation only for entities that are supervised by the Federal Reserve: state member banks and uninsured state branches and agencies of foreign banks. Other federal financial agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. Under the current requirements, the annual burden to comply with the notice-of-nonpayment requirement in Regulation CC is estimated to be 3,592 hours for the 1,025 institutions supervised by the Federal Reserve and that are deemed to be respondents for the purposes of the PRA.

As discussed above, the Board proposes two alternatives to the check-return requirements, including two alternatives to the notice-of-nonpayment requirement imposed on paying banks that determine not to pay checks. Under Alternative 1, a paying bank would be subject to the notice-of-nonpayment requirement only if the paying bank sends the returned check in paper form. Unlike the current rule, Alternative 1's notice-of-nonpayment requirement would apply irrespective of the dollar value of the check being returned. Under Alternative 2, the Board proposes to eliminate the notice-of-nonpayment requirement. Finally, irrespective of which alternative the Board adopts, the Board would propose to require a depositary bank to notify its customer if the depositary bank receives a notice of recovery under § 229.35(b).

Under Alternative 1, the Board estimates that the proposed amendments to the notice-of-nonpayment requirement will decrease the number of notices that a paying bank must send. Paying banks would no longer be required to provide notice of nonpayment for checks returned electronically, which the Board estimates to be 99.0 percent of checks returned. A paying bank would be subject to a new notice-of-nonpayment requirement for most of its paper returned checks in amount under $2,500. The Board, however, estimates that the size of the decrease in required notices due to paying banks sending electronic returned checks would outweigh the size of the increase in required notices due to imposing the requirement on paper returned checks irrespective of the dollar amount. Under Alternative 2, the notice-of-nonpayment requirement would be eliminated; therefore eliminating the paperwork burden associated with the requirement. Finally, the Board does not believe that explicitly stating that a depositary bank must notify its customer if the depositary bank receives notice of recovery under § 229.35(b) will significantly affect the burden. That

[115] *Foster,* 457 F.3d at 622–23.

[116] *Chevy Chase,* 208 Fed. Appx. at 235.

[117] Under section 611(f) of the EFA Act (12 U.S.C. 4010(f)), the Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks.

requirement currently is set forth in the Board's Official Commentary to Regulation CC.

Under the current notice-of-nonpayment requirements, the Board estimates that the 1,025 respondents annually send 210 notices of nonpayment under current § 229.33(a) and (d). Under Alternative 1, the Board estimates that the notices of nonpayment sent by paying banks would be reduced. The annual burden for the notice-of-nonpayment information collection in Regulation CC is estimated to decrease from 3,592 to 2,396 hours. Under Alternative 2, the information collection burden attributable to the notice-of-nonpayment requirement would be eliminated.

As is currently the case, the proposed information collection would be mandatory. The Federal Reserve does not collect any of the proposed information, and therefore no issue of confidentiality arises. If, however, during a compliance examination of a financial institution, a violation or possible violation of the EFA Act or the Check 21 Act is noted then information regarding such violation may be kept confidential pursuant to section (b)(8) of the Freedom of Information Act. 5 U.S.C. 552(b)(8).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Board's functions; including whether the information has practical utility; (2) the accuracy of the Board's estimate of the burden of the proposed information collection, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

You may submit comments by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (the ''RFA'') (5 U.S.C. 601 *et seq.*) requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Board has reviewed the proposed regulation. In this case, the proposed rule would apply to all depository institutions. This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 in order for the Board to solicit comment on the effect of the proposal on small entities. The Board will, if necessary, conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rule

The Board is proposing the foregoing amendments to Regulation CC pursuant to its authority under the EFA Act and the Check 21 Act. The proposed rule is necessary to have Regulation CC reflect the substantial transition in the collection of checks from a largely paper-based process to one that is virtually all electronic. The proposed rule reflects the prevalent manner in which checks are now collected and returned. The full benefits and cost savings of the electronic check-processing methods facilitated by the Check 21 Act cannot be realized so long as some banks continue to employ paper-processing methods. The objective of the proposed rule is to encourage all banks to collect and return checks electronically.

2. Small Entities Affected by the Proposed Rule

The proposed rule would apply to all depository institutions regardless of their size.[118] Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a ''small banking organization'' includes a depository institution with $500 million or less in total assets. Based on call report data as of June 2013, there are approximately 12,164 depository institutions that have total domestic assets of $500 million or less and thus are considered small entities for purposes of the RFA. Based on December 2012 data regarding checks returned through the Reserve Banks, the Board estimates that 69 percent of small depository institutions had at that time made arrangements to receive returned checks electronically, whereas 31 percent had not.[119] Banks are steadily adopting electronic check handling methods, however, and the Board expects that a substantially higher percentage of small depository institutions will have made arrangements to receive electronic check returns by the time the a final rule becomes effective.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements

By removing the regulation's expeditious-return requirement in Alternative 1 and conditioning the requirement on the ability of a returned check to be returned electronically in Alternative 2, the proposed rule would encourage, but not require, depositary banks to accept check returns in electronic form. A depositary bank that currently receives returned checks in paper form and that chooses, as encouraged by the proposal, to begin to receive returned checks electronically, will incur some cost associated with that transition. The Board continues to expect that these costs would be relatively low for a small depositary bank, which typically would receive only a small volume of returned checks. For example, as mentioned above, the Federal Reserve Banks offer a product under which they deliver electronically to small depositary banks copies (.pdf files) of returned checks, which the banks can print on their own premises if necessary.[120] To receive returned checks in this fashion, a depositary bank may need to establish and maintain an electronic connection to the Reserve

[118] The proposed rule would not impose costs on any small entities other than depository institutions.

[119] In December 2010, 41 percent of small depository institutions had made arrangements to receive returns electronically, whereas 59 percent had not.

[120] After printing the .pdf files, the depositary bank would be able to process the checks exactly as it would process paper checks physically delivered to it.

Banks, or another returning bank that offers a similar service, and to purchase certain equipment, such as a printer capable of double-sided printing and magnetic-ink toner cartridges. Depending on the volume of returned checks that a small depositary bank receives, the Board continues to estimate that this transition would cost a small depositary bank approximately $5,000 in net-present-value terms.[121] A few commenters responding to the Board's March 2011 proposal stated that this $5,000 estimate of the cost to receive electronic returns is too low. Based upon its review of the comments, however, the Board believes that these commenters misinterpreted the $5,000 figure as being intended to cover costs associated with the portions of the March 2011 proposal that were related to subpart B of the regulation—for example, the proposed revisions related to the model funds-availability policy disclosures and provision of the hold notices. The $5,000 figure, however, represented an estimate of the net present value of only the cost to a small depositary bank to transition to receive returned checks electronically.

Conversely, a small depositary bank that does not choose to accept returned checks electronically would, under the proposal, incur additional risk associated with that decision. Specifically, a paper returned check may not be delivered to the bank in a timely fashion, which may result in the bank more frequently making funds available to its depositors before learning whether a check has been returned unpaid. Although this risk is difficult to quantify, it is reasonable to expect that each small depositary bank will weigh the costs and benefits of whether to accept returns electronically. If the bank determines that the net present value of the risk is greater than the cost to receive returned checks electronically, then the bank can minimize its cost associated with the Board's proposal by accepting returned checks electronically such that there is more likely to be an all-electronic return path from the paying bank.

The Board is proposing changes to the regulation's provisions that address depositary banks' handling of misrouted notices of nonpayment. Under the proposal, a depositary bank receiving a misrouted written electronic notice of nonpayment would be required to either promptly send the notice to the correct depositary bank directly or by means of a returning bank agreeing to handle it, or to send the notice back to the bank from which it was received. Currently, depositary banks are not required to take any action in response to a misrouted written electronic notice of nonpayment that they receive. The Board requests comment on any cost that may be imposed on small entities by this portion of its proposal.

Any costs to a small depositary bank that may result from the rule will be offset to some extent by savings to the bank in other areas. For example, receiving returned checks electronically may enable a small bank to reduce its ongoing operating costs associated with receiving and processing returned checks. Further, as other banks with which the small bank does business also begin to receive returned checks electronically, the small bank, in its role as paying bank, may experience lower costs associated with sending returned checks to other banks, because a paying bank typically pays a higher fee to a returning bank (or other service provider) to deliver a returned check in paper form to a depositary bank, as compared to delivering a returned check electronically to the depositary bank.

The regulation currently requires a paying bank that determines not to pay a check in the amount of $2,500 or more to provide notice of nonpayment such that the notice is received by the depositary bank by 4 p.m. (local time) on the second business day following the banking day on which the check was presented to the paying bank. Return of the check itself satisfies the notice of nonpayment requirement if the return meets the timeframe requirement for the notice. Under the Board's proposed Alternative 1, a paying bank will only be required to provide notice if the bank initiates return of the related check in paper form, but the requirement would apply regardless of the dollar amount of the check. (Return of the check itself would continue to satisfy the notice requirement if the return meets the timeframe requirement for notice.) With respect to checks handled by the Reserve Banks, by the end of 2013, Reserve Banks estimate that paying banks will initiate check returns electronically 99.0 percent of the time, such that a notice would not be required with respect to those checks under the Board's proposal. The Board therefore expects that its proposal will substantially reduce the number of notices that paying banks send. In Alternative 2, the requirement to send a notice of nonpayment, as well as its associated costs, would be eliminated.

The Board proposes to require that the paying bank send a notice of nonpayment, if required under Alternative 1 or a returned check under Alternative 2 such that the notice or check reaches the depositary bank by 2 p.m. local time of the depositary bank, as opposed to the currently required 4 p.m. local time, on the second business day following the banking day of presentment. This earlier required time for receipt by the depositary bank may impose additional cost on the paying bank sending notice or returned check. However, any increased cost to a paying bank associated with delivering a notice or returned check by the earlier time may not be material depending on a bank's current processing schedules, and it may be offset by reduced depositary bank losses associated with checks that are returned unpaid.

In connection with Alternative 1, any increase in a paying bank's cost associated with sending a notice under Alternative 1 should provide an increased incentive for a paying bank to send check returns electronically, thereby avoiding the requirement to send the notice. Over time, the proposal could reduce to zero the number of notices that paying banks send and eliminate entirely paying banks' costs associated with providing the notices.

The Board requests comment on the cost of its proposed rule to small depository institutions.

4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Board notes that subpart A of Regulation J overlaps with the proposed rule with respect to checks collected or returned through the Reserve Banks. The provisions of Regulation J supersede any inconsistent provisions of Regulation CC, but only to the extent of the inconsistency.[122]

5. Significant Alternatives to the Proposed Rule

As discussed above in this **Federal Register** notice and in the 2011 proposal, the Board has extensively considered possible alternatives to Alternative 1 and Alternative 2 in this proposed rule. The Board believes that the other alternatives would either impose greater costs on small entities than would this proposed rule, or would be less preferable than this proposed

[121] This estimate takes into account the cost to a small depositary bank to establish and maintain an electronic connection to the Reserve Banks, which is estimated to be $110 per month. *See* 78 FR 66715 (Nov. 6, 2013). This figure (i.e., the Reserve Banks' fee) is unchanged since the March 2011 proposal. Some small banks already have such a connection. Further, a small depositary bank may choose to receive its returns electronically in a manner that does not require this connection, such as through a different returning bank, an electronic check clearinghouse, or a nonbank processor.

[122] See 12 CFR 210.3(f).

rule for other reasons. For example, some of the other alternatives that the Board has considered might give undue preference in the regulation to the Reserve Banks' returned-check services. Other possibilities might be disruptive to banks' existing processes for handling and routing returned checks.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 229 as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

Subpart A—General

■ 2. In § 229.1, paragraphs (b)(5) through (10) are added to read as follows:

§ 229.1 Authority and purpose; organization.

* * * * *

(b) * * *

(5) Appendix A of this part contains a routing number guide to next-day-availability checks. The guide lists the routing numbers of checks drawn on Federal Reserve Banks and Federal Home Loan Banks, and U.S. Treasury checks and Postal money orders that are subject to next-day availability.

(6) Appendix B of this part is reserved.

(7) Appendix C of this part contains model funds-availability policy disclosures, clauses, and notices and a model disclosure and notices related to substitute-check policies.

(8) Appendix D of this part is reserved.

(9) Appendix E of this part contains Board interpretations, which are labeled ''Commentary,'' of the provisions of this part. The Commentary provides background material to explain the Board's intent in adopting a particular part of the regulation and provides examples to aid in understanding how a particular requirement is to work. The Commentary is an official Board interpretation under section 611(e) of the EFA Act (12 U.S.C. 4010(e)).

(10) Appendix F of this part contains the Board's determinations of the EFA Act and Regulation CC's preemption of state laws that were in effect on September 1, 1989.

■ 3. In § 229.2, paragraphs (dd), (vv), and (bbb) are revised and paragraph (ggg) is added,to read as follows:

§ 229.2 Definitions.

* * * * *

(dd) *Routing number* means—

(1) The number printed on the face of a check in fractional form or in nine-digit form;

(2) The number in a bank's indorsement in fractional or nine-digit form; or

(3) For purposes of subpart C and subpart D, the bank-identification number contained in an electronic image of or electronic information related to a check.

* * * * *

(vv) *Magnetic ink character recognition line* and *MICR line* mean the numbers, which may include the routing number, account number, check number, check amount, and other information, that are printed near the bottom of a check in magnetic ink in accordance with American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (hereinafter ANS X9.13) for an original check and American National Standard Specifications for an Image Replacement Document—IRD, X9.100–140 (hereinafter ANS X9.100–140) for a substitute check, or, for purposes of subpart C and subpart D, contained in the electronic image of and electronic information related to the check in accordance with American National Standard Specifications for Electronic Exchange of Check Image Data—Domestic, X9.100–187 (hereinafter ANS X9.100–187) for an electronic image of and electronic information related to a check, unless the Board by rule or order determines that different standards apply.

* * * * *

(bbb) *Copy and sufficient copy.* (1) *A copy* of a check means—

(i) Any paper reproduction of a check, including a paper printout of an electronic image of the check, a photocopy of the check, or a substitute check; or

(ii) Any electronic reproduction of a check that a recipient has agreed to receive from the sender instead of a paper reproduction.

(2) A *sufficient copy* means a copy of an original check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or is otherwise sufficient to determine whether or not a claim is valid.

* * * * *

(ggg) *Electronic check and electronic returned check.*—(1) *Electronic check* means an electronic image of a check or electronic information related to a check that–

(i) A bank or a nonbank depositor sends to a receiving bank pursuant to an agreement with the receiving bank; and

(ii) Conforms with ANS X9.100–187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.

(2) *Electronic returned check* means an electronic image of a returned check or electronic information related to a returned check that—

(i) A bank sends to a receiving bank pursuant to an agreement with the receiving bank; and

(ii) Conforms with ANS X9.100–187, unless the Board by rule or order determines that a different standard applies or the parties otherwise agree.

Subpart C—Collection of Checks

■ 4. Section 229.30 is revised to read as follows:

§ 229.30 Electronic images and electronic information.

(a) *Check under this subpart.* Electronic checks and electronic returned checks are subject to this subpart as if they were checks or returned checks, unless otherwise provided in this subpart.

(b) *Writings.* If a bank is required to provide information in writing or in written form under this subpart, the bank may satisfy that requirement by providing the information in electronic form if the receiving bank has agreed to receive that information electronically from the sending bank.

■ 5. Section 229.31 is revised to read as follows:

§ 229.31 Paying bank's responsibility for return of checks and notices of nonpayment.

Alternative 1 for Paragraph (a).

(a) *Return of checks.* (1) A paying bank may send a returned check to the depositary bank, to any other bank agreeing to handle the returned check, or as provided under paragraph (a)(2) of this section.

(2) A paying bank that is unable to identify the depositary bank with respect to a check may send the returned check to any bank that handled the check for forward collection and must advise the bank to which the check is sent that the paying bank is unable to identify the depositary bank.

(3) A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a ''2'' in the case of an original check (or a ''5'' in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100–140.

(4) Except as provided in paragraph (g) of this section, this section does not affect a paying bank's responsibility to return a check within the deadlines required by the UCC or Regulation J (12 CFR part 210).

Alternative 2 for Paragraph (a)

(a) *Return of checks.* (1) Subject to the requirement for expeditious return under paragraph (b) of this section, a paying bank may send a returned check to the depositary bank, to any other bank agreeing to handle the returned check, or as provided in paragraph (a)(2) of this section.

(2) A paying bank that is unable to identify the depositary bank with respect to a check may send the returned check to any bank that handled the check for forward collection and must advise the bank to which the check is sent that the paying bank is unable to identify the depositary bank.

(3) A paying bank may convert a check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a ''2'' in the case of an original check (or a ''5'' in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100–140.

(4) Except as provided in paragraph (g) of this section, this section does not affect a paying bank's responsibility to return a check within the deadlines required by the UCC or Regulation J (12 CFR part 210).

Alternative 1 for Paragraph (b)

(b) [Reserved.]

Alternative 2 for Paragraph (b)

(b) *Expeditious return of checks.* (1) Except as provided in paragraph (c) of this section, if a paying bank determines not to pay a check, it shall return the check in an expeditious manner such that the check would normally be received by the depositary bank not later than 2 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.

(2) If the second business day following the banking day on which the check was presented to the paying bank is not a banking day for the depositary bank, the paying bank satisfies the expeditious return requirement if it sends the returned check in a manner such that the depositary bank would normally receive the returned check on or before the depositary bank's next banking day.

Alternative 1 for Paragraph (c)

(c) [Reserved.]

Alternative 2 for Paragraph (c)

(c) *Exceptions to the expeditious return of checks.* The expeditious return requirement of paragraph (b) of this section does not apply if—

(1) The paying bank does not have an agreement to send electronic returned checks to the depositary bank or to a returning bank that is subject to the expeditious return requirement for that check under § 229.32(b);

(2) The check is deposited in a depositary bank that is not subject to subpart B of this part; or

(3) A paying bank is unable to identify the depositary bank with respect to the check.

Alternative 1 for Paragraph (d)

(d) *Notice of nonpayment.* (1) If a paying bank determines not to pay a check and sends the returned check in paper form, it shall provide notice of nonpayment such that the notice is received by the depositary bank by 2 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank. If the day the paying bank is required to provide notice is not a banking day for the depositary bank, receipt of notice on the depositary bank's next banking day constitutes timely notice. Notice may be provided by any reasonable means, including the returned check, a writing (including a copy of the check), or telephone.

(2)(i) To the extent available to the paying bank, notice must include the information contained in the check's MICR line when the check is received by the paying bank, as well as—

(A) Name of the paying bank;

(B) Name of the payee(s);

(C) Amount;

(D) Date of the indorsement of the depositary bank;

(E) Account number of the customer(s) of the depositary bank;

(F) Branch name or number of the depositary bank from its indorsement;

(G) The bank name, routing number, and trace or sequence number associated with the indorsement of the depositary bank; and

(H) Reason for nonpayment.

(ii) If the paying bank is not sure of the accuracy of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.

(iii) The notice may include other information from the check that may be useful in identifying the check being returned and the customer.

(3) The requirements of this paragraph (d) do not apply if—

(i) The check is deposited in a depositary bank that is not subject to subpart B of this part; or

(ii) A paying bank is unable to identify the depositary bank with respect to the check.

Alternative 2 for Paragraph (d)

(d) [Reserved.]

(e) *Identification of returned check.* A paying bank returning a check shall clearly indicate on the front of the check that it is a returned check and the reason for return. If the paying bank is returning a substitute check or an electronic returned check, the paying bank shall include this information such that the information would be retained on any subsequent substitute check.

Alternative 1 for Paragraph (f)

(f) *Notice in lieu of return.* If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in paragraph (d)(2) of this section. The copy or written notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the requirements of this subpart.

Alternative 2 for Paragraph (f)

(f) *Notice in lieu of return.* (1) If a check is unavailable for return, the paying bank may send in its place a copy of the front and back of the returned check, or, if no such copy is available, a written notice of nonpayment containing the information specified in paragraph (f)(2) of this section.

(2)(i) To the extent available to the paying bank, notice must include the information contained in the check's MICR line when the check is received by the paying bank, as well as—

(A) Name of the paying bank;

(B) Name of the payee(s);

(C) Amount;

(D) Date of the indorsement of the depositary bank;

(E) Account number of the customer(s) of the depositary bank;

(F) Branch name or number of the depositary bank from its indorsement;

(G) The bank name, routing number, and trace or sequence number associated with the indorsement of the depositary bank; and

(H) Reason for nonpayment.

(ii) If the paying bank is not sure of the accuracy of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.

(iii) The notice may include other information from the check that may be useful in identifying the check being returned and the customer.

(3) The copy or written notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the requirements of this subpart.

Alternative 1 for Paragraph (g)

(g) *Extension of deadline.* The deadline for return or notice of dishonor or nonpayment under the UCC or Regulation J (12 CFR part 210), or § 229.36(f)(3) and (4) is extended to the time of dispatch of such return or notice if the depositary bank (or the receiving bank, if the depositary bank is unidentifiable) receives the returned check or notice:

(1) On or before the depositary bank's (or receiving bank's) next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. (local time of the depositary bank or receiving bank) or later set by the depositary bank (or receiving bank) under UCC 4–108, for all deadlines other than those described in paragraph (g)(2) of this section; or

(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depositary bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable UCC) for the paying bank.

Alternative 2 for Paragraph (g)

(g) *Extension of deadline.* The deadline for return or notice of dishonor under the UCC or Regulation J (12 CFR part 210), § 229.36(f)(3) and (4) is extended to the time of dispatch of such return or notice if the depositary bank (or the receiving bank, if the depositary bank is unidentifiable) receives the returned check or notice:

(1) On or before the depositary bank's (or receiving bank's) next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. (local time of the depositary bank or receiving bank) or later set by the depositary bank (or receiving bank) under UCC 4–108, for all deadlines other than those described in paragraph (e)(2) of this section; or

(2) Prior to the cut-off hour for the next processing cycle (if sent to a returning bank), or on the next banking day (if sent to the depositary bank), for a deadline falling on a Saturday that is a banking day (as defined in the applicable UCC) for the paying bank.

(h) *Payable-through and payable-at checks.* Except for paragraph (e) of this section, for purposes of this subpart, a check payable at or through a paying bank is considered to be drawn on that bank.

(i) *Reliance on routing number.* A paying bank may return a returned check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank's indorsement.

■ 6. Section 229.32 is revised to read as follows:

§ 229.32 Returning bank's responsibility for return of checks.

Alternative 1 for Paragraph (a)

(a) *Return of checks.* (1) A returning bank may send the returned check to the depositary bank, to any bank agreeing to handle the returned check, or as provided in paragraph (a)(2) of this section.

(2) A returning bank that is unable to identify the depositary bank with respect to a returned check may send the returned check to any collecting bank that handled the returned check for forward collection if the returning bank was not a collecting bank with respect to the returned check, or to a prior collecting bank, if the returning bank was a collecting bank with respect to the returned check. A returning bank sending a returned check under this paragraph to a bank must advise the bank to which the returned check is sent that the returning bank is unable to identify the depositary bank.

(3) A returning bank may convert a returned check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a ''2'' in the case of an original check (or a ''5'' in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100–140.

Alternative 2 for Paragraph (a)

(a) *Return of checks.* (1) Subject to the requirement for expeditious return in paragraph (b) of this section, a returning bank may send the returned check to the depositary bank, to any bank agreeing to handle the returned check, or as provided in paragraph (a)(2) of this section.

(2) A returning bank that is unable to identify the depositary bank with respect to a returned check may send the returned check to any collecting bank that handled the returned check for forward collection if the returning bank was not a collecting bank with respect to the returned check, or to a prior collecting bank, if the returning bank was a collecting bank with respect to the returned check. A returning bank sending a returned check under this paragraph to a bank must advise the bank to which the returned check is sent that the returning bank is unable to identify the depositary bank.

(3) A returning bank may convert a returned check to a qualified returned check. A qualified returned check shall be encoded in magnetic ink with the routing number of the depositary bank, the amount of the returned check, and a ''2'' in the case of an original check (or a ''5'' in the case of a substitute check) in position 44 of the qualified return MICR line as a return identifier. A qualified returned original check shall be encoded in accordance with ANS X9.13, and a qualified returned substitute check shall be encoded in accordance with ANS X9.100–140.

Alternative 1 for Paragraph (b)

(b) [Reserved.]

Alternative 2 for Paragraph (b)

(b) *Expeditious return of checks.* (1) Except as provided in paragraph (c) of this section, a returning bank shall return the check in an expeditious manner such that the check would normally be received by the depositary bank not later than 2 p.m. (local time of the depositary bank) on the second business day following the banking day on which the check was presented to the paying bank.

(2) If the second business day following the banking day on which the check was presented to the paying bank is not a banking day for the depositary bank, the returning bank satisfies the expeditious return requirement if it sends the returned check in a manner such that the check would normally be received by the depositary bank on or before the depositary bank's next banking day.

Alternative 1 for Paragraph (c)

(c) [Reserved.]

Alternative 2 for Paragraph (c)

(c) *Exceptions to the expeditious return of checks.* (1) The expeditious return requirement of paragraph (b) of this section does not apply if—

(i) The returning bank does not have an agreement to send electronic returned checks to the depositary bank or to another returning bank that has an agreement to send electronic returned checks to the depositary bank, and the returning bank has not otherwise agreed to handle the returned check expeditiously under paragraph (b) of this section;

(ii) The check is deposited in a depositary bank that is not subject to subpart B of this part; or

(iii) The paying bank is unable to identify the depositary bank with respect to the check.

Alternative 1 for Paragraph (d)

(d) *Notice in lieu of return.* If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in § 229.31(d). The copy or written notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the requirements of this section and the other requirements of this subpart.

Alternative 2 for Paragraph (d)

(d) *Notice in lieu of return.* (1) If a check is unavailable for return, the returning bank may send in its place a copy of the front and back of the returned check, or, if no copy is available, a written notice of nonpayment containing the information specified in paragraph (d)(2) of this section.

(2)(i) To the extent available to the returning bank, notice must include the information contained in the check's MICR line when the check is received by the returning bank, as well as—

(A) Name of the paying bank;

(B) Name of the payee(s);

(C) Amount;

(D) Date of the indorsement of the depositary bank;

(E) Account number of the customer(s) of the depositary bank;

(F) Branch name or number of the depositary bank from its indorsement;

(G) The bank name, routing number, and trace or sequence number associated with the indorsement of the depositary bank; and

(H) Reason for nonpayment.

(ii) If the returning bank is not sure of the accuracy of an item of information, it shall include the information required by this paragraph to the extent possible, and identify any item of information for which the bank is not sure of the accuracy.

(iii) The notice may include other information from the check that may be useful in identifying the check being returned and the customer.

(3) The copy or written notice shall clearly state that it constitutes a notice in lieu of return. A notice in lieu of return is considered a returned check subject to the requirements of this section and the other requirements of this subpart.

(e) *Settlement.* A returning bank shall settle with a bank sending a returned check to it for return by the same means that it settles or would settle with the sending bank for a check received for forward collection drawn on the depositary bank. This settlement is final when made.

(f) *Charges.* A returning bank may impose a charge on a bank sending a returned check for handling the returned check.

(g) *Reliance on routing number.* A returning bank may return a returned check based on any routing number designating the depositary bank appearing on the returned check in the depositary bank's indorsement or in magnetic ink on a qualified returned check.

■ 7. Section 229.33 is revised to read as follows:

§ 229.33 Depositary bank's responsibility for returned checks and notices of nonpayment.

Alternative 1 For Paragraph (a)

(a) *Acceptance of electronic returned checks and electronic notices of nonpayment.* A depositary bank's agreement with the transferor bank governs the acceptance of electronic returned checks and electronic written notices of nonpayment.

Alternative 2 for paragraph (a)

(a) *Acceptance of electronic returned checks.* A depositary bank's agreement with the transferor bank governs the acceptance of electronic returned checks.

Alternative 1 for paragraph (b)

(b) *Acceptance of paper returned checks and paper notices of nonpayment.* (1) A depositary bank shall accept paper returned checks and paper written notices of nonpayment during its banking day—

(i) At a location, if any, at which presentment of paper checks for forward collection is requested by the depositary bank; and

(ii) (A) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

(B) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check; or

(C) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

(2) A depositary bank may require that paper returned checks be separated from forward collection checks.

Alternative 2 for Paragraph (b)

(b) *Acceptance of paper returned checks.* (1) A depositary bank shall accept paper returned checks during its banking day—

(i) At a location, if any, at which presentment of paper checks for forward collection is requested by the depositary bank; and

(ii) (A) At a branch, head office, or other location consistent with the name and address of the bank in its indorsement on the check;

(B) If no address appears in the indorsement, at a branch or head office associated with the routing number of the bank in its indorsement on the check; or

(C) If no routing number or address appears in its indorsement on the check, at any branch or head office of the bank.

(2) A depositary bank may require that paper returned checks be separated from forward collection checks.

Alternative 1 for Paragraph (c)

(c) *Acceptance of oral notices of nonpayment.* A depositary bank shall accept oral notices of nonpayment during its banking day—

(1) At the telephone number indicated in the indorsement; and

(2) At any other number held out by the bank for receipt of notice of nonpayment.

Alternative 2 for Paragraph (c)

(c) [Reserved.]

(d) *Payment.* (1) A depositary bank shall pay the returning bank or paying bank returning the check to it for the amount of the check prior to the close of business on the banking day on which it received the check (''payment date'') by—

(i) Debit to an account of the depositary bank on the books of the returning bank or paying bank;

(ii) Cash;

(iii) Wire transfer; or

(iv) Any other form of payment acceptable to the returning bank or paying bank.

(2) The proceeds of the payment must be available to the returning bank or paying bank in cash or by credit to an account of the returning bank or paying bank on or as of the payment date. If the payment date is not a banking day for the returning bank or paying bank or the depositary bank is unable to make the payment on the payment date, payment shall be made by the next day that is a banking day for the returning bank or paying bank. These payments are final when made.

Alternative 1 for Paragraph (e)

(e) *Misrouted returned checks and written notices of nonpayment.* If a bank receives a returned check or written notice of nonpayment on the basis that it is the depositary bank, and the bank determines that it is not the depositary bank with respect to the check or notice, it shall either promptly send the returned check or notice to the depositary bank directly or by means of a returning bank agreeing to handle the returned check or notice, or send the check or notice back to the bank from which it was received.

Alternative 2 for Paragraph (e)

(e) *Misrouted returned checks.* If a bank receives a returned check on the basis that it is the depositary bank, and the bank determines that it is not the depositary bank with respect to the check or notice, it shall either promptly send the returned check to the depositary bank directly or by means of a returning bank agreeing to handle the returned check or notice, or send the check back to the bank from which it was received.

(f) *Charges.* A depositary bank may not impose a charge for accepting and paying checks being returned to it.

Alternative 1 for Paragraph (g)

(g) *Notification to customer.* If the depositary bank receives a returned check, notice of nonpayment, or notice of recovery under § 229.35(b), it shall send or give notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check, notice of nonpayment, or notice of recovery, or within a longer reasonable time.

Alternative 2 for Paragraph (g)

(g) *Notification to customer.* If the depositary bank receives a returned check or notice of recovery under § 229.35(b), it shall send or give notice to its customer of the facts by midnight of the banking day following the banking day on which it received the returned check or notice of recovery, or within a longer reasonable time.

■ 8. Section 229.34 is revised to read as follows:

§ 229.34 Warranties and indemnities.

(a) *Warranties with respect to electronic checks and electronic returned checks.* (1) Each bank that transfers or presents an electronic check or electronic returned check and receives a settlement or other consideration for it warrants that—

(i) The electronic image accurately represents all of the information on the front and back of the original check as of the time that the original check was truncated and the electronic information contains an accurate record of all MICR line information required for a substitute check under § 229.2(aaa) and the amount of the check, and

(ii) No person will receive a transfer, presentment, or return of, or otherwise be charged for an electronic check or electronic returned check, the original check, a substitute check, or a paper or electronic representation of a substitute check such that the person will be asked to make payment based on a check it has already paid.

(2) Each bank that makes the warranties under paragraph (a)(1) of this section makes the warranties to—

(i) In the case of transfers for collection or presentment, the transferee bank, any subsequent collecting bank, the paying bank, and the drawer; and

(ii) In the case of transfers for return, the transferee returning bank, any subsequent returning bank, the depositary bank, and the owner.

(b) *Indemnity with respect to an electronic image or electronic information not related to a paper check.* Each bank that transfers or presents an electronic image or electronic information that is not derived from a paper check and for which it receives a settlement or other consideration shall indemnify each transferee bank, any subsequent collecting bank, the paying bank, and any subsequent returning bank against losses as set forth in paragraph (i) of this section that result from the fact that the electronic image or electronic information is not derived from a paper check.

(c) *Transfer and presentment warranties with respect to a remotely created check.* (1) A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. For purposes of this paragraph (c)(1), ''account'' includes an account as defined in § 229.2(a) as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(2) If a paying bank asserts a claim for breach of warranty under paragraph (c)(1) of this section, the warranting bank may defend by proving that the customer of the paying bank is precluded under UCC 4–406, as applicable, from asserting against the paying bank the unauthorized issuance of the check.

(d) *Settlement amount, encoding, and offset warranties.* (1) Each bank that presents one or more checks to a paying bank and in return receives a settlement or other consideration warrants to the paying bank that the total amount of the checks presented is equal to the total amount of the settlement demanded by the presenting bank from the paying bank.

(2) Each bank that transfers one or more checks or returned checks to a collecting bank, returning bank, or depositary bank and in return receives a settlement or other consideration warrants to the transferee bank that the accompanying information, if any, accurately indicates the total amount of the checks or returned checks transferred.

(3) Each bank that presents or transfers a check or returned check warrants to any bank that subsequently handles it that, at the time of presentment or transfer, the information encoded after issue regarding the check or returned check is accurate. For purposes of this paragraph, the information encoded after issue regarding the check or returned check means any information that could be encoded in the MICR line of a paper check.

(4) If a bank settles with another bank for checks presented, or for returned checks for which it is the depositary bank, in an amount exceeding the total amount of the checks, the settling bank may set off the excess settlement

amount against subsequent settlements for checks presented, or for returned checks for which it is the depositary bank, that it receives from the other bank.

(e) *Returned check warranties.* (1) Each paying bank or returning bank that transfers a returned check and receives a settlement or other consideration for it warrants to the transferee returning bank, to any subsequent returning bank, to the depositary bank, and to the owner of the check, that—

(i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned the check within its deadline under the UCC or § 229.31(g) of this part;

(ii) It is authorized to return the check;

(iii) The check has not been materially altered; and

(iv) In the case of a notice in lieu of return, the check has not and will not be returned.

(2) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or checks drawn on a state or a unit of general local government that are not payable through or at a bank.

Alternative 1 for Paragraph (f)

(f) *Notice of nonpayment warranties.* (1) Each paying bank that gives a notice of nonpayment warrants to the transferee bank, to any subsequent transferee bank, to the depositary bank, and to the owner of the check that—

(i) The paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, returned or will return the check within its deadline under the UCC or § 229.31(g) of this part;

(ii) It is authorized to send the notice; and

(iii) The check has not been materially altered.

(2) These warranties are not made with respect to checks drawn on the Treasury of the United States, U.S. Postal Service money orders, or check drawn on a state or a unit of general local government that are not payable through or at a bank.

Alternative 2 for Paragraph (f)

(f) [Reserved.]

(g) *Truncating bank indemnity.* (1) The indemnity described in paragraph (g)(2) of this section is provided by a depositary bank that—

(i) Is a truncating bank under § 229.2(eee)(2) because it accepts deposit of an electronic check related to an original check;

(ii) Does not receive the original check;

(iii) Receives settlement or other consideration for an electronic check or substitute check related to the original check; and

(iv) Does not receive a return of the check unpaid.

(2) A bank described in paragraph (g)(1) of this section shall indemnify a depositary bank that accepts the original check for deposit for losses incurred by that depositary bank if the loss is due to the check having already been paid.

(h) *Damages.* Damages for breach of the warranties in this section shall not exceed the consideration received by the bank that presents or transfers a check or returned check, plus interest compensation and expenses related to the check or returned check, if any.

(i) *Indemnity amounts.* (1) The amount of the indemnity in paragraphs (b) and (g) of this section shall not exceed the sum of—

(i) The amount of the loss of the indemnified bank, up to the amount of the settlement or other consideration received by the indemnifying bank; and

(ii) Interest and expenses of the indemnified bank (including costs and reasonable attorney's fees and other expenses of representation).

(2)(i) If a loss described in paragraph (b) or (g) of this section results in whole or in part from the indemnified bank's negligence or failure to act in good faith, then the indemnity amount described in paragraph (i)(1) of this section shall be reduced in proportion to the amount of negligence or bad faith attributable to the indemnified bank.

(ii) Nothing in this paragraph (i)(2) reduces the rights of a person under the UCC or other applicable provision of state or federal law.

(j) *Tender of defense.* If a bank is sued for breach of a warranty or for indemnity under this section, it may give a prior bank in the collection or return chain written notice of the litigation, and the bank notified may then give similar notice to any other prior bank. If the notice states that the bank notified may come in and defend and that failure to do so will bind the bank notified in an action later brought by the bank giving the notice as to any determination of fact common to the two litigations, the bank notified is so bound unless after seasonable receipt of the notice the bank notified does come in and defend.

(k) *Notice of claim.* Unless a claimant gives notice of a claim for breach of warranty or for indemnity under this section to the bank that made the warranty or indemnification within 30 days after the claimant has reason to know of the breach or facts and circumstances giving rise to the indemnity and the identity of the warranting bank, the warranting bank is discharged to the extent of any loss caused by the delay in giving notice of the claim.

■ 9. In § 229.35, paragraphs (a) and (d) are revised to read as follows:

§ 229.35 Indorsements.

(a) *Indorsement standards.* A bank (other than a paying bank) that handles a check during forward collection or a returned check shall indorse the check in a manner that permits a person to interpret the indorsement, in accordance with American National Standard (ANS) Specifications for Physical Check Indorsements, X9.100–111 (ANS X9.100–111) for a paper check, ANS X9.100–140 for a substitute check, and American National Standard Specifications for Electronic Exchange of Check and Image Data—Domestic, X9.100–187 (ANS X9.100–187), for an electronic check, unless the Board by rule or order determines that different standards apply or the parties otherwise agree.

* * * **

(d) *Indorsement for depositary bank.* A depositary bank may arrange with another bank to apply the other bank's indorsement as the depositary bank indorsement, provided that any indorsement of the depositary bank on the check avoids the area reserved for the depositary bank indorsement as specified in the indorsement standard applicable to the check under paragraph (a) of this section. The other bank indorsing as depositary bank is considered the depositary bank for purposes of subpart C of this part.

■ 10. In § 229.36:

■ A. Paragraphs (a) and (b) are revised;

■ B. Paragraph (e) is removed and reserved; and

■ C. Paragraph (f) is revised.

The revisions read as follows:

§ 229.36 Presentment and issuance of checks.

(a) *Receipt of electronic checks.* A paying bank's receipt of an electronic check is governed by the paying bank's agreement with the presenting bank.

(b) *Receipt of paper checks.* (1) A check in paper form is considered received by the paying bank when it is received—

(i) At a location to which delivery is requested by the paying bank;

(ii) At a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address;

(iii) At an address of the bank associated with the routing number on the check, whether contained in the MICR line or in fractional form; or

(iv) At any branch or head office, if the bank is identified on the check by name without address.

(2) A bank may require that checks presented to it as a paying bank be separated from returned checks.

* * * * *

(e) [Reserved.]

(f) *Same-day settlement.* (1) A paper check is considered presented, and a paying bank must settle for or return the check pursuant to paragraph (f)(2) of this section, if a presenting bank delivers the check in accordance with reasonable delivery requirements established by the paying bank and demands payment under this paragraph (f)—

(i) At a location designated by the paying bank for receipt of paper checks under this paragraph (f) at which the paying bank would be considered to have received the paper check under paragraph (b) of this section or, if no location is designated, at any location described in paragraph (b) of this section; and

(ii) By 8 a.m. on a business day (local time of the location described in paragraph (f)(1)(i) of this section).

(2) A paying bank may require that paper checks presented for settlement pursuant to paragraph (d)(1) of this section be separated from other forward-collection checks or returned checks.

(3) If presentment of a paper check meets the requirements of paragraph (f)(1) of this section, the paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on the business day it receives the check, it either—

(i) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(ii) Returns the check.

(4) Notwithstanding paragraph (f)(3) of this section, if a paying bank closes on a business day and receives presentment of a paper check on that day in accordance with paragraph (f)(1) of this section:

(i) The paying bank is accountable to the presenting bank for the amount of the check unless, by the close of Fedwire on its next banking day, it either—

(A) Settles with the presenting bank for the amount of the check by credit to an account at a Federal Reserve Bank designated by the presenting bank; or

(B) Returns the check.

(ii) If the closing is voluntary, unless the paying bank settles for or returns the check in accordance with paragraph (f)(3) of this section, it shall pay interest compensation to the presenting bank for each day after the business day on which the check was presented until the paying bank settles for the check, including the day of settlement.

■ 11. In § 229.38:

■ A. Paragraph (a) is revised;

■ B. Paragraph (b) is removed and reserved; and

■ C. Paragraphs (c) and (d) are revised.

The revisions read as follows:

§ 229.38 Liability.

Alternative 1 for Paragraph (a)

(a) *Standard of care; liability; measure of damages.* A bank shall exercise ordinary care and act in good faith in complying with the requirements of this subpart. A bank that fails to exercise ordinary care or act in good faith under this subpart may be liable to the depositary bank, the depositary bank's customer, the owner of a check, or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss that party would have incurred even if the bank had exercised ordinary care. A bank that fails to act in good faith under this subpart may be liable for other damages, if any, suffered by the party as a proximate consequence. Subject to a bank's duty to exercise ordinary care or act in good faith in choosing the means of return or notice of nonpayment, the bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for loss or destruction of a check or notice of nonpayment in transit or in the possession of others. This section does not affect a paying bank's liability to its customer under the UCC or other law.

Alternative 2 for Paragraph (a)

(a) *Standard of care; liability; measure of damages.* A bank shall exercise ordinary care and act in good faith in complying with the requirements of this subpart. A bank that fails to exercise ordinary care or act in good faith under this subpart may be liable to the depositary bank, the depositary bank's customer, the owner of a check, or another party to the check. The measure of damages for failure to exercise ordinary care is the amount of the loss incurred, up to the amount of the check, reduced by the amount of the loss that party would have incurred even if the bank had exercised ordinary care. A bank that fails to act in good faith under this subpart may be liable for other damages, if any, suffered by the party as a proximate consequence. Subject to a bank's duty to exercise ordinary care or act in good faith in choosing the means of return, the bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, or for loss or destruction of a check in transit or in the possession of others. This section does not affect a paying bank's liability to its customer under the UCC or other law.

* * * * *

(b) [Reserved.]

Alternative 1 for Paragraph (c)

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check or notice of nonpayment (§ 229.33(a), (b), and (c)), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

Alternative 2 for Paragraph (c)

(c) *Comparative negligence.* If a person, including a bank, fails to exercise ordinary care or act in good faith under this subpart in indorsing a check (§ 229.35), accepting a returned check (§ 229.33(a) and (b)), or otherwise, the damages incurred by that person under § 229.38(a) shall be diminished in proportion to the amount of negligence or bad faith attributable to that person.

(d) *Responsibility for certain aspects of checks.* (1) A paying bank, or in the case of a check payable through the paying bank and payable by another bank, the bank by which the check is payable, is responsible for damages under paragraph (a) of this section to the extent that the condition of the check when issued by it or its customer adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A depositary bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a check arising after the issuance of the check and prior to acceptance of the check by it adversely affects the ability of a bank to indorse the check legibly in accordance with § 229.35. A reconverting bank is responsible for damages under paragraph (a) of this section to the extent that the condition of the back of a substitute check transferred, presented, or returned by it—

(i) Adversely affects the ability of a subsequent bank to indorse the check legibly in accordance with § 229.35; or

(ii) Causes an indorsement that previously was applied in accordance with § 229.35 to become illegible.

(2) Responsibility under this paragraph (d) shall be treated as negligence of the paying bank, depositary bank, or reconverting bank for purposes of paragraph (b) of this section.

* * * * *

■ 12. Section 229.39 is revised to read as follows:

§ 229.39 Insolvency of bank.

(a) *Duty of receiver to return unpaid checks.* A check or returned check in, or coming into, the possession of a paying bank, collecting bank, depositary bank, or returning bank that suspends payment, and which is not paid, shall be returned by the receiver, trustee, or agent in charge of the closed bank to the bank or customer that transferred the check to the closed bank.

(b) *Claims against banks for checks not returned by receiver.* If a check or returned check is not returned by the receiver, trustee, or agent in charge of the closed bank under paragraph (a) of this section, a bank shall have claims with respect to the check or returned check as follows—

(1) If the paying bank has finally paid the check, or if a depositary bank is obligated to pay the returned check, and suspends payment without making a settlement for the check or returned check with the prior bank that is or becomes final, the prior bank has a claim against the paying bank or the depositary bank.

(2) If a collecting bank, paying bank, or returning bank receives settlement from a subsequent bank for a check or returned check, which settlement is or becomes final, and suspends payments without making a settlement for the check with the prior bank, which is or becomes final, the prior bank has a claim against the collecting bank or returning bank.

(c) *Preferred claim against presenting bank for breach of warranty.* If a paying bank settles with a presenting bank for one or more checks, and if the presenting bank breaches a warranty specified in § 229.34(d)(1) or (3) with respect to those checks and suspends payments before satisfying the paying bank's warranty claim, the paying bank has a preferred claim against the presenting bank for the amount of the warranty claim.

(d) *Finality of settlement.* If a paying bank or depositary bank gives, or a collecting bank, paying bank, or returning bank gives or receives, a settlement for a check or returned check and thereafter suspends payment, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of a certain time or the happening of certain events.

■ 13. Section 229.40 is revised to read as follows:

§ 229.40 Effect of merger transaction.

For purposes of this subpart, two or more banks that have engaged in a merger transaction may be considered to be separate banks for a period of one year following the consummation of the merger transaction.

■ 14. Section 229.42 is revised to read as follows:

§ 229.42 Exclusions.

Alternative 1 for This Section

The notice-of-nonpayment (§ 229.31(d)) and same-day settlement (§ 229.36(d)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

Alternative 2 for This Section

The expeditious return (§§ 229.31(b) and 229.32(b)) and same-day settlement (§ 229.36(d)) requirements of this subpart do not apply to a check drawn upon the United States Treasury, to a U.S. Postal Service money order, or to a check drawn on a state or a unit of general local government that is not payable through or at a bank.

■ 15. In § 229.43, paragraphs (a)(2) and (b) are revised to read as follows:

§ 229.43 Checks payable in Guam, American Samoa, and the Northern Mariana Islands.

(a) * * *

(2) *Pacific island check* means—

(i) A demand draft drawn on or payable through or at a Pacific island bank, which is not a check as defined in § 229.2(k); and

(ii) Includes an electronic image of or electronic information related to a demand draft drawn on or payable through or at a Pacific island bank that a bank sends to a receiving bank pursuant to an agreement with the receiving bank, except as otherwise provided in this section.

Alternative 1 for Paragraph (b)

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word ''check'' in each such section is construed to include a Pacific island check)—

(1) § 229.32;

(2) § 229.33(a), (b), (c), (d), (e), and (f);

(3) § 229.34(a), (b), (c), (d)(2), (d)(3), (g), (h), (i) and (j);

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) § 229.36(d);

(6) § 229.37;

(7) § 229.38;

(8) § 229.39(a), (b), and (d); and

(9) §§ 229.40 through 229.42.

Alternative 2 for Paragraph (b)

(b) *Rules applicable to Pacific island checks.* To the extent a bank handles a Pacific island check as if it were a check defined in § 229.2(k), the bank is subject to the following sections of this part (and the word ''check'' in each such section is construed to include a Pacific island check)—

(1) § 229.32;

(2) § 229.33(a), (b), (c), (d), (e), and (f);

(3) § 229.34(a), (b), (c), (d)(2), (d)(3), (g), (h), (i) and (j);

(4) § 229.35; for purposes of § 229.35(c), the Pacific island bank is deemed to be a bank;

(5) § 229.36(d);

(6) § 229.37;

(7) § 229.38;

(8) § 229.39(a), (b), (c) and (e); and

(9) §§ 229.40 through 229.42.

Subpart D—Substitute Checks

■ 16. In § 229.51, paragraphs (b)(1) through (3) are revised to read as follows:

§ 229.51 General provisions governing substitute checks.

* * * * *

(b) * * *

(1) Bears all indorsements applied by parties that previously handled the check in any form (including the original check, a substitute check, or another paper or electronic representation of such original check or substitute check) for forward collection or return;

(2) Identifies the reconverting bank in a manner that preserves any previous reconverting-bank identifications, in accordance with ANS X9.100–140; and

(3) Identifies the bank that truncated the original check, in accordance with ANS X9.100–140.

* * * * *

■ 17. In § 229.52, paragraph (a) is revised to read as follows:

§ 229.52 Substitute check warranties.

(a) *Content and provision of substitute-check warranties.* (1) A bank that transfers, presents, or returns a

substitute check (or a paper or electronic representation of a substitute check) for which it receives consideration warrants to the parties listed in paragraph (b) of this section that—

(i) The substitute check meets the requirements for legal equivalence described in § 229.51(a)(1) and (2); and

(ii) No depositary bank, drawee, drawer, or indorser will receive presentment or return of, or otherwise be charged for, the substitute check, the original check, or a paper or electronic representation of the substitute check or original check such that that person will be asked to make a payment based on a check that it already has paid.

(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) makes the warranties in paragraph (a)(1) of this section regardless of whether the bank received consideration.

* * * * *

■ 18. In § 229.53, paragraph (a) is revised to read as follows:

§ 229.53 Substitute check indemnity.

(a) *Scope of indemnity.* (1) A bank that transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check for which it receives consideration shall indemnify the recipient and any subsequent recipient (including a collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor, and any indorser) for any loss incurred by any recipient of a substitute check if that loss occurred due to the receipt of a substitute check instead of the original check.

(2) A bank that rejects a check submitted for deposit and returns to its customer a substitute check (or a paper or electronic representation of a substitute check) shall indemnify the recipient as described in paragraph (a)(1) of this section regardless of whether the bank received consideration.

* * * * *

Appendix D to Part 229—[Removed and Reserved]

■ 19. Appendix D to Part 229 is removed and reserved.

■ 20. In appendix E to part 229:

■ A. Under ''II. Section 229.2 Definitions'':

■ 1. Revise paragraph 2 under ''Z. 229.2(z) Paying Bank'';

■ 2. Revise DD. 229(dd);

■ 3. Revise VV. 229.2(vv);

■ 4. Revise BBB. 229.2(bbb) and its examples; and

■ 5. Add GGG. 229.2(ggg).

■ B. Remove:

■ 1. ''XVI. Section 229.30 Paying Bank's Responsibility for Return of Checks'';

■ 2. ''XVII. Section 229.31 Returning Bank's Responsibility for Return of Checks'';

■ 3. ''XVIII. Section 229.32 Depositary Bank's Responsibility for Returned Checks''; and

■ 4. ''XIX. Section 229.33 Notice of Nonpayment.''

■ C. Add new:

■ 1. ''XVI. Section 229.30 Electronic Images and Electronic Information'';

■ 2. ''XVII. Section 229.31 Paying Bank's Responsibility for Return of Checks and Notices of Nonpayment'';

■ 3. ''XVIII. Section 229.32 Returning Bank's Responsibility for Return of Checks''; and

■ 4. ''XIX. Section 229.33 Depositary Bank's Responsibility for Returned Checks and Notices of Nonpayment''.

■ D. ''XX. Section 229.34 Warranties'' is revised.

■ E. ''XXI. Section 229.35 Indorsements'' is revised.

■ F. ''XXII. Section 229.36 Presentment and Issuance of Checks'' is revised.

■ G. ''XXIV. Section 229.38 Liability'' is revised.

■ H. ''XXV. Section 229.39 Insolvency of Bank'' is revised.

■ I. ''XXVI Section 229.40 Effect on Merger Transaction'' is revised.

■ J. ''XXVII. Section 229.41 Relation to State Law'' is revised.

■ K. ''XXVIII. Section 229.42 Exclusions'' is revised.

■ L. ''XXIX Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands'' is revised.

■ M. In ''XXX. § 229.51 General provisions governing substitute checks,'' paragraph B is revised.

■ N. ''XXXI. § 229.52 Substitute Check Warranties'' is revised.

■ O. ''XXXII. § 229.53 Substitute Check Indemnity,'' paragraphs A, B.1., B.1. Examples, and B.3. are revised.

■ P. In ''XXXIII. Section 229.54 Expedited Recredit for Consumers,'' paragraph A.2. is revised.

The revisions and additions read as follows:

Appendix E to Part 229—Commentary

* * * * *

II. Section 229.2 Definitions

* * * * *

Z. 229.2(z) Paying Bank

* * * * *

2. Allowing the payable-through bank additional time to forward checks to the payor and await return or pay instructions from the payor would delay the return of these checks, increasing the risks to depositary banks. Subpart C of this part places on payable-through and payable-at banks the requirements of expeditious return based on the time the payable-through or payable-at bank received the check for forward collection.

* * * * *

DD. 229.2(dd) Routing number

Each bank is assigned a routing number by an agent of the American Bankers Association. The routing number takes two forms—a fractional form and a nine-digit form. A paying bank is identified by both the fractional form routing number (which normally appears in the upper right hand corner of the check) and the nine-digit form. The nine-digit form of the routing number of the paying bank generally is printed in magnetic ink near the bottom of the check (the MICR line; see ANS X9.13). In the case of an electronic image of a check, the routing number of the paying bank is contained in the electronic image of the check (in nine-digit form and fractional form), and, in the case of electronic information related to a check, the routing number of the paying bank is contained in the electronic information related to the check (in nine-digit form). When a check is payable by one bank but payable through another bank, the routing number appearing on the check is that of the payable-through bank, not the payor bank. Industry standards require depositary banks, subsequent collecting banks, and returning banks to place their routing numbers in nine-digit form in their indorsements. (See § 229.35 and commentary.)

* * * * *

VV. 229.2(vv) MICR Line

Information in the MICR line of a check must be printed in accordance with ANS X9.13 for original checks and ANS X9.100–140 for substitute checks, and must be contained in the electronic image of and electronic information related to a check in accordance with ANS X9.100–187. These standards could vary the requirements for printing the MICR line, such as by indicating circumstances under which the use of magnetic ink is not required. The banks exchanging the electronic check may determine the applicable standard for electronic checks and electronic returned checks.

* * * * *

BBB. 229.2(bbb) Copy and Sufficient Copy

1. A copy must be a paper reproduction of a check, unless the parties sending and receiving the copy otherwise agree. Therefore, an electronic image is not a copy or a sufficient copy absent an agreement. However, if a customer has agreed to receive such information electronically, a bank that is required to provide a copy or sufficient copy may satisfy that requirement by providing an electronic image. (See § 229.58)

2. A sufficient copy, which is used to resolve claims related to the receipt of a substitute check, must be a copy of the original check.

3. A bank under § 229.53(b)(3) may limit its liability for an indemnity claim and under §§ 229.54(e)(2) and 229.55(c)(2) may respond to an expedited recredit claim by providing the claimant with a copy of a check that accurately represents all of the information on the front and back of the original check as of the time the original check was truncated or that otherwise is sufficient to determine the validity of the claim against the bank.

Examples.

a. A copy of an original check that accurately represents all the information on the front and back of the original check as of the time of truncation would constitute a sufficient copy if that copy resolved the claim. For example, if resolution of the claim required accurate payment and indorsement information, an accurate copy of the front and back of a legible original check (including but not limited to a substitute check) would be a sufficient copy.

b. A copy of the original check that does not accurately represent all the information on both the front and back of the original check also could be a sufficient copy if such copy contained all the information necessary to determine the validity of the relevant claim. For instance, if a consumer received a substitute check that contained a blurry image of a legible original check, the consumer might seek an expedited recredit because his or her account was charged for $1,000, but he or she believed that the check was written for only $100. If the amount that appeared on the front of the original check was legible, an accurate copy of only the front of the original check that showed the amount of the check would be sufficient to determine whether or not the consumer's claim regarding the amount of the check was valid.

* * * * *

GGG. 229.2(ggg) Electronic Check and Electronic Returned Check

1. Banks often enter into agreements under which a check may be transferred, returned, or presented by sending an electronic image of the check, electronic information related to the check (e.g., MICR line information), or both, instead of transferring, returning, or presenting the paper check. The terms of the agreements may vary. For example, an agreement may provide that an electronic image of the check as well as other electronic information related to the check (such as MICR line information) must be sent. Alternatively, an agreement may provide that electronic information related to the check is sufficient and an image is not required. A sending bank and receiving bank may also agree, for example, that instead of sending the electronic check or electronic returned check directly to the receiving bank, the electronic check or electronic returned check may be sent to an intermediary that stores the electronic check or electronic returned check on the receiving bank's behalf and makes the electronic check or electronic returned check available for the receiving bank to retrieve.

2. A sending bank must have an agreement with the receiving bank in order to send an electronic image of a check or electronic information related to a check instead of a paper check. The agreement to receive an electronic check or electronic returned check may be either bilateral or through a Federal Reserve Bank operating circular, clearinghouse rule, or other interbank agreement. (*See* UCC 4–110).

3. ANS X9.100–187 is the most prevalent industry standard for electronic images of and electronic information related to checks and returned checks that will enable banks to create substitute checks. Multiple standards, however, exist that would enable a bank to create a substitute check from an electronic image of and electronic information related the check or returned check. Therefore, the banks exchanging electronic images and electronic information may agree that a different standard applies to electronic images and electronic information exchanged between the two banks. Additionally, banks that exchange checks electronically may agree to transfer, present, or return only electronic images of checks or only electronic information related to checks. In these situations, the sending bank and receiving bank will have agreed to a different standard as ANS X9.100–187 requires both an electronic image and electronic information.

4. These electronic checks and electronic returned checks are subject to subpart C, except as otherwise provided in that subpart. (*See* § 229.30 and commentary thereto).

* * * * *

XVI. Section 229.30 Electronic Images and Electronic Information

Alternative 1 for XVI. Section 229.30 Electronic Images and Electronic Information

A. 229.30(a) Checks Under This Subpart

1. A bank may agree to receive an electronic check or electronic returned check from another bank instead of a paper check or returned check (See § 229.2(bbb) and commentary thereto). Section 229.30(a) does not give a bank the right to send an electronic image of a check or electronic information related to a check or returned check absent an agreement to do so with the receiving bank.

2. Electronic checks and electronic returned checks are subject to subpart C of this part as if they were checks or returned checks, unless otherwise provided in subpart C. For example, § 229.31(d) requires a paying bank to provide a notice of nonpayment only if the paying bank returns a check in paper form. Additionally, §§ 229.33(a) and 229.36(a) specify that the parties' agreements govern the receipt of electronic returned checks and electronic checks, respectively, rather than the provisions in § 229.33(b) (Acceptance of paper returned checks) and § 229.36(b) (Receipt of paper checks). Section 229.34(a) sets forth warranties that are given only with respect to electronic checks and electronic returned checks. The parties may, by agreement, vary the effect of the provisions in subpart C of this part as they apply to electronic checks and electronic returned checks. (See § 229.37 and commentary thereto).

B. 229.30(b) Writings

1. Provisions in subpart C of this part require that a paying bank or returning bank send information in writing. For example, § 229.31(f) requires that a notice in lieu be either a copy of the check or a written notice of nonpayment. A bank may send information required to be in writing in electronic form if the bank sending the information has an agreement with the bank receiving the information to do so.

Alternative 2 for XVI. Section 229.30 Electronic Images and Electronic Information

A. 229.30(a) Checks Under This Subpart

1. A bank may agree to receive an electronic check or electronic returned check from another bank instead of a paper check or returned check (See § 229.2(bbb) and commentary thereto). Section 229.30(a) does not give a bank the right to send an electronic image of a check or electronic information related to a check or returned check absent an agreement to do so with the receiving bank.

2. Electronic checks and electronic returned checks are subject to subpart C of this part as if they were checks or returned checks, unless otherwise provided in subpart C. For example, §§ 229.33(a) and 229.36(a) specify that the parties' agreements govern the receipt of electronic returned checks and electronic checks, respectively, rather than the provisions in § 229.33(b) (Acceptance of paper returned checks) and § 229.36(b) (Receipt of paper checks). Section 229.34(a) sets forth warranties that are given only with respect to electronic checks and electronic returned checks. The parties may, by agreement, vary the effect of the provisions in subpart C of this part as they apply to electronic checks and electronic returned checks. (See § 229.37 and commentary thereto).

B. 229.30(b) Writings

1. Provisions in subpart C of this part require that a paying bank or returning bank send information in writing. For example, § 229.31(f) requires that a notice in lieu be either a copy of the check or a written notice of nonpayment. A bank may send information required to be in writing in electronic form if the bank sending the information has an agreement with the bank receiving the information to do so.

XVII. Section 229.31 Paying Bank's Responsibility for Return of Checks and Notices of Nonpayment

Alternative 1 for XVII. Section 229.31 Paying Bank's Responsibility for Return of Checks and Notices of Nonpayment

A. 229.31(a) Return of Checks

1. Routing of returned checks.

a. The paying bank acts, in effect, as an agent or subagent of the depositary bank in selecting a means of return. Under § 229.31(a), a paying bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depositary bank by sending an electronic returned check directly to the depositary bank if the paying bank has an

agreement with the depositary bank to do so, or by using a courier or other means of delivery, bypassing returning banks; or

ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check or electronic returned check, regardless of whether or not the returning bank handled the check for forward collection.

b. If the paying bank elects to return the check directly to the depositary bank, it is not necessarily required to return the check to the branch of first deposit. A paper check may be returned to the depositary bank at any physical location permitted under § 229.33(b).

2. a. In some cases, a paying bank will be unable to identify the depositary bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as depositary banks generally apply their indorsements electronically. A paying bank, for example, would be unable to identify the depositary bank if the depositary bank's indorsement is neither in an addenda record nor within the image of the check that was presented electronically. A paying bank, however, would not be ''unable'' to identify the depositary bank merely because the depositary bank's indorsement is available within the image rather than attached as an addenda record.

b. In cases where the paying bank is unable to identify the depositary bank, the paying bank may send the returned check to a returning bank that agrees to handle the returned check. The returning bank may be better able to identify the depositary bank.

c. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the presenting bank or a prior collecting bank is required accept the returned check and send it to another prior collecting bank in the path used for forward collection or to the depositary bank. If the paying bank has an agreement to send electronic returned checks to a bank that handled the check for forward collection, the paying bank may send the electronic returned check to that bank.

d. A paying bank returning a check to a prior collecting bank because it is unable to identify the depositary bank must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties. The advice will warn the bank that this check will require special research and handling in accordance with § 229.32(a)(2). The returned check may not be prepared as a qualified return.

e. A paying bank also may send a check to a prior collecting bank to make a claim against that bank under § 229.35(b) where the depositary bank is insolvent or in other cases as provided in § 229.35(b). Finally, paying bank may make a claim against a prior collecting bank based on a breach of warranty under UCC 4–208.

3. Midnight deadline. Except for the extension permitted by § 229.31(g), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under UCC 4–301 and 4–302, which continue to apply. Under UCC 4–302, a paying bank is ''accountable'' for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under UCC 3–418(c) and 4–215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, the UCC midnight deadline gives the paying bank an incentive to make a prompt return.

4. UCC provisions affected. This paragraph directly affects the following provisions of the UCC, and may affect other sections or provisions:

a. Section 4–301(e), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depositary bank or to a returning bank.

b. Section 4–301(a), in that settlement for returned checks is made under § 229.32(e), not by revocation of settlement.

B. 229.31(d) Notice of Nonpayment

1. Requirement.

a. The paying bank must send a notice of nonpayment if it decides not to pay a check and sends the returned check in paper form. Except in the case where the returned check or a notice in lieu of return serves as the notice of nonpayment, the notice of nonpayment carries no value, and the check or substitute check must be returned in addition to the notice of nonpayment. A paying bank that sends an electronic returned check instead of a paper returned check, pursuant to an agreement to do so, is not required to send a notice of nonpayment. The paying bank must send the notice of nonpayment such that it is received by the depositary bank by 2 p.m. local time of the depositary bank on the second business day following presentment.

b. A bank identified by routing number as the paying bank is considered the paying bank under this regulation and would be required to provide a notice of nonpayment even though that bank determined that the check was not drawn by a customer of that bank. (See commentary to the definition of paying bank in § 229.2(z)). A bank designated as a payable-through or payable-at bank and to which the check is sent for payment collection is responsible for the notice of nonpayment requirement. The payable-through or payable-at bank may contract with the payor with respect to its liability in discharging these responsibilities.

c. The paying bank should not send a notice of nonpayment until it has finally determined not to pay the check. Under § 229.34(e), by sending the notice the paying bank warrants that it has returned or will return the check. If a paying bank sends a notice and subsequently decides to pay the check, the paying bank may mitigate its liability on this warranty by notifying the depositary bank that the check has been paid.

d. The return of the check itself may serve as the required notice of nonpayment. In some cases, the returned check may be received by the depositary bank within the time requirements of § 229.31(d)(1) and no notice other than the return of the check will be necessary. If the check is not received by the depositary bank within the time limits for notice, the return of the check will not satisfy the notice requirement.

e. The requirement for notice does not affect the requirements for return of the check under the UCC (or § 229.31(e)). A paying bank is not responsible for failure to give notice of nonpayment to a party that has breached a presentment warranty under UCC 4–208, notwithstanding that the paying bank may have returned the check. (See UCC 4–208 and 4–302.)

2. Content of Notices.

a. This paragraph provides that, to the extent the information is available to the paying bank, the notice must at a minimum contain the information contained in the check's MICR line when the check was received by the paying bank. This information includes the paying bank's routing number, the account number of the paying bank's customer, the check number, and auxiliary on-us fields for corporate checks, and may include the amount of the check.

b. If the paying bank cannot identify the depositary bank from the check itself, it may wish to send the notice to the earliest collecting bank it can identify and indicate that the notice is not being sent to the depositary bank. The collecting bank may be able to identify the depositary bank and forward the notice, but is under no duty to do so. In addition, the collecting bank may actually be the depositary bank.

c. A bank must identify an item of information if the bank is uncertain as to that item's accuracy. A bank may make this identification in accordance with generally applicable industry standards, or as otherwise agreed to by the parties.

3. Depositary banks not subject to subpart B of this part.

a. Subpart B of this part applies only to ''checks'' deposited in transaction ''accounts.'' A depositary bank with only time or savings accounts need not comply with the availability requirements of subpart B of Regulation CC. Thus, the notice of nonpayment requirement of § 229.31(d) does not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in UCC 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12), and the extension in § 229.31(g), would continue to apply to these checks.

b. The notice of nonpayment requirement applies only to ''checks'' deposited in a bank that is a ''depository institution'' under the EFA Act. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not ''depository institutions'' within the meaning

of the EFA Act and therefore are not subject to the expedited-availability requirements of subpart B of this regulation. Thus, the notice of nonpayment requirement of this section would not apply to a paying bank returning a check that was deposited in one of these banks.

4. Unidentifiable depositary banks.

a. A paying bank that sends a paper check to a bank that handled the check for forward collection because the paying bank is unable to identify the depositary bank is not subject to the requirement for notice of nonpayment. Although the lack of requirement for notice of nonpayment under this paragraph will create risks for the depositary bank, in many cases the inability to identify the depositary bank will be due to the depositary bank's, or a collecting bank's, failure to indorse as required by § 229.35(a). If the depositary bank failed to use the proper indorsement, it should bear the risks of not receiving notice of nonpayment in a timely manner. Similarly, where the inability to identify the depositary bank is due to indorsements or other information placed on the back of the check by the depositary bank's customer or other prior indorser, the depositary bank should bear the risk that it cannot charge a returned check back to that customer.

b. This paragraph does not relieve a paying bank from the liability for not providing notice of nonpayment in accordance with § 229.31(d) in cases where the paying bank is itself responsible for the inability to identify the depositary bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depositary bank's indorsement, making the indorsement unreadable. (See § 229.38(c).)

c. A paying bank's return of a check to an unidentifiable depositary bank is subject to its midnight deadline under UCC 4–301, Regulation J (if the check is returned through a Federal Reserve Bank), and the extension provided in § 229.31(g).

C. 229.31(e) Identification of Returned Check

1. The reason for the return must be clearly indicated. A check is identified as a returned check if the front of that check indicates the reason for return, even though it does not specifically state that the check is a returned check. A reason such as ''Refer to Maker'' may be permissible in certain cases, such as when a drawer with a positive pay arrangement instructs the bank to return the check. By contrast, a reason such as ''Refer to Maker'' would not be permissible in cases where a check is being returned due to the paying bank having already paid the item. In such cases, the payee and not the drawer would have more information as to why the check is being returned.

2. If the returned check is a substitute check or electronic returned check, the reason for return information must be included such that it is retained on any subsequent substitute check. For substitute checks, this requirement could be met by placing the information (1) in the location on the front of the substitute check that is specified by ANS X9.100–140 or (2) within the image of the original check that appears on the front of the substitute check so that the information is retained on any subsequent substitute check. For electronic returned checks, this requirement could be met by including the reason for return in accordance with ANS X9.100–187. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check but need not repeat the reason for return stated on the check if it in fact appears on the check.

D. 229.31(f) Notice in Lieu of Return

1. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in § 229.35(b). Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or must retain possession of the check for protest) and does not have sufficient information to create a substitute check. For example, a bank that does not have the original check may have an image of both sides of the check, but the image may be insufficient, or may not be in the proper format, to create a substitute check. In that case, the check would be unavailable for return. A bank using a notice in lieu of return gives a warranty under § 229.34(e)(1)(iv) that the check, in any form, has not been and will not be returned.

2. A notice in lieu of return must be in writing (either paper or electronic, if agreed to by the parties), but not provided by telephone or other oral transmission. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that any returning bank and the depositary bank are informed that the notice carries value. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.31(d). The copy or written notice must clearly indicate it is a notice in lieu of return. Notice by a legible facsimile of both sides of the check may satisfy the requirements for a notice in lieu of return. The paying bank may send an electronic image of both sides of the check as a notice in lieu of return only if it has an agreement to do so with the receiving bank. (See § 229.30(b)).

3. The requirement of this paragraph supersedes the requirement of UCC 4–301(a) as to the form and information required of a notice of dishonor or nonpayment.

4. The notice in lieu of return is subject to the provisions of and is treated like a returned check for purposes of this subpart. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise. For example, the notice of nonpayment requirement under § 229.31(d) may be satisfied by the notice in lieu of return if the notice in lieu meets the time and information requirements of § 229.31(d).

5. If not all of the information required by § 229.31(d) is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

E. 229.31(g) Extension of Deadline

1. This paragraph permits extension of the deadlines in the UCC, Regulation J (12 CFR part 210) and § 229.36(f)(3) and (4) of this part for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by § 210.9 of Regulation J (12 CFR part 210) or § 229.36(f)(3) or (4) of this part), in two circumstances:

a. A paying bank may, by agreement, send an electronic returned check instead of a paper returned check or may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches the depositary bank (or receiving bank, if the depositary bank is unidentifiable) on or before the depositary bank's (or receiving bank's) next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. (local time of the depositary bank or receiving bank) or later set by the depositary bank (or receiving bank) under UCC 4–108. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see the following paragraph).

b. A paying bank may observe a banking day, as defined in the applicable UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have its back-office operations staff available on Saturday to prepare and send the electronic returned checks, and the returning bank or depositary bank that would be receiving this electronic information may not have staff available to process it until Sunday night or Monday morning. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depositary bank (or receiving bank) by the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.

2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in UCC 4–301 and 4–302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and § 229.36(f)(3) and (f)(4) of this part.

3. If the paying bank has an agreement to do so with the receiving bank, the paying bank may satisfy its midnight or other return deadline by sending an electronic returned check prior to the expiration of the deadline.

The time when the electronic returned check is considered to be received by the depositary bank is determined by the agreement. The paying bank satisfies its midnight or other return deadline by dispatching paper returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

4. This paragraph directly affects UCC 4–301 and 4–302 and §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

F. 229.31(h) Payable Through and Payable at Checks

1. For purposes of subpart C, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of subpart C are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks and receipt of notices of nonpayment for checks that are payable through or at a bank to the depositary bank.

2. A check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of UCC 4–301.

G. 229.31(i) Reliance on Routing Number

1. Although § 229.35 requires that the depositary bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary bank's indorsement) or in the electronic check sent pursuant to an agreement when the check, or electronic check, is received by the paying bank.

2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depositary bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

Alternative 2 for XVII. Section 229.31 Paying Bank's Responsibility for Return of Checks and Notices of Nonpayment

A. 229.31(a) Return of Checks

1. Routing of returned checks.

a. This subsection is subject to the requirements of expeditious return provided in § 229.31(b).

b. The paying bank acts, in effect, as an agent or subagent of the depositary bank in selecting a means of return. Under § 229.31(a), a paying bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depositary bank by sending an electronic returned check directly to the depositary bank if the paying bank has an agreement with the depositary bank to do so, or by using a courier or other means of delivery, bypassing returning banks; or

ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check or electronic returned check, regardless of whether or not the returning bank handled the check for forward collection.

b. If the paying bank elects to return the check directly to the depositary bank, it is not necessarily required to return the check to the branch of first deposit. A paper check may be returned to the depositary bank at any physical location permitted under § 229.33(b).

2. a. In some cases, a paying bank will be unable to identify the depositary bank through the use of ordinary care and good faith. The Board expects that these cases will be unusual as depositary banks generally apply their indorsements electronically. A paying bank, for example, would be unable to identify the depositary bank if the depositary bank's indorsement is neither in an addenda record nor within the image of the check that was presented electronically. A paying bank, however, would not be ''unable'' to identify the depositary bank merely because the depositary bank's indorsement is available within the image rather than attached as an addenda record.

b. In cases where the paying bank is unable to identify the depositary bank, the paying bank may send the returned check to a returning bank that agrees to handle the returned check. The returning bank may be better able to identify the depositary bank.

c. In the alternative, the paying bank may send the check back up the path used for forward collection of the check. The presenting bank and prior collecting banks normally will be able to trace the collection path of the check through the use of their internal records in conjunction with the indorsements on the returned check. In these limited cases, the presenting bank or a prior collecting bank is required accept the returned check and send it to another prior collecting bank in the path used for forward collection or to the depositary bank. If the paying bank has an agreement to send electronic returned checks to a bank that handled the check for forward collection, the paying bank may send the electronic returned check to that bank.

d. A paying bank returning a check to a prior collecting bank because it is unable to identify the depositary bank must advise that bank that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on each check for which the depositary bank is unknown if such checks are commingled with other returned checks, or, if such checks are sent in a separate cash letter, by one notice on the cash letter. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties. The advice will warn the bank that this check will require special research and handling in accordance with § 229.32(a)(2). The returned check may not be prepared as a qualified return.

e. A paying bank also may send a check to a prior collecting bank to make a claim against that bank under § 229.35(b) where the depositary bank is insolvent or in other cases as provided in § 229.35(b). Finally, paying bank may make a claim against a prior collecting bank based on a breach of warranty under UCC 4–208.

3. Midnight deadline. Except for the extension permitted by § 229.31(g), discussed below, this section does not relieve a paying bank from the requirement for timely return (i.e., midnight deadline) under UCC 4–301 and 4–302, which continue to apply. Under UCC 4–302, a paying bank is ''accountable'' for the amount of a demand item, other than a documentary draft, if it does not pay or return the item or send notice of dishonor by its midnight deadline. Under UCC 3–418(c) and 4–215(a), late return constitutes payment and would be final in favor of a holder in due course or a person who has in good faith changed his position in reliance on the payment. Thus, the UCC midnight deadline gives the paying bank an incentive to make a prompt return.

4. UCC provisions affected. This paragraph directly affects the following provisions of the UCC, and may affect other sections or provisions:

a. Section 4–301(d), in that instead of returning a check through a clearinghouse or to the presenting bank, a paying bank may send a returned check to the depositary bank or to a returning bank.

b. Section 4–301(a), in that settlement for returned checks is made under § 229.32(e), not by revocation of settlement.

B. 229.31(b) Expeditious Return of Checks

1. This section requires a paying bank (which, for purposes of subpart C, may include a payable-through and payable-at bank (see § 229.2(z)) that determines not to pay a check to return the check expeditiously. Section 229.31(c) sets forth exceptions to this general rule. If a paying bank is not subject to the requirement for expeditious return under § 229.31(b), the paying bank, nonetheless, must return the check within its deadlines under the UCC, Regulation J (12 CFR part 210) or §§ 229.36(f)(3) and (f)(4), as extended by § 229.31(g), for returning the item or sending notice.

2. Two-day test.

a. A returned check, including the original check, substitute check, or electronic returned check, is returned expeditiously if a paying bank sends the returned check in a manner such that the returned check would normally be received by the depositary bank not later than 2 p.m. (local time of the depositary bank) of the second business day following the banking day on which the check was presented to the paying bank.

b. A paying bank may satisfy its expeditious return requirement by returning either an electronic returned check or a paper check. For example, a paying bank could meet the expeditious return test by sending an electronic returned check directly to the depositary bank such that it normally would reach the depositary bank by the specified deadline, or sending an electronic returned check to a returning bank within the returning bank's timeframe for delivering electronic returned checks to the depositary

bank within the return deadline. A paying bank that sends a returned check in paper form, even though it has an agreement to send electronic returned checks to the receiving bank, would typically need a highly expeditious means of delivery to meet the expeditious return test.

c. This test does not require actual receipt of the returned check by the depositary bank within the specified deadline. In determining whether an electronic returned check would normally reach a depositary bank within the specified deadline, a paying bank may rely on a returning bank's return deadlines and availability schedules for electronic returned checks destined for the depositary bank. The paying bank is not responsible for unforeseeable delays in the return of the check, such as communication failures or transportation delays. A paying bank may not rely on the availability schedules if the paying bank has reason to believe that these schedules do not reflect the actual time for return of an electronic returned check to the depositary bank to which the paying bank is returning the check.

d. Where the second business day following presentment of the check to the paying bank is not a banking day for the depositary bank, the depositary bank may not process checks on that day. Consequently, if the last day of the time limit is not a banking day for the depositary bank, the check may be delivered to the depositary bank before the close of the depositary bank's next banking day and the return will still be considered expeditious.

3. Examples.

a. The paying bank and depositary bank have a bilateral agreement under which the depositary bank agrees to receive electronic returned checks directly from the paying bank. If a check is presented to a paying bank on Monday, the paying bank should send the returned check such that an electronic returned check normally would be received by the depositary bank by 2 p.m. (local time of the depositary bank) on Wednesday. This result is the same if, instead of a bilateral agreement, the paying bank and depositary bank are members of the same clearinghouse and agree to exchange electronic returned checks under clearinghouse rules.

b. i. The depositary bank has an agreement to receive electronic returned checks from Returning Bank A but not from the paying bank. The paying bank, however, has an agreement with Returning Bank A to send electronic returned checks to Returning Bank A. If a check is presented to the paying bank on Monday, the paying bank should send the returned check such that the depositary bank normally would receive the returned check by 2 p.m. (local time of the depositary bank) on Wednesday. A paying bank may satisfy this requirement by sending either an electronic returned check or a paper returned check to Returning Bank A in a manner that permits Returning Bank A to send an electronic returned check to the depositary bank by 2 p.m. on Wednesday. The paying bank may also send a paper returned check to the depositary bank if a paper returned check would normally be received by the depositary bank by 2 p.m. on Wednesday.

ii. The paying bank has an agreement to send electronic returned checks to Returning Bank A. The depositary bank has an agreement to receive electronic returned checks from Returning Bank B. The paying bank does not have an agreement to send electronic returned checks to Returning Bank B. Returning Bank A, however, has an agreement to send electronic returned checks to Returning Bank B. Consequently, the paying bank, Returning Bank A, and Returning Bank B are subject to the expeditious return requirement. If a check is presented to the paying bank on Monday, the paying bank should send the returned check such that the depositary bank normally would receive the returned check by 2 p.m. (local time of the depositary bank) on Wednesday.

C. 229.31(c) Exceptions to the Expeditious Return Requirement

1. This paragraph sets forth the circumstances under which a paying bank is not required to return the check to the depositary bank in accordance with § 229.31(b).

2. *Example—No direct or indirect electronic return agreement.* The paying bank has an agreement to send electronic returned checks to Returning Bank A. Returning Bank A, however, does not have an agreement to send electronic returned checks to the depositary bank or to any returning bank that has an agreement to send electronic returned checks to the depositary bank. Returning Bank A has not otherwise agreed to handle the returned check expeditiously. Consequently, Returning Bank A is not subject to the expeditious return requirement under § 229.32(b). Under these facts, the paying bank would not be subject to the expeditious return requirement under § 229.31(b). The paying bank, however, must comply with any deadlines under the UCC, Regulation J (12 CFR part 210), or § 229.30(e).

3. Depositary banks not subject to subpart B.

a. Subpart B of this regulation applies only to ''checks'' deposited in transaction ''accounts.'' A depositary bank with only time or savings accounts need not comply with the availability requirements of subpart B of Regulation CC. Thus, the expedited return requirement of § 229.31(b) does not apply to checks being returned to banks that do not hold accounts. The paying bank's midnight deadline in UCC 4–301 and 4–302 and § 210.12 of Regulation J (12 CFR 210.12), and the extension in § 229.31(g), would continue to apply to these checks. Returning banks also would be required to exercise ordinary care when returning the checks (UCC 4–202).

b. The expeditious return requirement applies only to ''checks'' deposited in a bank that is a ''depository institution'' under the EFA Act. Federal Reserve Banks, Federal Home Loan Banks, private bankers, and possibly certain industrial banks are not ''depository institutions'' within the meaning of the EFA Act and therefore are not subject to the expedited-availability requirements of subpart B of this regulation. Thus, the expedited return requirement of this section would not apply to a paying bank returning a check that was deposited in one of these banks.

4. Unidentifiable depositary bank.

a. The sending of a check to a bank that handled the check for forward collection under this paragraph is not subject to the requirement for expeditious return by the paying bank. Although the lack of a requirement of expeditious return will create risks for the depositary bank, in many cases the inability to identify the depositary bank will be due to the depositary bank's, or a collecting bank's, failure to indorse as required by § 229.35(a). If the depositary bank failed to use the proper indorsement, it should bear the risks of less than expeditious return. Similarly, where the inability to identify the depositary bank is due to indorsements or other information placed on the back of the check by the depositary bank's customer or other prior indorser, the depositary bank should bear the risk that it cannot charge a returned check back to that customer.

b. This paragraph does not relieve a paying bank from the liability for the lack of expeditious return in cases where the paying bank is itself responsible for the inability to identify the depositary bank, such as when the paying bank's customer has used a check with printing or other material on the back in the area reserved for the depositary bank's indorsement, making the indorsement unreadable. (See § 229.38(c).)

c. A paying bank's return of a check to an unidentifiable depositary bank is subject to its midnight deadline under UCC 4–301, Regulation J (if the check is returned through a Federal Reserve Bank), and the extension provided in § 229.31(g).

D. 229.31(e) Identification of Returned Check

1. The reason for the return must be clearly indicated. A check is identified as a returned check if the front of that check indicates the reason for return, even though it does not specifically state that the check is a returned check. A reason such as ''Refer to Maker'' may be permissible in certain cases, such as when a drawer with a positive pay arrangement instructs the bank to return the check. By contrast, a reason such as ''Refer to Maker'' would not be permissible in cases where a check is being returned due to the paying bank having already paid the item. In such cases, the payee and not the drawer would have more information as to why the check is being returned.

2. If the returned check is a substitute check or electronic returned check, the reason for return information must be included such that it is retained on any subsequent substitute check. For substitute checks, this requirement could be met by placing the information (1) in the location on the front of the substitute check that is specified by ANS X9.100–140 or (2) within the image of the original check that appears on the front of the substitute check so that the information is retained on any subsequent substitute check. For electronic returned checks, this requirement could be met by including the reason for return in accordance with ANS X9.100–187. If the paying bank places the returned check in a carrier envelope, the carrier envelope should indicate that it is a returned check but need not repeat the reason for return stated on the check if it in fact appears on the check.

E. 229.31(f) Notice in Lieu of Return

1. A notice in lieu of return may be used by a bank handling a returned check that has been lost or destroyed, including when the original returned check has been charged back as lost or destroyed as provided in § 229.35(b). Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or must retain possession of the check for protest) and does not have sufficient information to create a substitute check. For example, a bank that does not have the original check may have an image of both sides of the check, but the image may be insufficient, or may not be in the proper format, to create a substitute check. In that case, the check would be unavailable for return. A bank using a notice in lieu of return gives a warranty under § 229.34(e)(1)(iv) that the check, in any form, has not been and will not be returned.

2. A notice in lieu of return must be in writing (either paper or electronic, if agreed to by the parties), but not provided by telephone or other oral transmission. The requirement for a writing and the indication that the notice is a substitute for the returned check is necessary so that any returning bank and the depositary bank are informed that the notice carries value. A check that is lost or otherwise unavailable for return may be returned by sending a legible copy of both sides of the check or, if such a copy is not available to the paying bank, a written notice of nonpayment containing the information specified in § 229.31(f)(2). The copy or written notice must clearly indicate it is a notice in lieu of return. Notice by a legible facsimile of both sides of the check may satisfy the requirements for a notice in lieu of return. The paying bank may send an electronic image of both sides of the check as a notice in lieu of return only if it has an agreement to do so with the receiving bank. (See § 229.30(b)).

3. The requirement of this paragraph supersedes the requirement of UCC 4–301(a) as to the form and information required of a notice of dishonor or nonpayment.

4. The notice in lieu of return is subject to the provisions of and is treated like a returned check for purposes of this subpart. Reference in the regulation and this commentary to a returned check includes a notice in lieu of return unless the context indicates otherwise.

5. If not all of the information required by § 229.31(f)(2) is available, the paying bank may make a claim against any prior bank handling the check as provided in § 229.35(b).

F. 229.31(g) Extension of Deadline

1. This paragraph permits extension of the deadlines in the UCC, Regulation J (12 CFR part 210), and § 229.36(f)(3) and (4) for returning a check for which the paying bank previously has settled (generally midnight of the banking day following the banking day on which the check is received by the paying bank) and for returning a check without settling for it (generally midnight of the banking day on which the check is received by the paying bank, or such other time provided by § 210.9 of Regulation J (12 CFR part 210), or § 229.36(f)(3) or (4)), in two circumstances:

a. A paying bank may, by agreement, send an electronic returned check instead of a paper returned check or may have a courier that leaves after midnight (or after any other applicable deadline) to deliver its forward-collection checks. This paragraph removes the constraint of the midnight deadline for returned checks if the returned check reaches the depositary bank (or receiving bank, if the depositary bank is unidentifiable) on or before the depositary bank's (or receiving bank's) next banking day following the otherwise applicable deadline by the earlier of the close of that banking day or a cutoff hour of 2 p.m. (local time of the depositary bank or receiving bank) or later set by the depositary bank (or receiving bank) under UCC 4–108. This paragraph applies to the extension of all midnight deadlines except Saturday midnight deadlines (see the following paragraph).

b. A paying bank may observe a banking day, as defined in the applicable UCC, on a Saturday, which is not a business day and therefore not a banking day under Regulation CC. In such a case, the UCC deadline for returning checks received and settled for on Friday, or for returning checks received on Saturday without settling for them, might require the bank to return the checks by midnight Saturday. However, the bank may not have its back-office operations staff available on Saturday to prepare and send the electronic returned checks, and the returning bank or depositary bank that would be receiving this electronic information may not have staff available to process it until Sunday night or Monday morning. This paragraph extends the midnight deadline if the returned checks reach the returning bank by a cut-off hour (usually on Sunday night or Monday morning) that permits processing during its next processing cycle or reach the depositary bank (or receiving bank) by the cut-off hour on its next banking day following the Saturday midnight deadline. This paragraph applies exclusively to the extension of Saturday midnight deadlines.

2. The time limits that are extended in each case are the paying bank's midnight deadline for returning a check for which it has already settled and the paying bank's deadline for returning a check without settling for it in UCC 4–301 and 4–302, §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12), and § 229.36(f)(3) and (4).

3. If the paying bank has an agreement to do so with the receiving bank, the paying bank may satisfy its midnight or other return deadline by sending an electronic returned check prior to the expiration of the deadline. The time when the electronic returned check is considered to be received by the depositary bank is determined by the agreement. The paying bank satisfies its midnight or other return deadline by dispatching paper returned checks to another bank by courier, including a courier under contract with the paying bank, prior to expiration of the deadline.

4. This paragraph directly affects UCC 4–301 and 4–302 and §§ 210.9 and 210.12 of Regulation J (12 CFR 210.9 and 210.12) to the extent that this paragraph applies by its terms, and may affect other provisions.

G. 229.31(h) Payable Through and Payable at Checks

1. For purposes of subpart C of this part, the regulation defines a payable-through or payable-at bank (which could be designated the collectible-through or collectible-at bank) as a paying bank. The requirements of subpart C are imposed on a payable-through or payable-at bank and are based on the time of receipt of the forward collection check by the payable-through or payable-at bank. This provision is intended to speed the return of checks and receipt of notices of nonpayment for checks that are payable through or at a bank to the depositary bank.

2. A check sent for payment or collection to a payable-through or payable-at bank is not considered to be drawn on that bank for purposes of the midnight deadline provision of UCC 4–301.

H. 229.31(i) Reliance on Routing Number

1. Although § 229.35 requires that the depositary bank indorsement contain its nine-digit routing number, it is possible that a returned check will bear the routing number of the depositary bank in fractional, nine-digit, or other form. This paragraph permits a paying bank to rely on the routing number of the depositary bank as it appears on the check (in the depositary bank's indorsement) or in the electronic check sent pursuant to an agreement when the check, or electronic check, is received by the paying bank.

2. If there are inconsistent routing numbers, the paying bank may rely on any routing number designating the depositary bank. The paying bank is not required to resolve the inconsistency prior to processing the check. The paying bank remains subject to the requirement to act in good faith and use ordinary care under § 229.38(a).

XVIII. Section 229.32 Returning Bank's Responsibility for Return of Checks

Alternative 1 for XVIII. Section 229.32 Returning Bank's Responsibility for Return of Checks

A. 229.32(a) Return of Checks

1. Routing of returned check.

a. Under § 229.32(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depositary bank by sending an electronic returned check directly to the depositary bank if the returning bank has an agreement with the depositary bank to do so, or by using a courier or other means of delivery; or

ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check regardless of whether or not the returning bank handled the check for forward collection.

b. If the returning bank elects to send the returned check directly to the depositary bank, it is not required to send the check to the branch of the depositary bank that first handled the check. A paper returned check may be sent to the depositary bank at any physical location permitted under § 229.33(b).

2. Unidentifiable depositary bank.

a. Returning banks agreeing to handle checks for return to depositary banks under § 229. 32(a) are expected to be expert in identifying depositary bank indorsements. In the limited cases where the returning bank cannot identify the depositary bank, if the returning bank did not handle the check for forward collection, it may send the returned check to any collecting bank that handled the check for forward collection.

b. If, on the other hand, the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward-collection process, which will be better able to identify the depositary bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depositary bank.

c. The returning bank's return of a check under this paragraph is subject to the requirement to use ordinary care under UCC 4–202(b). (See definition of returning bank in § 229.2(cc).)

d. As in the case of a paying bank returning a check under § 229.31(a)(2), a returning bank returning a check under § 229.32(a)(2) must advise the bank to which it sends the returned check that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on the check or a notice on the cash letter. The returned check may not be prepared as a qualified return. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties.

3. A returning bank agrees to handle a returned check if it—

a. Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

b. Handles a returned check for return that it did not handle for forward collection;

c. Agrees with the paying bank or returning bank to handle electronic returned checks sent by that bank; or

d. Otherwise agrees to handle a returned check.

4. Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but, unless the sending bank and returning bank agree otherwise, the cut-off hour for returned checks may not be earlier than 2 p.m. (local time of the returning bank). The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks.

5. Qualified returned checks.

a. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. The qualified returned check must include the routing number of the depositary bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100–140 for substitute checks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence or under § 229.34(d)(3) for breach of an encoding warranty.

6. Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depositary bank. (See UCC 4–202(c) regarding the responsibility of collecting banks.)

7. UCC sections affected. Section 229.32 directly affects UCC Section 4–214(a) and may affect other sections or provisions (See UCC 4–202(b)). Section 4–214(a) is affected in that settlement for returned checks is made under § 229.32(e) and not by charge-back of provisional credit.

B. 229.32(d) Notice in Lieu of Return

1. This paragraph is similar to § 229.31(f) and authorizes a returning bank to originate a notice in lieu of return if the returned check is unavailable for return. Notice in lieu of return is permitted only when a bank does not have and cannot obtain possession of the check (or when the bank must retain possession of the check for protest) and does not have sufficient information to create a substitute check. (See the commentary to § 229.31(f).)

C. 229.32(e) Settlement

1. Under the UCC, a paying bank settles with a presenting bank after the check is presented to the paying bank. The paying bank may recover the settlement when the paying bank returns the check to the presenting bank. Under this regulation, however, the paying bank may return the check directly to the depositary bank or through returning banks that did not handle the check for forward collection. On these more efficient return paths, the paying bank does not recover the settlement made to the presenting bank. Thus, this paragraph requires the returning bank to settle for a returned check (either with the paying bank or another returning bank) in the same way that it would settle for a similar check for forward collection. To achieve uniformity, this paragraph applies even if the returning bank handled the check for forward collection.

2. Any returning bank, including one that handled the check for forward collection, may provide availability for returned checks pursuant to an availability schedule as it does for forward collection checks. These settlements by returning banks, as well as settlements between banks made during the forward collection of a check, are considered final when made subject to any deferment of availability. (See § 229.36(d) and commentary to § 229.35(b).)

3. A returning bank may vary the settlement method it uses by agreement with paying banks or other returning banks. Special rules apply in the case of insolvency of banks. (See § 229.39.) If payment cannot be obtained from a depositary bank or returning bank because of its insolvency or otherwise, recovery can be had by returning banks, paying banks, and collecting banks from prior banks on this basis of the liability of prior banks under § 229.35(b).

4. This paragraph affects UCC 4–214(a) in that a paying bank or collecting bank does not ordinarily have a right to charge back against the bank from which it received the returned check, although it is entitled to settlement if it returns the returned check to that bank, and may affect other sections or provisions. Under § 229.36(d), a bank collecting a check remains liable to prior collecting banks and the depositary bank's customer under the UCC.

D. 229.32(f) Charges

1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

E. 229.32(g) Reliance on Routing Number

1. This paragraph is similar to § 229.31(i) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depositary bank's indorsement, or in the electronic returned check received by the returning bank pursuant to an agreement, or on qualified returned checks. (See the commentary to § 229.31(i).)

Alternative 2 for XVIII. Section 229.32 Returning Bank's Responsibility for Return of Checks

A. 229.32(a) Return of Checks

1. Routing of returned check.

a. Under § 229.32(a), the returning bank is authorized to route the returned check in a variety of ways:

i. It may send the returned check directly to the depositary bank by sending an electronic returned check directly to the depositary bank if the returning bank has an agreement with the depositary bank to do so, or by using a courier or other means of delivery; or

ii. It may send the returned check or electronic returned check to any returning bank agreeing to handle the returned check regardless of whether or not the returning bank handled the check for forward collection.

b. If the returning bank elects to send the returned check directly to the depositary bank, it is not required to send the check to the branch of the depositary bank that first handled the check. A paper returned check may be sent to the depositary bank at any physical location permitted under § 229.33(b).

2. Unidentifiable depositary bank.

a. Returning banks agreeing to handle checks for return to depositary banks under § 229.32(a) are expected to be expert in identifying depositary bank indorsements. In the limited cases where the returning bank cannot identify the depositary bank, if the returning bank did not handle the check for forward collection, it may send the returned check to any collecting bank that handled the check for forward collection.

b. If, on the other hand, the returning bank itself handled the check for forward collection, it may send the returned check to a collecting bank that was prior to it in the forward-collection process, which will be better able to identify the depositary bank. If there are no prior collecting banks, the returning bank must research the collection of the check and identify the depositary bank.

c. The returning bank's return of a check under this paragraph is subject to the requirement to use ordinary care under UCC 4–202(b). (See definition of returning bank in § 229.2(cc).)

d. As in the case of a paying bank returning a check under § 229.31(a)(2), a returning bank returning a check under § 229.32(a)(2) must advise the bank to which it sends the returned check that it is unable to identify the depositary bank. This advice must be conspicuous, such as a stamp on the check or a notice on the cash letter. The returned check may not be prepared as a qualified return. In the case of an electronic returned check, the advice requirement may be satisfied as agreed to by the parties.

3. A returning bank agrees to handle a returned check if it—

a. Publishes or distributes availability schedules for the return of returned checks and accepts the returned check for return;

b. Handles a returned check for return that it did not handle for forward collection;

c. Agrees with the paying bank or returning bank to handle electronic returned checks sent by that bank; or

d. Otherwise agrees to handle a returned check.

4. Cut-off hours. A returning bank may establish earlier cut-off hours for receipt of returned checks than for receipt of forward collection checks, but, unless the sending bank and returning bank agree otherwise, the cut-off hour for returned checks may not be earlier than 2 p.m. (local time of the returning bank). The returning bank also may set different sorting requirements for returned checks than those applicable to other checks. Thus, a returning bank may allow itself more processing time for returns than for forward collection checks.

5. Qualified returned checks.

a. A qualified returned check will be handled by subsequent returning banks more efficiently than a raw return. The qualified returned check must include the routing number of the depositary bank, the amount of the check, and a return identifier encoded on the check in magnetic ink. A check that is converted to a qualified returned check must be encoded in accordance with ANS X9.13 for original checks or ANS X9.100–140 for substitute checks. If the returning bank makes an encoding error in creating a qualified returned check, it may be liable under § 229.38 for losses caused by any negligence or under § 229.34(d)(3) for breach of an encoding warranty.

6. Responsibilities of returning bank. In meeting the requirements of this section, the returning bank is responsible for its own actions, but not those of the paying bank, other returning banks, or the depositary bank. (See UCC 4–202(c) regarding the responsibility of collecting banks.)

7. UCC sections affected. Section 229.32 directly affects UCC Section 4–214(a) and may affect other sections or provisions (See UCC 4–202(b)). Section 4–214(a) is affected in that settlement for returned checks is made under § 229.32(e) and not by charge-back of provisional credit.

B. 229.32(b) Expeditious Return of Checks

1. The standards for return of checks established by this section are similar to those for paying banks in § 229.31(b). This section requires a returning bank to return a returned check expeditiously, subject to the exceptions set forth in § 229.32(c). In effect, the returning bank is an agent or subagent of the paying bank and a subagent of the depositary bank for the purposes of returning the check.

2. A returning bank is subject to the expeditious return requirement with respect to a returned check if it—

a. Has an agreement to send electronic returned checks directly to the depositary bank, to another returning bank that has an agreement to send electronic returned checks to the depositary bank; or to another returning bank that otherwise agrees to handle the returned check expeditiously under § 229.32(b);

b. Publishes or distributes availability schedules for the expeditious return of returned checks to the depositary bank and accepts the returned check for return;

c. Agrees with the paying bank or returning bank to handle returned checks sent by that bank for expeditious return to certain depositary banks; or

d. Otherwise agrees to handle a returned check for expeditious return.

3. Two-day test. As in the case of a paying bank, a returning bank's return of a returned check is expeditious if it is sent in a manner such that the depositary bank would normally receive the returned check by 2 p.m. (local time of the depositary bank) of the second business day after the banking day on which the check was presented to the paying bank. Although a returning bank will not have firsthand knowledge of the day on which a check was presented to the paying bank, returning banks may, by agreement, allocate with paying banks liability for late return based on the delays caused by each.

4. *Example.* Returning Bank A does not have an agreement to send electronic returned checks to the depositary bank but has an agreement to send electronic returned checks to Returning Bank B, which, in turn, has an agreement to send electronic returned checks to the depositary bank. Under these facts, the returning bank would be subject to the expeditious return requirement under § 229.32(b). If a check is presented to the paying bank on Monday, the returning bank would need to send the returned check in a manner such that the depositary bank normally would receive the returned check by 2 p.m. (local time of the depositary bank) on Wednesday.

C. 229.32(c) Exceptions to the Expeditious Return Requirement

1. This paragraph sets forth the circumstances under which a returning bank is not required to return the check to the depositary bank in accordance with § 229.32(b).

2. *Example—No direct or indirect electronic return agreement.* The returning bank does not have an agreement to send electronic returned checks to the depositary bank. The returning bank also does not have an agreement to send electronic returned checks to any returning bank from which the depositary bank accepts electronic returned checks or to any returning bank that otherwise agrees to handle the return expeditious. Under these facts, the returning bank is not subject to the expeditious return requirement under § 229.32(b). The returning bank nonetheless is required to exercise ordinary care under UCC 4–202 when returning checks. (See definition of returning bank in § 229.2(cc).)

3. Depositary bank not subject to subpart B. This paragraph is similar to § 229.31(c)(2) and relieves a returning bank of its obligation to make expeditious return to a depositary bank that does not hold ''accounts'' under subpart B of this regulation or is not a ''depository institution'' within the meaning of the EFT Act. (See the commentary to § 229.31(b).)

4. Unidentifiable depositary bank

As in the case of paying banks under § 229.31(c), a returning bank that cannot identify the depositary bank is not subject to the expeditious return requirements of § 229.32(b).

D. 229.32(f) Charges

1. This paragraph permits any returning bank, even one that handled the check for forward collection, to impose a fee on the paying bank or other returning bank for its service in handling a returned check. Where a claim is made under § 229.35(b), the bank on which the claim is made is not authorized by this paragraph to impose a charge for taking up a check. This paragraph preempts state laws to the extent that these laws prevent returning banks from charging fees for handling returned checks.

E. 229.32(g) Reliance on Routing Number

1. This paragraph is similar to § 229.31(i) and permits a returning bank to rely on routing numbers appearing on a returned check such as routing numbers in the depositary bank's indorsement, or in the electronic returned check received by the returning bank pursuant to an agreement, or on qualified returned checks. (See the commentary to § 229.31(i).)

XIX. Section 229.33 Depositary Bank's Responsibility for Returned Checks and Notices of Nonpayment

Alternative 1 for XIX. Section 229.33 Depositary Bank's Responsibility for Returned Checks and Notices of Nonpayment

A. 229.33(a) Acceptance of Electronic Returned Checks and Electronic Notices of Nonpayment

1. A depositary bank may agree directly with a returning bank or a paying bank (or through clearinghouse rules) to accept electronic returned checks. Likewise, a depositary bank may agree directly with a

paying bank (or through clearinghouse rules) to accept electronic written notices of nonpayment. (See §§ 229.2(ggg), 229.30(b), and 229.31(d) and commentary thereto.) The depositary bank's acceptance of electronic returned checks and electronic written notices of nonpayment is governed by the depositary bank's agreement with the banks sending the electronic returned check or electronic written notice of nonpayment to the depositary bank (or through the applicable clearinghouse rules). The agreement normally would specify the electronic address or receipt point at which the depositary bank accepts returned checks and written notices of nonpayment electronically, as well as what constitutes receipt of the returned checks and written notices of nonpayment. The agreement also may specify whether electronic returned checks must be separated from electronic checks sent for forward collection.

B. 229.33(b) Acceptance of Paper Returned Checks and Paper Notices of Nonpayment

1. This paragraph states where the depositary bank is required to accept paper returned checks and paper notices of nonpayment during its banking day. (These locations differ from locations at which a depositary bank must accept oral notices or electronic notices. *See* § 229.33(c) and commentary thereto). This paragraph is derived from UCC 3–111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depositary bank does not print the check and can only specify the place of ''payment'' of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depositary bank must accept paper returned checks and paper notices of nonpayment:

a. The depositary bank must accept paper returned checks and paper notices of nonpayment at any location at which it requests presentment of forward collection paper checks, such as a processing center. A depositary bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b. i. If the depositary bank indorsement states the name and address of the depositary bank, it must accept paper returned checks and paper notices of nonpayment at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depositary bank must accept paper returned checks and paper notices of nonpayment at any branch or head office consistent with the address. If, for example, the address is ''New York, New York,'' each branch in New York City must accept paper returned checks and paper notices of nonpayment. Accordingly, a depositary bank may limit the locations at which it must accept paper returned checks and paper notices of nonpayment by specifying a branch or head office in its indorsement.

ii. If no address appears in the depositary bank's indorsement, the depositary bank must accept paper returned checks and paper notices of nonpayment at any branch or head office associated with the depositary bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers,* published by an agent of the American Bankers Association, which lists a city and state address for each routing number.

iii. If no routing number or address appears in its indorsement, the depositary bank must accept a paper returned check at any branch or head office of the bank. Section 229.35 and applicable industry standards require that the indorsement contain a routing number, a name, and a location. Consequently paragraphs (b)(1)(ii)(B) and (C) of this section apply only where the depositary bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depositary bank may require that returning banks or paying banks returning checks to it separate returned checks from forward collection checks being presented.

4. In general, banks may vary by agreement the location at which notices are received.

C. 229.33(c) Acceptance of Oral Notices of Nonpayment

1. In the case of telephone notices, the depositary bank may not refuse to accept notices at the telephone numbers identified in this section, but may transfer calls or use a recording device.

D. 229.33(d) Payment

1. As discussed in the commentary to § 229.32(e), under this regulation a paying bank or returning bank does not obtain credit for a returned check by charge-back but by, in effect, ''presenting'' the returned check to the depositary bank. This paragraph imposes an obligation to ''pay'' a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depositary bank may not return a returned check for which it is the depositary bank. Also, certain means of payment, such as remittance drafts, may be used only by agreement.

2. The depositary bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to UCC 4–108, which permits the bank to establish a cut-off hour, generally not earlier than 2 p.m. (local time of the depositary bank), and treat checks received after that hour as being received on the next banking day. If the depositary bank is unable to make payment to a returning bank or paying bank on the banking day that it receives the returned check, because the returning bank or paying bank is closed for a holiday or because the time when the depositary bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.

3. Payment must be made so that the funds are available for use by the bank returning the check to the depositary bank on the day the check is received by the depositary bank. For example, a depositary bank meets this requirement if it sends a wire transfer to the returning bank or paying bank on the day it receives the returned check, even if the returning bank or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depositary bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

5. The bank sending the returned check to the depositary bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning bank or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depositary bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.19(c)(2)(ii), 229.33(g), and 229.35(b).)

E. 229.33(e) Misrouted Returned Checks and Written Notices of Nonpayment

1. This paragraph permits a bank receiving a check or written notice of nonpayment (either in paper form or electronic form) on the basis that it is the depositary bank to send the misrouted returned check or written notice of nonpayment to the correct depositary bank, if it can identify the correct depositary bank, either directly or through a returning bank agreeing to handle the check or written notice of nonpayment. When sending a returned check under this paragraph, the bank receiving the misrouted check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check or written notice of nonpayment must send the check or notice back to the bank from which it was received.

2. In sending a misrouted returned check, the bank to which the returned check was misrouted (the incorrect depositary bank) could receive settlement from the bank to which it sends the misrouted check under § 229.33(e) (the correct depositary bank, a returning bank that agrees to handle it, or the bank from which the misrouted check was received). The correct depositary bank would be required to pay for the returned check under § 229.33(d), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.32(e). The bank to which the returned check was misrouted is required to act promptly, i.e., within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

F. 229.33(f) Charges

1. This paragraph prohibits a depositary bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depositary bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depositary bank, however, no fee may be charged.

G. 229.33(g) Notification to Customer

1. This paragraph requires a depositary bank to notify its customer of nonpayment upon receipt of a returned check or notice of nonpayment. Notice also must be given if a depositary bank receives a notice of recovery under § 229.35(b). A bank that chooses to provide the notice required by § 229.33(g) in writing may send the notice by email or facsimile if the bank sends the notice to the email address or facsimile number specified by the customer for that purpose. The notice to the customer required under this paragraph also may satisfy the notice requirement of § 229.13(g) if the depositary bank invokes the reasonable-cause exception of § 229.13(e) due to the receipt of a notice of nonpayment, provided the notice meets all the requirements of § 229.13(g).

Alternative 2 for XIX. Section 229.33 Depositary Bank's Responsibility for Returned Checks and Notices of Nonpayment

A. 229.33(a) Acceptance of Electronic Returned Checks

The depositary bank's acceptance of electronic returned checks is governed by the depositary bank's agreement with the banks sending the electronic returned check or electronic written notice of nonpayment to the depositary bank (or through the applicable clearinghouse rules). The agreement normally would specify the electronic address or receipt point at which the depositary bank accepts returned checks electronically, as well as what constitutes receipt of the returned checks. The agreement also may specify whether electronic returned checks must be separated from electronic checks sent for forward collection.

B. 229.33(b) Acceptance of Paper Returned Checks

This paragraph states where the depositary bank is required to accept paper returned checks during its banking day. This paragraph is derived from UCC 3–111, which specifies that presentment for payment may be made at the place specified in the instrument or, if there is none, at the place of business of the party to pay. In the case of returned checks, the depositary bank does not print the check and can only specify the place of ''payment'' of the returned check in its indorsement.

2. The paragraph specifies four locations at which the depositary bank must accept paper returned checks:

a. The depositary bank must accept paper returned checks at any location at which it requests presentment of forward collection paper checks, such as a processing center. A depositary bank does not request presentment of forward collection checks at a branch of the bank merely by paying checks presented over the counter.

b. i. If the depositary bank indorsement states the name and address of the depositary bank, it must accept paper returned checks at the branch, head office, or other location, such as a processing center, indicated by the address. If the address is too general to identify a particular location, then the depositary bank must accept paper returned checks at any branch or head office consistent with the address. If, for example, the address is ''New York, New York,'' each branch in New York City must accept paper returned checks. Accordingly, a depositary bank may limit the locations at which it must accept paper returned checks by specifying a branch or head office in its indorsement.

ii. If no address appears in the depositary bank's indorsement, the depositary bank must accept paper returned checks at any branch or head office associated with the depositary bank's routing number. The offices associated with the routing number of a bank are found in *American Bankers Association Key to Routing Numbers,* published by an agent of the American Bankers Association, which lists a city and state address for each routing number.

iii. If no routing number or address appears in its indorsement, the depositary bank must accept a paper returned check at any branch or head office of the bank. Section 229.35 and applicable industry standards require that the indorsement contain a routing number, a name, and a location. Consequently paragraphs (b)(1)(ii)(B) and (C) of this section apply only where the depositary bank has failed to comply with the indorsement requirement.

3. For ease of processing, a depositary bank may require that returning banks or paying banks returning checks to it separate returned checks from forward collection checks being presented.

C. 229.33(d) Payment

1. As discussed in the commentary to § 229.32(c), under this regulation a paying bank or returning bank does not obtain credit for a returned check by charge-back but by, in effect, ''presenting'' the returned check to the depositary bank. This paragraph imposes an obligation to ''pay'' a returned check that is similar to the obligation to pay a forward collection check by a paying bank, except that the depositary bank may not return a returned check for which it is the depositary bank. Also, certain means of payment, such as remittance drafts, may be used only by agreement.

2. The depositary bank must pay for a returned check by the close of the banking day on which it received the returned check. The day on which a returned check is received is determined pursuant to UCC 4–108, which permits the bank to establish a cut-off hour, generally not earlier than 2 p.m. (local time of the depositary bank), and treat checks received after that hour as being received on the next banking day. If the depositary bank is unable to make payment to a returning bank or paying bank on the banking day that it receives the returned check, because the returning bank or paying bank is closed for a holiday or because the time when the depositary bank received the check is after the close of Fedwire, e.g., west coast banks with late cut-off hours, payment may be made on the next banking day of the bank receiving payment.

3. Payment must be made so that the funds are available for use by the bank returning the check to the depositary bank on the day the check is received by the depositary bank. For example, a depositary bank meets this requirement if it sends a wire transfer to the returning bank or paying bank on the day it receives the returned check, even if the returning bank or paying bank has closed for the day. A wire transfer should indicate the purpose of the payment.

4. The depositary bank may use a net settlement arrangement to settle for a returned check. Banks with net settlement agreements could net the appropriate credits and debits for returned checks with the accounting entries for forward collection checks if they so desired. If, for purposes of establishing additional controls or for other reasons, the banks involved desired a separate settlement for returned checks, a separate net settlement agreement could be established.

5. The bank sending the returned check to the depositary bank may agree to accept payment at a later date if, for example, it does not believe that the amount of the returned check or checks warrants the costs of same-day payment. Thus, a returning bank or paying bank may agree to accept payment through an ACH credit or debit transfer that settles the day after the returned check is received instead of a wire transfer that settles on the same day.

6. This paragraph and this subpart do not affect the depositary bank's right to recover a provisional settlement with its nonbank customer for a check that is returned. (See also §§ 229.19(c)(2)(ii), 229.33(g), and 229.35(b).)

E. 229.33(e) Misrouted Returned Checks

1. This paragraph permits a bank receiving a check (either in paper form or electronic form) on the basis that it is the depositary bank to send the misrouted returned check to the correct depositary bank, if it can identify the correct depositary bank, either directly or through a returning bank agreeing to handle the check. When sending a returned check under this paragraph, the bank receiving the misrouted check is acting as a returning bank. Alternatively, the bank receiving the misrouted returned check must send the check back to the bank from which it was received.

2. In sending a misrouted returned check, the bank to which the returned check was misrouted (the incorrect depositary bank) could receive settlement from the bank to which it sends the misrouted check under § 229.33(e) (the correct depositary bank, a returning bank that agrees to handle it, or the bank from which the misrouted check was received). The correct depositary bank would

be required to pay for the returned check under § 229.33(d), and any other bank to which the check is sent under this paragraph would be required to settle for the check as a returning bank under § 229.32(e). The bank to which the returned check was misrouted is required to act promptly, i.e., within its midnight deadline. This paragraph does not affect a bank's duties under § 229.35(b).

F. 229.33(f) Charges

1. This paragraph prohibits a depositary bank from charging the equivalent of a presentment fee for returned checks. A returning bank, however, may charge a fee for handling returned checks. If the returning bank receives a mixed cash letter of returned checks, which includes some checks for which the returning bank also is the depositary bank, the fee may be applied to all the returned checks in the cash letter. In the case of a sorted cash letter containing only returned checks for which the returning bank is the depositary bank, however, no fee may be charged.

G. 229.33(g) Notification to Customer

1. This paragraph requires a depositary bank to notify its customer of nonpayment upon receipt of a returned check. Notice also must be given if a depositary bank receives a notice of recovery under § 229.35(b). A bank that chooses to provide the notice required by § 229.33(g) in writing may send the notice by email or facsimile if the bank sends the notice to the email address or facsimile number specified by the customer for that purpose.

XX. Section 229.34 Warranties and Indemnities

Alternative 1 for XX. Section 229.34 Warranties and Indemnities

A. 229.34(a) Warranties With Respect to Electronic Checks and Electronic Returned Checks

1. Paragraph (a) of § 229.34 sets forth the warranties that a bank makes when transferring or presenting an electronic check or electronic returned check and receiving settlement or other consideration for it. Electronic checks and electronic returned checks sent pursuant to an agreement with the receiving bank are treated as checks subject to subpart C. Therefore, the warranties in § 229.34(a) are in addition to any warranties a bank makes under paragraphs (c), (d), (e), and (f) with respect to an electronic check or electronic returned check. For example, a bank that transfers and receives consideration for an electronic check that is derived from a remotely created check warrants that the remotely created check from which the electronic check is derived is authorized by the person on whose account the check is drawn.

2. The warranties in § 229.34(a)(1) relate to a subsequent bank's ability to create a substitute check. This paragraph provides a bank that creates a substitute check from an electronic check or electronic returned check with a warranty claim against any prior bank that transferred the electronic check or electronic returned check. The warranties in this paragraph correspond to the warranties made by a bank that transfers, presents, or returns a substitute check (a paper or electronic representation of a substitute check) for which it receives consideration. (*See* § 229.52 and commentary thereto). A bank that transfers an electronic check or electronic returned check that is an electronic representation of a substitute check also makes the warranties and indemnities in §§ 229.52 and 229.53.

3. By agreement, a sending and receiving bank may vary the warranties the sending bank makes to the receiving bank for electronic images of or electronic information related to checks, for example, to provide that the bank transferring the check does not warrant that the electronic image or information is sufficient for creating a substitute check. (See § 229.37(a)). The variation by agreement, however, would not affect the rights of banks and persons that are not bound by the agreement.

B. 229.34(b) Indemnity With Respect to an Electronic Image or Electronic Information Not Derived From a Paper Check

1. As a practical matter a bank receiving an electronic image generally cannot distinguish an image that is derived from a paper check from an image that was not derived from a paper check (an electronically-created item). Nonetheless, the bank receiving the electronically-created item often handles the electronically-created image as if it were derived from a paper check. The indemnity in § 229.34(b) enables a bank that receives the electronically-created item to be compensated for losses the bank incurs due to the fact that the electronic image was not derived from a paper check. (*See* § 229.34(i) and commentary thereto).

Examples.

a. A bank receives an electronic image of and electronic information related to an electronically-created item and, in turn, produces a paper item that is indistinguishable from a substitute check. The paper item is not a substitute check because the item is not derived from an original, paper check. That bank may incur a loss because it cannot produce the legal equivalent of a check (*See* § 229.53 and commentary thereto). The indemnity in § 229.34(b) enables a bank that received the electronically-created item to recover from the bank sending the check for the amount of the loss permitted under § 229.34(i).

b. A paying bank pays an electronically-created item, which the paying bank's customer subsequently claims is unauthorized. The paying bank may incur liability on the item due to the fact the item is electronically created and not derived from a paper check. For example, the paying bank may have no means of disputing the customer's claim without examining the physical check, which does not exist. The indemnity in § 229.34(b) enables the paying bank to recover from the presenting bank or any prior transferor bank for the amount of its loss, as permitted under § 229.34(i), due to receiving the electronically-created item.

C. 229.34(c) Transfer and Presentment Warranties With Respect to a Remotely Created Check

1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depositary bank. The depositary bank cannot assert the transfer and presentment warranties against a depositor. However, a depositary bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The transfer and presentment warranties shift liability to the depositary bank only when the remotely created check is unauthorized, and would not apply when the customer initially authorizes a check but then experiences ''buyer's remorse'' and subsequently tries to revoke the authorization by asserting a claim against the paying bank under UCC 4–401. If the depositary bank suspects ''buyer's remorse,'' it may obtain from its customer the express verifiable authorization of the check by the paying bank's customer and use that authorization as a defense to the warranty claim.

3. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding UCC warranty provisions in two respects. The UCC warranties differ from the § 229.34(c) warranties in that they are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under § 229.34(c). In addition, the UCC warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The § 229.34(c) warranties specifically cover the amount as well as the payee stated on the check. Neither the UCC warranties, nor the § 229.34(c) warranties, apply to the date stated on the remotely created check.

4. A bank making the § 229.34(c) warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by UCC 4–406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

5. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been converted to an electronic check or reconverted to a substitute check.

D. 229.34(d) Settlement Amount, Encoding, and Offset Warranties

1. Paragraph (d)(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter or in the electronic cash letter file)

equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under UCC 4–301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting bank, returning bank, or depositary bank, the transferor bank is not required to demand settlement, as is required upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing or cash letter control record) that will indicate the total of the checks or returned checks. Paragraph (d)(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (i.e., equals the actual total of the items).

3. Paragraph (d)(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of information encoded regarding the check after issue, and that exists at the time of presentment or transfer, to any bank that subsequently handles the check or returned check. Paragraph (d)(3) applies to all MICR-line encoding on a paper check, substitute check, or contained in an electronic check or electronic returned check. Under UCC 4–209(a), only the encoder (or the encoder and the depositary bank, if the encoder is a customer of the depositary bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph (d)(3) expands on the UCC by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the UCC, the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (d)(3) provides that the warranty is made to banks in the return chain as well.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (d)(1) (which would require the paying bank to show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph (d)(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (d)(4) provides that a paying bank or a depositary bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depositary bank) subsequent to the excess settlement.

E. 229.34(e) Returned Check Warranties

1. This paragraph includes warranties that a returned check, including a notice in lieu of return and electronic returned check, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC (subject to any claims or defenses under the UCC, such as breach of a presentment warranty) or § 229.31(e); that the paying bank or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the check has not been and will not be returned for payment. (See the commentary to § 229.31(f).) These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See § 229.42.)

F. 229.34(f) Notice of Nonpayment Warranties

1. This paragraph sets forth warranties for notices of nonpayment. This warranty does not include a warranty that the notice is accurate and timely under § 229.31(d). The requirements of § 229.31(d) that are not covered by the warranty are subject to the liability provisions of § 229.38. These warranties are designed to protect depositary banks that rely on notices of nonpayment. This paragraph imposes liability on a paying bank that gives notice of nonpayment and then subsequently returns the check. (See commentary on § 229.31(d).)

G. 229.34(g) Truncating Bank Indemnity

1. This indemnity provides for a depositary bank's potential liability when it permits a customer to truncate checks and deposit an electronic image of the original check instead of the original check. Because the depositary bank's customer retains the original check, that customer might, intentionally or mistakenly, deposit the original check in another depositary bank. The depositary bank that accepts the original check, in turn, may make funds available to the customer before it learns that the check is being returned unpaid and, in some cases, may be unable to recover the funds from its customer. Section 229.34(k) provides the depositary bank that accepts the original check for deposit with a claim against the depositary bank that permitted its customer to truncate the original check, did not receive the original check, receives settlement or other consideration for the check, and does not receive a return of the check unpaid. This claim exists only if the check is returned to the depositary bank that accepted the original check due to the fact that the check had already been paid.

Examples.

a. Depositary Bank A offers its customers a remote deposit capture service that permits customers to take pictures of the front and back of their checks and send the image to the bank for deposit. Depositary Bank A accepts an image of the check from its customer and sends an electronic check for collection to Paying Bank. Paying Bank, in turn, pays the check. Depositary Bank A receives settlement for the check. The same customer who sent Depositary Bank A the electronic image of the check then deposits the original check in Depositary Bank B. Depositary Bank B sends the original check (or a substitute check or electronic check) for collection and makes funds from the deposited check available to its customer. The customer withdraws the funds. Paying Bank returns the check to Depositary Bank B indicating that the check already had been paid. Depositary Bank B may be unable to charge back funds from its customer's account. Depositary Bank B may make an indemnity claim against Depositary Bank A for the amount of the funds Depositary Bank B is unable to recover from its customer.

b. The facts are the same as above with respect to Depositary Bank A; however, Depositary Bank B also offers a remote deposit capture service to its customer. The customer uses Depositary Bank B's remote deposit capture service to send an electronic image of the front and back of the check, after sending the same image to Depositary Bank A. The customer also deposits the original check into Depositary Bank C. Paying Bank pays the check based on the image presented by Depositary Bank A, and Depositary Bank A receives settlement for the check without the check being returned unpaid to it. Paying Bank returns the checks presented by Depositary Bank B and Depositary Bank C. Neither Depositary Bank B nor Depositary Bank C can recover the funds from the deposited check from the customer. Depositary Bank B does not have an indemnity claim against Depositary Bank A because Depositary Bank B did not receive the original check for deposit. Depositary Bank C, however, would be able to bring an indemnity claim against Depositary Bank A or Depositary Bank B.

2. A depositary bank may, by agreement, allocate liability for loss incurred from subsequent deposit of the original check to its customer that sent the electronic check related to the original check to the depositary bank.

H. 229.34(h) Damages

1. This paragraph adopts for the warranties in § 229.34(a), (c), (d), (e), and (f) the damages provided in UCC 4–207(c) and 4A–506(b). (See definition of interest compensation in § 229.2(oo).)

I. 229.34(i) Indemnity Amounts

1. This paragraph adopts for the amount of the indemnities provided for in §§ 229.34(b) and (g) an amount comparable to the damages provided in § 229.53(b)(1)(ii) of subpart D of this regulation.

2. The amount of an indemnity would be reduced in proportion to the amount of any loss attributable to the indemnified person's negligence or bad faith. This comparative-negligence standard is intended to allocate liability in the same manner as the comparative negligence provision of § 229.38(c).

J. 229.34(j) Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of UCC 3–119.

K. 229.34(k) Notice of Claim

1. This paragraph adopts the notice provisions of UCC sections 4–207(d) and 4–208(e). The time limit set forth in this

paragraph applies to notices of claims for warranty breaches and for indemnities. As provided in § 229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

Alternative 2 for XX. Section 229.34 Warranties and Indemnities

A. 229.34(a) Warranties With Respect to Electronic Checks and Electronic Returned Checks

1. Paragraph (a) of § 229.34 sets forth the warranties that a bank makes when transferring or presenting an electronic check or electronic returned check and receiving settlement or other consideration for it. Electronic checks and electronic returned checks sent pursuant to an agreement with the receiving bank are treated as checks subject to subpart C. Therefore, the warranties in § 229.34(a) are in addition to any warranties a bank makes under paragraphs (c), (d), (e), and (f) with respect to an electronic check or electronic returned check. For example, a bank that transfers and receives consideration for an electronic check that is derived from a remotely created check warrants that the remotely created check from which the electronic check is derived is authorized by the person on whose account the check is drawn.

2. The warranties in § 229.34(a)(1) relate to a subsequent bank's ability to create a substitute check. This paragraph provides a bank that creates a substitute check from an electronic check or electronic returned check with a warranty claim against any prior bank that transferred the electronic check or electronic returned check. The warranties in this paragraph correspond to the warranties made by a bank that transfers, presents, or returns a substitute check (a paper or electronic representation of a substitute check) for which it receives consideration. (*See* § 229.52 and commentary thereto). A bank that transfers an electronic check or electronic returned check that is an electronic representation of a substitute check also makes the warranties and indemnities in §§ 229.52 and 229.53.

3. By agreement, a sending and receiving bank may vary the warranties the sending bank makes to the receiving bank for electronic images of or electronic information related to checks, for example, to provide that the bank transferring the check does not warrant that the electronic image or information is sufficient for creating a substitute check. (See § 229.37(a)). The variation by agreement, however, would not affect the rights of banks and persons that are not bound by the agreement.

B. 229.34(b) Indemnity With Respect to an Electronic Image or Electronic Information Not Derived from a Paper Check

1. As a practical matter a bank receiving an electronic image generally cannot distinguish an image that is derived from a paper check from an image that was not derived from a paper check (an electronically-created item). Nonetheless, the bank receiving the electronically-created item often handles the electronically-created image as if it were derived from a paper check. The indemnity in § 229.34(b) enables a bank that receives the electronically-created item to be compensated for losses the bank incurs due to the fact that the electronic image was not derived from a paper check. (*See* § 229.34(i) and commentary thereto).

Examples.

a. A bank receives an electronic image of and electronic information related to an electronically-created item and, in turn, produces a paper item that is indistinguishable from a substitute check. The paper item is not a substitute check because the item is not derived from an original, paper check. That bank may incur a loss because it cannot produce the legal equivalent of a check (*See* § 229.53 and commentary thereto). The indemnity in § 229.34(b) enables a bank that received the electronically-created item to recover from the bank sending the check for the amount of the loss permitted under § 229.34(i).

b. A paying bank pays an electronically-created item, which the paying bank's customer subsequently claims is unauthorized. The paying bank may incur liability on the item due to the fact the item is electronically created and not derived from a paper check. For example, the paying bank may have no means of disputing the customer's claim without examining the physical check, which does not exist. The indemnity in § 229.34(b) enables the paying bank to recover from the presenting bank or any prior transferor bank for the amount of its loss, as permitted under § 229.34(i), due to receiving the electronically-created item.

C. 229.34(c) Transfer and Presentment Warranties With Respect to a Remotely Created Check

1. A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants that the person on whose account the check is drawn authorized the issuance of the check in the amount stated on the check and to the payee stated on the check. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depositary bank. The depositary bank cannot assert the transfer and presentment warranties against a depositor. However, a depositary bank may, by agreement, allocate liability for such an item to the depositor and also may have a claim under other laws against that person.

2. The transfer and presentment warranties shift liability to the depositary bank only when the remotely created check is unauthorized, and would not apply when the customer initially authorizes a check but then experiences ''buyer's remorse'' and subsequently tries to revoke the authorization by asserting a claim against the paying bank under UCC 4–401. If the depositary bank suspects ''buyer's remorse,'' it may obtain from its customer the express verifiable authorization of the check by the paying bank's customer and use that authorization as a defense to the warranty claim.

3. The scope of the transfer and presentment warranties for remotely created checks differs from that of the corresponding UCC warranty provisions in two respects. The UCC warranties differ from the § 229.34(c) warranties in that they are given by any person, including a nonbank depositor, that transfers a remotely created check and not just to a bank, as is the case under § 229.34(c). In addition, the UCC warranties state that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. The § 229.34(c) warranties specifically cover the amount as well as the payee stated on the check. Neither the UCC warranties, nor the § 229.34(c) warranties, apply to the date stated on the remotely created check.

4. A bank making the § 229.34(c) warranties may defend a claim asserting violation of the warranties by proving that the customer of the paying bank is precluded by UCC 4–406 from making a claim against the paying bank. This may be the case, for example, if the customer failed to discover the unauthorized remotely created check in a timely manner.

5. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been converted to an electronic check or reconverted to a substitute check.

D. 229.34(d) Settlement Amount, Encoding, and Offset Warranties

1. Paragraph (d)(1) provides that a bank that presents and receives settlement for checks warrants to the paying bank that the settlement it demands (e.g., as noted on the cash letter or in the electronic cash letter file) equals the total amount of the checks it presents. This paragraph gives the paying bank a warranty claim against the presenting bank for the amount of any excess settlement made on the basis of the amount demanded, plus expenses. If the amount demanded is understated, a paying bank discharges its settlement obligation under UCC 4–301 by paying the amount demanded, but remains liable for the amount by which the demand is understated; the presenting bank is nevertheless liable for expenses in resolving the adjustment.

2. When checks or returned checks are transferred to a collecting bank, returning bank, or depositary bank, the transferor bank is not required to demand settlement, as is required upon presentment to the paying bank. However, often the checks or returned checks will be accompanied by information (such as a cash letter listing or cash letter control record) that will indicate the total of the checks or returned checks. Paragraph (d)(2) provides that if the transferor bank includes information indicating the total amount of checks or returned checks transferred, it warrants that the information is correct (i.e., equals the actual total of the items).

3. Paragraph (d)(3) provides that a bank that presents or transfers a check or returned check warrants the accuracy of information encoded regarding the check after issue, and that exists at the time of presentment or transfer, to any bank that subsequently handles the check or returned check. Paragraph (d)(3) applies to all MICR-line encoding on a paper check, substitute check,

or contained in an electronic check or electronic returned check. Under UCC 4–209(a), only the encoder (or the encoder and the depositary bank, if the encoder is a customer of the depositary bank) warrants the encoding accuracy, thus any claims on the warranty must be directed to the encoder. Paragraph (d)(3) expands on the UCC by providing that all banks that transfer or present a check or returned check make the encoding warranty. In addition, under the UCC, the encoder makes the warranty to subsequent collecting banks and the paying bank, while paragraph (d)(3) provides that the warranty is made to banks in the return chain as well.

4. A paying bank that settles for an overstated cash letter because of a misencoded check may make a warranty claim against the presenting bank under paragraph (d)(1) (which would require the paying bank to show that the check was part of the overstated cash letter) or an encoding warranty claim under paragraph (d)(3) against the presenting bank or any preceding bank that handled the misencoded check.

5. Paragraph (d)(4) provides that a paying bank or a depositary bank may set off excess settlement paid to another bank against settlement owed to that bank for checks presented or returned checks received (for which it is the depositary bank) subsequent to the excess settlement.

E. 229.34(e) Returned Check Warranties

1. This paragraph includes warranties that a returned check, including a notice in lieu of return and electronic returned check, was returned by the paying bank, or in the case of a check payable by a bank and payable through another bank, the bank by which the check is payable, within the deadline under the UCC (subject to any claims or defenses under the UCC, such as breach of a presentment warranty) or § 229.31(e); that the paying bank or returning bank is authorized to return the check; that the returned check has not been materially altered; and that, in the case of a notice in lieu of return, the check has not been and will not be returned for payment. (See the commentary to § 229.31(c).) These warranties do not apply to checks drawn on the United States Treasury, to U.S. Postal Service money orders, or to checks drawn on a state or a unit of general local government that are not payable through or at a bank. (See § 229.42.)

F. 229.34(g) Truncating Bank Indemnity

1. This indemnity provides for a depositary bank's potential liability when it permits a customer to truncate checks and deposit an electronic image of the original check instead of the original check. Because the depositary bank's customer retains the original check, that customer might, intentionally or mistakenly, deposit the original check in another depositary bank. The depositary bank that accepts the original check, in turn, may make funds available to the customer before it learns that the check is being returned unpaid and, in some cases, may be unable to recover the funds from its customer. Section 229.34(g) provides the depositary bank that accepts the original check for deposit with a claim against the depositary bank that permitted its customer to truncate the original check, did not receive the original check, receives settlement or other consideration for the check, and does not receive a return of the check unpaid. This claim exists only if the check is returned to the depositary bank that accepted the original check due to the fact that the check had already been paid.

Examples.

a. Depositary Bank A offers its customers a remote deposit capture service that permits customers to take pictures of the front and back of their checks and send the image to the bank for deposit. Depositary Bank A accepts an image of the check from its customer and sends an electronic check for collection to Paying Bank. Paying Bank, in turn, pays the check. Depositary Bank A receives settlement for the check. The same customer who sent Depositary Bank A the electronic image of the check then deposits the original check in Depositary Bank B. Depositary Bank B sends the original check (or a substitute check or electronic check) for collection and makes funds from the deposited check available to its customer. The customer withdraws the funds. Paying Bank returns the check to Depositary Bank B indicating that the check already had been paid. Depositary Bank B may be unable to charge back funds from its customer's account. Depositary Bank B may make an indemnity claim against Depositary Bank A for the amount of the funds Depositary Bank B is unable to recover from its customer.

b. The facts are the same as above with respect to Depositary Bank A; however, Depositary Bank B also offers a remote deposit capture service to its customer. The customer uses Depositary Bank B's remote deposit capture service to send an electronic image of the front and back of the check, after sending the same image to Depositary Bank A. The customer also deposits the original check into Depositary Bank C. Paying Bank pays the check based on the image presented by Depositary Bank A, and Depositary Bank A receives settlement for the check without the check being returned unpaid to it. Paying Bank returns the checks presented by Depositary Bank B and Depositary Bank C. Neither Depositary Bank B nor Depositary Bank C can recover the funds from the deposited check from the customer. Depositary Bank B does not have an indemnity claim against Depositary Bank A because Depositary Bank B did not receive the original check for deposit. Depositary Bank C, however, would be able to bring an indemnity claim against Depositary Bank A or Depositary Bank B.

2. A depositary bank may, by agreement, allocate liability for loss incurred from subsequent deposit of the original check to its customer that sent the electronic check related to the original check to the depositary bank.

G. 229.34(h) Damages

1. This paragraph adopts for the warranties in § 229.34(a), (c), (d), (e), and (f) the damages provided in UCC 4–207(c) and 4A–506(b). (See definition of interest compensation in § 229.2(oo).)

H. 229.34(i) Indemnity Amounts

1. This paragraph adopts for the amount of the indemnities provided for in § 229.34(b) and (g) an amount comparable to the damages provided in § 229.53(b)(1)(ii) of subpart D of this regulation.

2. The amount of an indemnity would be reduced in proportion to the amount of any loss attributable to the indemnified person's negligence or bad faith. This comparative-negligence standard is intended to allocate liability in the same manner as the comparative negligence provision of § 229.38(c).

I. 229.34(j) Tender of Defense

1. This paragraph adopts for this regulation the vouching-in provisions of UCC 3–119.

J. 229.34(k) Notice of Claim

1. This paragraph adopts the notice provisions of UCC sections 4–207(d) and 4–208(e). The time limit set forth in this paragraph applies to notices of claims for warranty breaches and for indemnities. As provided in § 229.38(g), all actions under this section must be brought within one year after the date of the occurrence of the violation involved.

XXI. Section 229.35 Indorsements

A. 229.35(a) Indorsement Standards

1. This section requires banks to use a standard form of indorsement when indorsing checks during the forward collection and return process. It is designed to facilitate the identification of the depositary bank and the prompt return of checks. The indorsement standard a bank must use depends on the type of check being indorsed. A bank must indorse paper checks in accordance with ANS X9.100–111. At the time a reconverting bank creates a substitute check it must apply indorsements to the check in accordance with ANS X9.100–140. For electronic checks, banks must apply indorsements in accordance ANS X9.100–187. The Board, however, may by rule or order determine that different standards apply.

2. The parties sending and receiving a check may agree that different indorsement standards will apply to such checks. For example, although ANS X9.100–187 is an industry standard for banks' exchange of electronic checks, the parties may agree to send and receive electronic checks that conform to a different standard.

3. Banks generally apply indorsements to a paper check in one of two ways: (1) in accordance with ANS X9.100–111, banks print or ''spray'' indorsements onto a check when the check is processed through the banks' automated check sorters (regardless of whether the checks are original checks or substitute checks), and (2) in accordance with ANS X9.100–140, reconverting banks print or ''overlay'' previously applied electronic indorsements and their own indorsements and identifications onto a substitute check at the time that the substitute check is created. If a subsequent substitute check is created in the course of collection or return, that substitute check will contain, in its image of the back of the previous substitute check, reproductions of

indorsements that were sprayed or overlaid onto the previous item.

4. A bank might use check-processing equipment that captures an image of a check prior to spraying an indorsement onto that item. If the bank truncates that item, it should ensure that it also applies an indorsement to the item electronically. A reconverting bank satisfies its obligation to preserve all previously applied indorsements by overlaying a bank's indorsement that previously was applied electronically onto a substitute check that the reconverting bank creates. (See commentary to § 229.51(b)).

5. A depositary bank may want to include an address in its indorsement in order to limit the number of locations at which it must receive paper returned checks and paper notices of nonpayment. Banks should note, however, that § 229.33(b) requires a depositary bank to receive paper returned checks at the location(s) at which it receives paper forward-collection checks, as well as the other locations enumerated in § 229.33(b). (See § 229.33(b) and commentary thereto.)

6. Under the UCC, a specific guarantee of prior indorsement is not necessary. (See UCC 4–207(a) and 4–208(a).) Use of guarantee language in indorsements, such as ''P.E.G.'' (''prior endorsements guaranteed''), may result in reducing the type size used in bank indorsements, thereby making them more difficult to read. Use of this language may make it more difficult for other banks to identify the depositary bank.

7. If the bank maintaining the account into which a check is deposited agrees with another bank (a correspondent, ATM operator, or lock box operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the indorsement placed on the check as the depositary bank indorsement may be the indorsement of the bank that acts as correspondent, ATM operator, or lock box operator as provided in paragraph (d) of § 229.35.

8. In general, checks will be handled more efficiently if depositary banks design indorsement stamps so that the nine-digit routing number avoids pre-existing matter on the back of the check, for example, a carbon band. Indorsing parties other than banks, e.g., corporations, will benefit from the faster return of checks if they protect the identifiability and legibility of the depositary bank indorsement by staying clear of the area on the back of the check reserved for the depositary bank indorsement.

9. A paying bank is not required to indorse the check; however, if a paying bank does indorse a check that is returned, it should follow the indorsement standards for collecting banks and returning banks. Collecting banks and returning banks are required to indorse the check for tracing purposes. With respect to the identification of a paying bank that is also a reconverting bank, see the commentary to § 229.51(b)(2).

B. 229.35(b) Liability of Bank Handling Check

1. When a check is sent for forward collection, the collection process results in a chain of indorsements extending from the depositary bank through any subsequent collecting banks to the paying bank. This paragraph extends the indorsement chain through the paying bank to the returning banks, and would permit each bank to recover from any prior indorser if the claimant bank does not receive payment for the check from a subsequent bank in the collection or return chain. For example, if a returning bank returned a check to an insolvent depositary bank, and did not receive the full amount of the check from the failed bank, the returning bank could obtain the unrecovered amount of the check from any bank prior to it in the collection and return chain including the paying bank. Because each bank in the collection and return chain could recover from a prior bank, any loss would fall on the first collecting bank that received the check from the depositary bank. To avoid circuity of actions, the returning bank could recover directly from the first collecting bank. Under the UCC, the first collecting bank might ultimately recover from the depositary bank's customer or from the other parties on the check.

2. Where a check is returned through the same banks used for the forward collection of the check, priority during the forward collection process controls over priority in the return process for the purpose of determining prior and subsequent banks under this regulation.

3. Where a returning bank is insolvent and fails to pay the paying bank or a prior returning bank for a returned check, § 229.39(a) requires the receiver of the failed bank to return the check to the bank that transferred the check to the failed bank. That bank then either could continue the return to the depositary bank or recover based on this paragraph. Where the paying bank is insolvent, and fails to pay the collecting bank, the collecting bank also could recover from a prior collecting bank under this paragraph, and the bank from which it recovered could in turn recover from its prior collecting bank until the loss settled on the depositary bank (which could recover from its customer).

4. A bank is not required to make a claim against an insolvent bank before exercising its right to recovery under this paragraph. Recovery may be made by charge-back or by other means. This right of recovery also is permitted even where nonpayment of the check is the result of the claiming bank's negligence such as failure to make timely notice of nonpayment, but the claiming bank remains liable for its negligence under § 229.38.

5. This liability to a bank that subsequently handles the check and does not receive payment for the check is imposed on a bank handling a check for collection or return regardless of whether the bank's indorsement appears on the check. Notice must be sent under this paragraph to a prior bank from which recovery is sought reasonably promptly after a bank learns that it did not receive payment from another bank, and learns the identity of the prior bank. Written notice reasonably identifying the check and the basis for recovery is sufficient if the check is not available. Receipt of notice by the bank against which the claim is made is not a precondition to recovery by charge-back or other means; however, a bank may be liable for negligence for failure to provide timely notice. A paying bank or returning bank also may recover from a prior collecting bank as provided in §§ 229.31(g) and 229.32(e) (in those cases where the paying bank is unable to identify the depositary bank). This paragraph does not affect a paying bank's accountability for a check under UCC 4–215(a) and 4–302. Nor does this paragraph affect a collecting bank's accountability under UCC 4–213 and 4–215(d). A collecting bank becomes accountable upon receipt of final settlement as provided in the foregoing UCC sections. Final settlement in §§ 229.32(e), 229.33(d), and 229.36(d) is intended to be consistent with final settlement in the UCC (e.g., UCC 4–213, 4–214, and 4–215). (See also § 229.2(cc) (definition of returning bank) and commentary thereto.)

6. This paragraph also provides that a bank may have the rights of a holder based on the handling of a check for collection or return. A bank may become a holder or a holder in due course regardless of whether prior banks have complied with the indorsement standard in § 229.35(a).

7. This paragraph affects the following provisions of the UCC, and may affect other provisions depending on circumstance:

a. Section 4–214(a), in that the right to recovery is not based on provisional settlement, and recovery may be had from any prior bank. Section 4–214(a) would continue to permit a depositary bank to recover a provisional settlement from its customer. (See § 229.33(g).)

b. Section 3–415 and related provisions (such as section 3–503), in that such provisions would not apply as between banks, or as between the depositary bank and its customer.

C. 229.35(c) Indorsement by Bank

1. This section protects the rights of a customer depositing a check in a bank without requiring the words ''pay any bank,'' as required by the UCC (See UCC 4–201(b).) Use of this language in a depositary bank's indorsement will make it more difficult for other banks to identify the depositary bank. The applicable industry standard prohibits such material in subsequent collecting bank indorsements. The existence of a bank indorsement provides notice of the restrictive indorsement without any additional words.

D. 229.35(d) Indorsement for Depositary Bank

1. This section permits a depositary bank to arrange with another bank to indorse checks. This practice may occur when a correspondent indorses for a respondent, or when the bank servicing an ATM or lock box indorses for the bank maintaining the account in which the check is deposited—i.e., the depositary bank. If the indorsing bank applies the depositary bank's indorsement, checks will be returned to the depositary bank. An indorsing bank may by agreement with the depositary bank apply its own indorsement as the depositary bank indorsement. In that case, the depositary

bank's own indorsement on the check (if any) should avoid the location reserved for the depositary bank. The actual depositary bank remains responsible for the availability and other requirements of subpart B, but the bank indorsing as depositary bank is considered the depositary bank for purposes of subpart C (e.g., for purposes of accepting paper checks under § 229.33(b)). The check will be returned, and notice of nonpayment will be given, to the bank indorsing as depositary bank.

2. Because the depositary bank for subpart B purposes will desire prompt notice of nonpayment, its arrangement with the indorsing bank should provide for prompt notice of nonpayment. The bank indorsing as depositary bank may require the depositary bank to agree to take up the check if the check is not paid even if the depositary bank's indorsement does not appear on the check and it did not handle the check. The arrangement between the banks may constitute an agreement varying the effect of provisions of subpart C under § 229.37.

XXII. Section 229.36 Presentment and Issuance of Checks

A. 229.36(a) Receipt of Electronic Checks

1. A paying bank may agree to accept presentment of electronic checks. (See § 229.2(ggg) and commentary thereto). The paying bank's acceptance of such electronic checks is governed by the paying bank's agreement with the bank sending the electronic item to the paying bank. The terms of these agreements are determined by the parties and may include, for example, the electronic address or electronic receipt point at which the paying bank agrees to accept electronic checks, as well as when presentment occurs. The agreement also may specify whether electronic checks sent for forward collection must be separated from electronic returned checks.

B. 229.36(b) Receipt of Paper Checks

1. The paragraph specifies four locations at which the paying bank must accept presentment of paper checks. Where the check is payable through a bank and the check is sent to that bank, the payable-through bank is the paying bank for purposes of this subpart, regardless of whether the paying bank must present the check to another bank or to a nonbank payor for payment.

a. Delivery of checks may be made, and presentment is considered to occur, at a location (including a processing center) requested by the paying bank. This provision adopts the common law rule of a number of legal decisions that the processing center acts as the agent of the paying bank to accept presentment and to begin the time for processing of the check. (See also UCC 4–204(c).) If a bank designates different locations for the presentment of forward collection checks bearing different routing numbers, for purposes of this paragraph it requests presentment of checks bearing a particular routing number only at the location designated for receipt of forward collection checks bearing that routing number.

b. If the check specifies the name and address of a branch or head office, or other location (such as a processing center), the check may be delivered to that office or other location. If the address is too general to identify a particular office, delivery may be made at any office consistent with the address. For example, if the address is ''San Francisco, California,'' each office in San Francisco must accept presentment. The designation of an address on the check generally is in the control of the paying bank.

c. i. Delivery may be made at an office of the bank associated with the routing number on the check. In the case of a substitute check, delivery may be made at an office of the bank associated with the routing number in the electronic check from which it was derived. The office associated with the routing number of a bank is found in *American Bankers Association Key to Routing Numbers,* published by an agent of the American Bankers Association, which lists a city and state address for each routing number. Checks generally are handled by collecting banks on the basis of the nine-digit routing number contained in the MICR line (or on the basis of the fractional form routing number if the MICR line is obliterated) on the check, rather than the printed name or address. The definition of a paying bank in § 229.2(z) includes a bank designated by routing number, whether or not there is a name on the check, and whether or not any name is consistent with the routing number. Where a check is payable by one bank, but payable through another, the routing number is that of the payable-through bank, not that of the payor bank. In these cases, the payor bank has selected the payable-through bank as the point through which presentment is to be made.

ii. There is no requirement in the regulation that the name and address on the check agree with the address associated with the routing number on the check. A bank generally may control the use of its routing number, just as it does the use of its name. The address associated with the routing number may be a processing center.

iii. In some cases, a paying bank may have several offices in the city associated with the routing number. In such case, it would not be reasonable or efficient to require the presenting bank to sort the checks by more specific branch addresses that might be printed on the checks, and to deliver the checks to each branch. A collecting bank normally would deliver all checks to one location. In cases where checks are delivered to a branch other than the branch on which they may be drawn, computer and courier communication among branches should permit the paying bank to determine quickly whether to pay the check.

d. If the check specifies the name of the paying bank but no address, the bank must accept delivery at any office. Where delivery is made by a person other than a bank, or where the routing number is not readable, delivery will be made based on the name and address of the paying bank on the check. If there is no address, delivery may be made at any office of the paying bank. This provision is consistent with UCC 3–111, which states that presentment for payment may be made at the place specified in the instrument, or, if there is none, at the place of business of the party to pay.

3. This paragraph may affect UCC 3–111 to the extent that the UCC requires presentment to occur at a place specified in the instrument.

C. 229.36(c) Liability of Bank During Forward Collection

1. This paragraph makes settlement between banks during forward collection final when made, subject to any deferment of credit, just as settlements between banks during the return of checks are final. In addition, this paragraph clarifies that this change does not affect the liability scheme under UCC 4–201 during forward collection of a check. That UCC section provides that, unless a contrary intent clearly appears, a bank is an agent or subagent of the owner of a check, but that Article 4 of the UCC applies even though a bank may have purchased an item and is the owner of it. This paragraph preserves the liability of a collecting bank to prior collecting banks and the depositary bank's customer for negligence during the forward collection of a check under the UCC, even though this paragraph provides that settlement between banks during forward collection is final rather than provisional. Settlement by a paying bank is not considered to be final payment for the purposes of UCC 4–215(a)(2) or (3), because a paying bank has the right to recover settlement from a returning bank or depositary bank to which it returns a check under this subpart. Other provisions of the UCC not superseded by this subpart, such as section 4–202, also continue to apply to the forward collection of a check and may apply to the return of a check. (See definition of returning bank in § 229.2(cc).)

D. 229.36(d) Issuance of Payable Through Checks

E. 229.36(e) [Reserved]

F. 229.36(f) Same-Day Settlement

1. Section 229.36(d) governs settlement for presentment of paper checks. Settlement for presentment of electronic checks is governed by the agreement of the parties. (See § 229.36(a) and commentary thereto). This paragraph provides that, under certain conditions, a paying bank must settle with a presenting bank for a check on the same day the check is presented in order to avail itself of the ability to return the check on its next banking day under UCC 4–301 and 4–302. This paragraph does not apply to checks presented for immediate payment over the counter. Settling for a check under this paragraph does not constitute final payment of the check under the UCC. This paragraph does not supersede or limit the rules governing collection and return of checks through Federal Reserve Banks that are contained in subpart A of Regulation J (12 CFR part 210).

2. Presentment requirements

a. Location and time

i. For presented checks to qualify for mandatory same-day settlement, information accompanying the checks must indicate that presentment is being made under this paragraph—e.g. ''these checks are being presented for same-day settlement''—and

must include a demand for payment of the total amount of the checks together with appropriate payment instructions in order to enable the paying bank to discharge its settlement responsibilities under this paragraph. In addition, the check or checks must be presented at a location designated by the paying bank for receipt of checks for same-day settlement by 8:00 a.m. local time of that location. The designated presentment location must be a location at which the paying bank would be considered to have received a check under § 229.36(b). The paying bank may not designate a location solely for presentment of checks subject to settlement under this paragraph; by designating a location for the purposes of § 229.36(d), the paying bank agrees to accept checks at that location for the purposes of § 229.36(b).

ii. If the paying bank does not designate a presentment location, it must accept presentment for same-day settlement at any location identified in § 229.36(b), i.e., at an address of the bank associated with the routing number on the check, at any branch or head office if the bank is identified on the check by name without address, or at a branch, head office, or other location consistent with the name and address of the bank on the check if the bank is identified on the check by name and address. A paying bank and a presenting bank may agree that checks will be accepted for same-day settlement at an alternative location or that the cut-off time for same-day settlement be earlier or later than 8 a.m. local time of the presentment location.

iii. In the case of a check payable through a bank but payable by another bank, this paragraph does not authorize direct presentment to the bank by which the check is payable. The requirements of same-day settlement under this paragraph would apply to a payable-through or payable-at bank to which the check is sent for payment or collection.

b. Reasonable delivery requirements. A check is considered presented when it is delivered to and payment is demanded at a location specified in paragraph (d)(1). Ordinarily, a presenting bank will find it necessary to contact the paying bank to determine the appropriate presentment location and any delivery instructions. Further, because presentment might not take place during the paying bank's banking day, a paying bank may establish reasonable delivery requirements to safeguard the checks presented, such as use of a night depository. If a presenting bank fails to follow reasonable delivery requirements established by the paying bank, it runs the risk that it will not have presented the checks. However, if no reasonable delivery requirements are established or if the paying bank does not make provisions for accepting delivery of checks during its non-business hours, leaving the checks at the presentment location constitutes effective presentment.

c. Sorting of checks. A paying bank may require that checks presented to it for same-day settlement be sorted separately from other forward collection checks it receives as a collecting bank or returned checks it receives as a returning bank or depositary bank. For example, if a bank provides correspondent check collection services and receives unsorted checks from a respondent bank that include checks for which it is the paying bank and that would otherwise meet the requirements for same-day settlement under this section, the collecting bank need not make settlement in accordance with paragraph (d)(3). If the collecting bank receives sorted checks from its respondent bank, consisting only of checks for which the collecting bank is the paying bank and that meet the requirements for same-day settlement under this paragraph, the collecting bank may not charge a fee for handling those checks and must make settlement in accordance with this paragraph.

3. Settlement

a. If a bank presents a check in accordance with the time and location requirements for presentment under paragraph (d)(1), the paying bank either must settle for the check on the business day it receives the check without charging a presentment fee or return the check prior to the time for settlement. (This return deadline is subject to extension under § 229.31(g).) The settlement must be in the form of a credit to an account designated by the presenting bank at a Federal Reserve Bank (e.g., a Fedwire transfer). The presenting bank may agree with the paying bank to accept settlement in another form (e.g., credit to an account of the presenting bank at the paying bank or debit to an account of the paying bank at the presenting bank). The settlement must occur by the close of Fedwire on the business day the check is received by the paying bank. Under the provisions of § 229.34(d), a settlement owed to a presenting bank may be set off by adjustments for previous settlements with the presenting bank. (See also § 229.39(d).)

b. Checks that are presented after the 8 a.m. (local time of the location at which the checks are presented) presentment deadline for same-day settlement and before the paying bank's cut-off hour are treated as if they were presented under other applicable law and settled for or returned accordingly. However, for purposes of settlement only, the presenting bank may require the paying bank to treat such checks as presented for same-day settlement on the next business day in lieu of accepting settlement by cash or other means on the business day the checks are presented to the paying bank. Checks presented after the paying bank's cut-off hour or on non-business days, but otherwise in accordance with this paragraph, are considered presented for same-day settlement on the next business day.

4. Closed Paying Bank

a. There may be certain business days that are not banking days for the paying bank. Some paying banks may continue to settle for checks presented on these days (e.g., by opening their back office operations). In other cases, a paying bank may be unable to settle for checks presented on a day it is closed. If the paying bank closes on a business day and checks are presented to the paying bank in accordance with paragraph (d)(1), the paying bank is accountable for the checks unless it settles for or returns the checks by the close of Fedwire on its next banking day. In addition, checks presented on a business day on which the paying bank is closed are considered received on the paying bank's next banking day for purposes of the UCC midnight deadline (UCC 4–301 and 4–302).

b. If the paying bank is closed on a business day voluntarily, the paying bank must pay interest compensation, as defined in § 229.2(oo), to the presenting bank for the value of the float associated with the check from the day of the voluntary closing until the day of settlement. Interest compensation is not required in the case of an involuntary closing on a business day, such as a closing required by state law. In addition, if the paying bank is closed on a business day due to emergency conditions, settlement delays and interest compensation may be excused under § 229.38(d) or UCC 4–109(b).

5. Good faith. Under § 229.38(a), both presenting banks and paying banks are held to a standard of good faith, defined in § 229.2(nn) to mean honesty in fact and the observance of reasonable commercial standards of fair dealing. For example, designating a presentment location or changing presentment locations for the primary purpose of discouraging banks from presenting checks for same-day settlement might not be considered good faith on the part of the paying bank. Similarly, presenting a large volume of checks without prior notice could be viewed as not meeting reasonable commercial standards of fair dealing and therefore may not constitute presentment in good faith. In addition, if banks, in the general course of business, regularly agree to certain practices related to same-day settlement, it might not be considered consistent with reasonable commercial standards of fair dealing, and therefore might not be considered good faith, for a bank to refuse to agree to those practices if agreeing would not cause it harm.

6. UCC sections affected. This paragraph directly affects the following provisions of the UCC and may affect other sections or provisions:

a. Section 4–204(b)(1), in that a presenting bank may not send a check for same-day settlement directly to the paying bank, if the paying bank designates a different location in accordance with paragraph (d)(1).

b. Section 4–213(a), in that the medium of settlement for checks presented under this paragraph is limited to a credit to an account at a Federal Reserve Bank and that, for checks presented after the deadline for same-day settlement and before the paying bank's cut-off hour, the presenting bank may require settlement on the next business day in accordance with this paragraph rather than accept settlement on the business day of presentment by cash.

c. Section 4–301(a), in that, to preserve the ability to exercise deferred posting, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to settle for checks presented under this paragraph by the close of Fedwire.

d. Section 4–302(a), in that, to avoid accountability, the time limit specified in that section for settlement or return by a paying bank on the banking day a check is received is superseded by the requirement to

settle for checks presented under this paragraph by the close of Fedwire.

* * * * *

XXIV. Section 229.38 Liability

Alternative 1 for XXIV. Section 229.38 Liability

A. 229.38(a) Standard of Care; Liability; Measure of Damages

1. The standard of care established by this section applies to any bank covered by the requirements of subpart C of the regulation. Thus, the standard of care applies to a paying bank under §§ 229.31, to a returning bank under § 229.32, to a depositary bank under §§ 229.33, to a bank erroneously receiving a returned check or written notice of nonpayment as depositary bank under § 229.33(e), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by UCC 1–203 and 4–103(a) and includes a duty to act in good faith, as defined in § 229.2(nn) of this regulation.

2. A bank not meeting this standard of care is liable to the depositary bank, the depositary bank's customer, the owner of the check, or another party to the check. The depositary bank's customer is usually a depositor of a check in the depositary bank (but see § 229.35(d)). The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on UCC 4–103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4–202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). This subpart does not absolve a collecting bank of liability to prior collecting banks under UCC 4–201.

3. Under this measure of damages, a depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux* v. *Van Wyk,* 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp.* v. *Prospect Nat'l Bank,* 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depositary bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

4. This paragraph also states that it does not affect a paying bank's liability to its customer. Under UCC 4–402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

B.229.38(c) Comparative Negligence

1. This paragraph establishes a ''pure'' comparative negligence standard for liability under subpart C of this regulation. This comparative negligence rule may have particular application where a paying bank or returning bank delays in sending a notice of nonpayment because of difficulty in identifying the depositary bank. Some examples will illustrate liability in such cases. In each example, it is assumed that the returned check is received by the depositary bank after it has made funds available to its customer, that it may no longer recover the funds from its customer, and that the inability to recover the funds from the customer is due to a delay in receiving notice of nonpayment of the check contrary to the standard established by § 229.31(d).

Examples.

a. If a depositary bank fails to use the indorsement required by this regulation, and this failure is caused by a failure to exercise ordinary care, and if a paying bank or returning bank is delayed in sending notice of nonpayment of the check because additional time is required to identify the depositary bank or find its routing number, the paying bank's liability to the depositary bank would be reduced or eliminated.

b. If the depositary bank uses the indorsement required by this regulation, but that indorsement is obscured by a subsequent collecting bank's indorsement, and a paying bank or returning bank is delayed in sending notice of nonpayment of the check because additional time was required to identify the depositary bank or find its routing number, the paying bank may not be liable to the depositary bank because the delay was not due to the paying bank's negligence. Nonetheless, the collecting bank may be liable to the depositary bank to the extent that its negligence in indorsing the check caused the paying bank's or returning bank's delay.

c. If a depositary bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depositary bank's indorsement is obscured by the printing, carbon band, or other material, and a paying bank or returning bank is delayed in returning the check because additional time was required to identify the depositary bank, the returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depositary bank to the extent that the printing, carbon band, or other material caused the delay.

C. 229.38(d) Responsibility for Certain Aspects of Checks

1. Responsibility for back of check. The indorsement standards set forth in § 229.35 are most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because banks' indorsements are usually applied by automated systems without visual inspection of the back of the check or the related electronic image, it is not always practical to avoid pre-existing matter on the back of the check, for example, a carbon band or printed, stamped, or written terms or notations on the back of the check. Section 229.38(c) allocates responsibility for loss resulting from a delay in a notice of nonpayment due to indorsements that are not readable because of material on the back of the check.

2. The paying bank is responsible for loss resulting from a delay in a notice of nonpayment caused by indorsements that are not readable because of other material on the back of the check at the time that it was issued. For example, the backs of some checks bear pre-printed information or blacked out areas for various reasons. The payee of the check may, therefore, place its indorsement or other information in the area specified for the depositary bank indorsement, thus making the depositary bank indorsement unreadable. The depositary bank, by contrast, is responsible for a loss resulting from a delay in return caused by the condition of the check arising after its issuance until its acceptance by the depositary bank that made the depositary bank's indorsement illegible. Depositary banks and paying banks may shift these risks to their customers by agreement. (See § 229.37(a) and commentary thereto.)

3. ANS X9.100–140 provides that an image of an original check must be reduced in size when placed on the first substitute check associated with that original check. (The image thereafter would be constant in size on any subsequent substitute check that might be created.) Because of this size reduction, the location of an indorsement, particularly a depositary bank indorsement, applied to an original paper check likely will change when the first reconverting bank creates a substitute check that contains that indorsement within the image of the original paper check. If the indorsement was applied to the original paper check in accordance with ANS X9.100–111's location requirements for indorsements applied to existing paper checks, and if the size reduction of the image causes the placement of the indorsement to no longer be consistent with ANS X9.100–111's requirements, then the reconverting bank bears the liability for any loss that results from the shift in the placement of the indorsement. Such a loss could result either because the original indorsement applied in accordance with ANS X9.100–111 is rendered illegible by a subsequent indorsement that a reconverting bank later applies to the substitute check in accordance with ANS X9.100–140, or because a subsequent bank receiving a substitute check cannot apply its indorsement to the substitute check legibly in accordance with ANS X9.100–111 as a result of the shift in the previous indorsement.

Example.

A depositary bank sprays its indorsement onto a business-sized original check in a location specified in accordance with ANS X9.100–111. The check's conversion to electronic form and subsequent reconversion to paper form by the reconverting bank causes the location of the depositary bank indorsement, now contained within the image of the original check, to change such that it is closer to the leading edge of the substitute check than it otherwise should be. A subsequent collecting bank sprays its indorsement onto the substitute check in accordance with ANS X9.100–111 and that location happens to be on top of the shifted depositary bank indorsement. If the check is

returned unpaid and the notice of nonpayment is not received within the time requirements of § 229.31(d) because of the illegibility of the depositary bank indorsement, and the depositary bank incurs a loss that it would not have incurred had the notice of nonpayment been received in accordance with § 229.31(d), the reconverting bank bears the liability for that loss.

4. Responsibility under paragraph (c)(1) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraph (c)(1) is treated in the same way as the degree of negligence under paragraph (b) of this section.

D. 229.38(d) Timeliness of Action

1. This paragraph excuses certain delays. It adopts the standard of UCC 4–109(b).

E. 229.38(e) Exclusion

1. This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and (b), and the bona fide error provision of 611(c) of the EFA Act (12 U.S.C. 4010(a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in subpart C.

F. 229.38(f) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

G. 229.38(g) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

Alternative 2 for XXIV. Section 229.38 Liability

A. 229.38(a) Standard of Care; Liability; Measure of Damages

1. The standard of care established by this section applies to any bank covered by the requirements of subpart C of the regulation. Thus, the standard of care applies to a paying bank under § 229.31, to a returning bank under § 229.32, to a depositary bank under § 229.33, to a bank erroneously receiving a returned check as depositary bank under § 229.33(e), and to a bank indorsing a check under § 229.35. The standard of care is similar to the standard imposed by UCC 1–203 and 4–103(a) and includes a duty to act in good faith, as defined in § 229.2(nn) of this regulation.

2. A bank not meeting this standard of care is liable to the depositary bank, the depositary bank's customer, the owner of the check, or another party to the check. The depositary bank's customer is usually a depositor of a check in the depositary bank (but see § 229.35(d)). The measure of damages provided in this section (loss incurred up to amount of check, less amount of loss party would have incurred even if bank had exercised ordinary care) is based on UCC 4–103(e) (amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care), as limited by 4–202(c) (bank is liable only for its own negligence and not for actions of subsequent banks in chain of collection). This subpart does not absolve a collecting bank of liability to prior collecting banks under UCC 4–201.

3. Under this measure of damages, a depositary bank or other person must show that the damage incurred results from the negligence proved. For example, the depositary bank may not simply claim that its customer will not accept a charge-back of a returned check, but must prove that it could not charge back when it received the returned check and could have charged back if no negligence had occurred, and must first attempt to collect from its customer. (See *Marcoux* v. *Van Wyk,* 572 F.2d 651 (8th Cir. 1978); *Appliance Buyers Credit Corp.* v. *Prospect Nat'l Bank,* 708 F.2d 290 (7th Cir. 1983).) Generally, a paying or returning bank's liability would not be reduced because the depositary bank did not place a hold on its customer's deposit before it learned of nonpayment of the check.

4. This paragraph also states that it does not affect a paying bank's liability to its customer. Under UCC 4–402, for example, a paying bank is liable to its customer for wrongful dishonor, which is different from failure to exercise ordinary care and has a different measure of damages.

B.229.38(c) Comparative Negligence

1. This paragraph establishes a ''pure'' comparative negligence standard for liability under subpart C of this regulation.

c. If a depositary bank accepts a check that has printing, a carbon band, or other material on the back of the check that existed at the time the check was issued, and the depositary bank's indorsement is obscured by the printing, carbon band, or other material, and a paying bank or returning bank is delayed in returning the check because additional time was required to identify the depositary bank, the returning bank may not be liable to the depositary bank because the delay was not due to its negligence. Nonetheless, the paying bank may be liable to the depositary bank to the extent that the printing, carbon band, or other material caused the delay.

C. 229.38(d) Responsibility for Certain Aspects of Checks

1. Responsibility for back of check. The indorsement standards set forth in § 229.35 are most effective if the back of the check remains clear of other matter that may obscure bank indorsements. Because banks' indorsements are usually applied by automated systems without visual inspection of the back of the check or the related electronic image, it is not always practical to avoid pre-existing matter on the back of the check, for example, a carbon band or printed, stamped, or written terms or notations on the back of the check.

2. ANS X9.100–140 provides that an image of an original check must be reduced in size when placed on the first substitute check associated with that original check. (The image thereafter would be constant in size on any subsequent substitute check that might be created.) Because of this size reduction, the location of an indorsement, particularly a depositary bank indorsement, applied to an original paper check likely will change when the first reconverting bank creates a substitute check that contains that indorsement within the image of the original paper check. If the indorsement was applied to the original paper check in accordance with ANS X9.100–111's location requirements for indorsements applied to existing paper checks, and if the size reduction of the image causes the placement of the indorsement to no longer be consistent with ANS X9.100–111's requirements, then the reconverting bank bears the liability for any loss that results from the shift in the placement of the indorsement. Such a loss could result either because the original indorsement applied in accordance with ANS X9.100–111 is rendered illegible by a subsequent indorsement that a reconverting bank later applies to the substitute check in accordance with ANS X9.100–140, or because a subsequent bank receiving a substitute check cannot apply its indorsement to the substitute check legibly in accordance with ANS X9.100–111 as a result of the shift in the previous indorsement.

3. Responsibility under paragraph (c)(1) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraph (c)(1) is treated in the same way as the degree of negligence under paragraph (b) of this section.

D. 229.38(d) Timeliness of Action

1. This paragraph excuses certain delays. It adopts the standard of UCC 4–109(b).

E. 229.38(e) Exclusion

1. This paragraph provides that the civil liability and class action provisions, particularly the punitive damage provisions of sections 611(a) and (b), and the bona fide error provision of 611(c) of the EFA Act (12 U.S.C. 4010(a), (b), and (c)) do not apply to regulatory provisions adopted to improve the efficiency of the payments mechanism. Allowing punitive damages for delays in the return of checks where no actual damages are incurred would only encourage litigation and provide little or no benefit to the check collection system. In view of the provisions of paragraph (a), which incorporate traditional bank collection standards based on negligence, the provision on bona fide error is not included in subpart C.

F. 229.38(f) Jurisdiction

1. The EFA Act confers subject matter jurisdiction on courts of competent jurisdiction and provides a time limit for civil actions for violations of this subpart.

G. 229.38(g) Reliance on Board Rulings

1. This provision shields banks from civil liability if they act in good faith in reliance on any rule, regulation, or interpretation of the Board, even if it were subsequently determined to be invalid. Banks may rely on the commentary to this regulation, which is issued as an official Board interpretation, as well as on the regulation itself.

XXV. Section 229.39 Insolvency of Bank

A. Introduction

1. These provisions cover situations where a bank becomes insolvent during collection or return. Paragraphs (a), (b), and (d) of § 229.39 are derived from UCC 4–216. They are intended to apply to all banks. Like UCC 4–216, paragraphs (a), (b), and (d) of § 229.39 are intended to establish the point in the collection process at which collection or return of an item should be either stopped or continued when a particular bank suspends payments. Section 229.39(a) sets forth the circumstances under which the receiver must stop collection or return and, instead, send the check back to the bank or customer that transferred the check. Section 229.39(b) sets forth the circumstances under which the collection or return of the item should continue. Paragraphs (a) and (b) of § 229.39 are not intended to confer upon banks preferential positions in the event of bank failures over general depositors or any other creditor of the failed bank. *See* UCC 4–216, cmt. 1.

B. 229.39(a) Duty of Receiver To Return Unpaid Checks

1. This paragraph requires a receiver of a closed bank to return a check to the prior bank if the paying bank or the receiver did not pay for the check. This permits the prior bank, as holder, to pursue its claims against the closed bank or prior indorsers on the check.

C. 229.39(b) Claims Against Banks for Checks Not Returned by the Receiver

1. This section sets forth the claims available to banks in situations in which a receiver does not return a check under § 229.39(a). In those situations, the prior bank would not be a holder of the check and would be unable to pursue claims as a holder.

2. Paragraph (b)(1) of § 229.39 gives a bank a claim against a closed paying bank that finally pays a check without settling for it or a closed depositary bank that becomes obligated to pay a returned check without settling for it. If the bank with a claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the claim.

3. Paragraph (b)(2) of § 229.39 gives a bank a claim against a closed collecting bank, paying bank, or returning bank that receives settlement for but does not make settlement for a check. (See commentary to § 229.35(b) for discussion of prior and subsequent banks.) As in the case of § 229.39(b), if the bank with a claim under this paragraph recovers from a prior bank or other party to the check, the prior bank or other party to the check is subrogated to the claim.

D. 229.39(c) Preferred Claim Against Presenting Bank for Breach of Warranty

1. This paragraph gives a paying bank a preferred claim against a closed presenting bank in the event that the presenting bank breaches an amount or encoding warranty as provided in § 229.34(d)(1) or (3) and does not reimburse the paying bank for adjustments for a settlement made by the paying bank in excess of the value of the checks presented. This preferred claim is intended to have the effect of a perfected security interest and is intended to put the paying bank in the position of a secured creditor for purposes of the receivership provisions of the Federal Deposit Insurance Act and similar provisions of state law.

E. 229.39(d) Finality of Settlement

1. This paragraph provides that insolvency does not interfere with the finality of a settlement, such as a settlement by a paying bank that becomes final by expiration of the midnight deadline.

XXVI. Section 229.40 Effect on Merger Transaction

A. When banks merge, there is normally a period of adjustment required before their operations are consolidated. To allow for this adjustment period, the regulation provides that the merged banks may be treated as separate banks for a period of up to one year after the consummation of the transaction. The term merger transaction is defined in § 229.2(t). This rule affects the status of the combined entity in a number of areas in this subpart. For example:

1. The paying bank's responsibility for notice of nonpayment (§ 229.31).
2. Where the depositary bank must accept returned checks (§ 229.33(b)).
3. Where the depositary bank must accept notice of nonpayment (§ 229.33(b) and (c)).
4. Where a paying bank must accept presentment of checks (§ 229.36(b)).

XXVII. Section 229.41 Relation to State Law

A. This section specifies that state law relating to the collection of checks is preempted only to the extent that it is inconsistent with this regulation. Thus, this regulation is not a complete replacement for state laws relating to the collection or return of checks.

XXVIII. Section 229.42 Exclusions

Alternative 1 for XXVIII. Section 229.42 Exclusions

Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the notice-of-nonpayment and same-day settlement requirements of subpart C of this part. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

Alternative 2 for XXVIII. Section 229.42 Exclusions

A. Checks drawn on the United States Treasury, U.S. Postal Service money orders, and checks drawn on states and units of general local government that are presented directly to the state or unit of general local government and that are not payable through or at a bank are excluded from the coverage of the same-day settlement requirements of subpart C of this part. Other provisions of this subpart continue to apply to the checks. This exclusion does not apply to checks drawn by the U.S. government on banks.

XXIX. Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands

A. 229.43(a) Definitions

1. For purposes of subparts B and C of this part, bank offices in Guam, American Samoa, and the Northern Mariana Islands (which Regulation CC defines as Pacific island banks) do not meet the definition of bank in § 229.2(e) because they are not located in the United States. Some checks drawn on Pacific island banks (defined as Pacific island checks) bear U.S. routing numbers and are collected and returned by banks in the same manner as checks payable in the U.S.

Alternative 1 for Paragraph B

B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in § 229.2(k), the bank is subject to certain provisions of subpart C of this part, as provided in this section. Because a Pacific island bank is not a bank as defined in § 229.2(e) for purposes of subpart C, it is not a paying bank as defined in § 229.2(z) for purposes of subpart C (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of subparts B and C, but may be subject to the provisions of subpart D of this part to the extent they create substitute checks. (See § 229.2(ff) defining ''State'').

2. A bank may agree to handle a Pacific island check as a returned check under § 229.32 and may convert the returned Pacific island check to a qualified returned check. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank for purposes of subpart C of this part, § 229.32(e) does not apply to a returning bank settling with the Pacific island bank.

3. A depositary bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank generally is subject to the provisions of § 229.33, except for § 229.33(b) with respect to its application to notices of nonpayment, § 229.33(c) (acceptance of oral notices of nonpayment), and § 229.33(g) (notification to customer of returned check). If the depositary bank receives the returned Pacific island check directly from the Pacific island bank, the provisions of § 229.33(d) (regarding time and manner of settlement for returned checks) do not apply, because the

Pacific island bank is not a paying bank for purposes of subpart C of this part. In the event the Pacific island check is returned by a returning bank, however, the provisions of § 229.33(d) apply. The depositary bank is not subject to the provisions in § 229.33(b) with respect to notices of nonpayment for Pacific island checks, but is subject to § 229.33(b) with respect to returned checks that are Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of § 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement ''pay any bank.'' For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(d)(2) regarding accurate cash letter totals and the encoding warranty in § 229.34(d)(3). A bank that acts as a returning bank for a Pacific island check is not subject to the returned check warranties in § 229.34(e). Similarly, because the Pacific island bank is not a ''bank'' or a ''paying bank'' for purposes of subpart C of this part, the notice of nonpayment warranties in § 229.34(f), and the presentment warranties in § 229.34(c)(1) and (d)(4) do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in § 229.38 do not apply to Pacific island banks. Section 229.36(d), regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

Alternative 2 for Paragraph B

B. 229.43(b) Rules Applicable to Pacific Island Checks

1. When a bank handles a Pacific island check as if it were a check as defined in § 229.2(k), the bank is subject to certain provisions of subpart C of this part, as provided in this section. Because a Pacific island bank is not a bank as defined in § 229.2(e) for purposes of subpart C, it is not a paying bank as defined in § 229.2(z) for purposes of subpart C (unless otherwise noted in this section). Pacific island banks are not subject to the provisions of subparts B and C, but may be subject to the provisions of subpart D of this part to the extent they create substitute checks. (See § 229.2(ff) defining ''State'').

2. A bank may agree to handle a Pacific island check as a returned check under § 229.32 and may convert the returned Pacific island check to a qualified returned check. The returning bank may receive the Pacific island check directly from a Pacific island bank or from another returning bank. As a Pacific island bank is not a paying bank for purposes of subpart C of this part, § 229.32(e) does not apply to a returning bank settling with the Pacific island bank.

3. A depositary bank that handles a Pacific island check is not subject to the provisions of subpart B of Regulation CC, including the availability, notice, and interest accrual requirements, with respect to that check. If, however, a bank accepts a Pacific island check for deposit (or otherwise accepts the check as transferee) and collects the Pacific island check in the same manner as other checks, the bank generally is subject to the provisions of § 229.33, except for § 229.33(b) with respect to its application to notices of nonpayment, and § 229.33(g) (notification to customer of returned check). If the depositary bank receives the returned Pacific island check directly from the Pacific island bank, the provisions of § 229.33(d) (regarding time and manner of settlement for returned checks) do not apply, because the Pacific island bank is not a paying bank for purposes of subpart C of this part. In the event the Pacific island check is returned by a returning bank, however, the provisions of § 229.33(d) apply. The depositary bank is not subject to the provisions in § 229.33(b) with respect to notices of nonpayment for Pacific island checks, but is subject to § 229.33(b) with respect to returned checks that are Pacific island checks.

4. Banks that handle Pacific island checks in the same manner as other checks are subject to the indorsement provisions of § 229.35. Section 229.35(c) eliminates the need for the restrictive indorsement ''pay any bank.'' For purposes of § 229.35(c), the Pacific island bank is deemed to be a bank.

5. Pacific island checks will often be intermingled with other checks in a single cash letter. Therefore, a bank that handles Pacific island checks in the same manner as other checks is subject to the transfer warranty provision in § 229.34(d)(2) regarding accurate cash letter totals and the encoding warranty in § 229.34(d)(3). A bank that acts as a returning bank for a Pacific island check is not subject to the returned check warranties in § 229.34(e). Similarly, because the Pacific island bank is not a ''bank'' or a ''paying bank'' for purposes of subpart C of this part, the notice of nonpayment warranties in § 229.34(f), and the presentment warranties in § 229.34(c)(1) and (d)(4) do not apply. For the same reason, the provisions of § 229.36 governing paying bank responsibilities such as place of receipt and same-day settlement do not apply to checks presented to a Pacific island bank, and the liability provisions applicable to paying banks in § 229.38 do not apply to Pacific island banks. Section 229.36(d), regarding finality of settlement between banks during forward collection, applies to banks that handle Pacific island checks in the same manner as other checks, as do the liability provisions of § 229.38, to the extent the banks are subject to the requirements of Regulation CC as provided in this section, and §§ 229.37 and 229.39 through 229.42.

XXX. Section 229.51 General Provisions Governing Substitute Checks

* * * * *

B. 229.51(b) Reconverting-Bank Duties

1. In accordance with ANS X9.100–140, a reconverting bank must indorse (or, if it is a paying bank with respect to the check or a bank that rejected a check submitted for deposit, identify itself on) the back of a substitute check in a manner that preserves all indorsements applied, whether physically or electronically, by persons that previously handled the check in any form for forward collection or return. Indorsements applied physically to the original check before an image of the check was captured would be preserved through the image of the back of the original check that a substitute check must contain. If a bank sprays an indorsement onto a paper check *after* it captures an image of the check, it should ensure that it applies an indorsement to the item electronically, if it transfers the check as an electronic check or electronic returned check. (See paragraph 4 of the commentary to section 229.35(a).) A reconverting bank satisfies its obligation to preserve all previously applied indorsements by physically applying (overlaying) electronic indorsements onto a substitute check that the reconverting bank creates. A reconverting bank is not responsible for obtaining indorsements that persons that previously handled the check in any form should have applied but did not apply.

2. A reconverting bank must identify itself and the truncating bank by applying its routing number and the routing number of the truncating bank to the front of a substitute check in accordance ANS X9.100–140.

3. If the reconverting bank is the paying bank or a bank that rejected a check submitted for deposit, it also must identify itself by applying its routing number to the back of the check. A reconverting bank also must preserve on the back of the substitute check, in accordance with ANS X9.100–140, the identifications of any previous reconverting banks. The reconverting-bank and truncating-bank routing numbers on the front of a substitute check and, if the reconverting bank is the paying bank or a bank that rejected a check submitted for deposit, the reconverting bank's routing number on the back of a substitute check are for identification only and are not indorsements or acceptances.

Example

A bank's customer, which is a nonbank business, receives checks for payment and by agreement deposits substitute checks instead of the original checks with its depositary bank. The depositary bank is the reconverting bank with respect to the substitute checks and the truncating bank with respect to the original checks. In accordance with ANS X9.100–140, the bank must therefore be identified on the front of the substitute checks as a reconverting bank and as the truncating bank, and on the back of the substitute checks as the depositary bank and a reconverting bank.

4. The location of an indorsement applied to a paper check in accordance with ANS X9.100–111 may shift if that check is truncated and later reconverted to a substitute check. If an indorsement applied

to an original check in accordance with ANS X9.100–111 is overwritten by a subsequent indorsement applied to a substitute check in accordance with industry standards, then one or both of those indorsements could be rendered illegible. As explained in § 229.38(c) and the commentary thereto, a reconverting bank is liable for losses associated with indorsements that are rendered illegible as a result of check substitution.

* * * * *

XXXI. Section 229.52 Substitute Check Warranties

A. 229.52(a) Warranty Content and Provision

1. The responsibility for providing the substitute-check warranties begins with the reconverting bank. In the case of a substitute check created by a bank, the reconverting bank starts the flow of warranties when it transfers, presents, or returns a substitute check for which it receives consideration or when it rejects a check submitted for deposit and returns to its customer a substitute check. A bank that receives a substitute check created by a nonbank starts the flow of warranties when it transfers, presents, or returns for consideration either the substitute check it received or an electronic or paper representation of that substitute check.

2. To ensure that warranty protections flow all the way through to the ultimate recipient of a substitute check or paper or electronic representation thereof, any subsequent bank that transfers, presents, or returns for consideration either the substitute check or a paper or electronic representation of the substitute check is responsible to subsequent transferees for the warranties. Any warranty recipient could bring a claim for a breach of a substitute-check warranty if it received either the actual substitute check or a paper or electronic representation of a substitute check.

3. The substitute-check warranties and indemnity are not given under sections 229.52 and 229.53 by a bank that truncates the original check and by agreement transfers an electronic check to a subsequent bank for consideration. However, parties may, by agreement, allocate liabilities associated with the exchange of electronic check information. A bank that is a truncating bank under § 229.2(eee)(2) because it accepts a deposit of a check electronically might be subject to a claim by another depositary bank that accepts the original check for deposit. (See § 229.34(g) and commentary thereto).

Example.

A bank that receives check information electronically and uses it to create substitute checks is the reconverting bank and, when it transfers, presents, or returns that substitute check, becomes the first warrantor. However, that bank may protect itself by including in its agreement with the sending bank provisions that specify the sending bank's warranties and responsibilities to the receiving bank, particularly with respect to the accuracy of the check image and check data transmitted under the agreement.

4. A bank need not affirmatively make the warranties because they attach automatically when a bank transfers, presents, or returns the substitute check (or a representation thereof) for which it receives consideration. Because a substitute check transferred, presented, or returned for consideration is warranted to be the legal equivalent of the original check and thereby subject to existing laws as if it were the original check, all UCC and other Regulation CC warranties that apply to the original check also apply to the substitute check.

5. The legal-equivalence warranty by definition must be linked to a particular substitute check. When an original check is truncated, the check may move from electronic form to substitute-check form and then back again, such that there would be multiple substitute checks associated with one original check. When a check changes form multiple times in the collection or return process, the first reconverting bank and subsequent banks that transfer, present, or return the first substitute check (or a paper or electronic representation of the first substitute check) warrant the legal equivalence of only the first substitute check. If a bank receives an electronic representation of a substitute check and uses that representation to create a second substitute check, the second reconverting bank and subsequent transferees of the second substitute check (or a representation thereof) warrant the legal equivalence of both the first and second substitute checks. A reconverting bank would not be liable for a warranty breach under section 229.52 if the legal-equivalence defect is the fault of a subsequent bank that handled the substitute check, either as a substitute check or in other paper or electronic form.

6. The warranty in section 229.52(a)(1)(ii), which addresses multiple payment requests for the same check, is not linked to a particular substitute check but rather is given by each bank handling the substitute check, an electronic representation of a substitute check, or a subsequent substitute check created from an electronic representation of a substitute check. All banks that transfer, present, or return a substitute check (or a paper or electronic representation thereof) therefore provide the warranty regardless of whether the ultimate demand for double payment is based on the original check, the substitute check, or some other electronic or paper representation of the substitute or original check, and regardless of the order in which the duplicative payment requests occur. This warranty is given by the banks that transfer, present, or return a substitute check even if the demand for duplicative payment results from a fraudulent substitute check about which the warranting bank had no knowledge. (See also section 229.34(a)(1)(ii).)

Example.

A nonbank depositor truncates a check and in lieu of the check sends an electronic check check to both Bank A and Bank B. Bank A and Bank B each use the check information that it received electronically to create a substitute check, which it presents to Bank C for payment. Bank A and Bank B are both reconverting banks and each made the substitute-check warranties when it presented a substitute check to and received payment from Bank C. Bank C could pursue a warranty claim for the loss it suffered as a result of the duplicative payment against either Bank A or Bank B.

7. A bank that rejects a check submitted for deposit and, instead of the original check, provides its customer with a substitute check makes the warranties in § 229.52(a)(1). As noted in the commentary to § 229.2(ccc), the Check 21 Act contemplates that nonbank persons that receive substitute checks (or representations thereof) from a bank will receive warranties and indemnities with respect to the checks. A reconverting bank that provides a substitute check to its depositor after it has rejected the check submitted for deposit may not have received consideration for the substitute check. In order to prevent banks from being able to transfer a check the bank truncated and then reconverted without providing substitute check warranties, the regulation provides that a bank that rejects a check submitted for deposit but provides its customer with a substitute check (or a paper or electronic representation of a substitute check) makes the warranties set forth in § 229.52(a)(1) regardless of whether the bank received consideration.

Example.

A bank's customer submits a check for deposit at an ATM that captures an image of the check and sends the image electronically to the bank. After reviewing the item, the bank rejects the item submitted for deposit. Instead of providing the original check to its customer, the bank provides a substitute check to its customer. This bank is the reconverting bank with respect to the substitute check and makes the warranties described in § 229.52(a)(1) regardless of whether the bank previously extended credit to its customer. (See commentary to § 229.2(ccc).)

B. 229.52(b) Warranty Recipients

1. A reconverting bank makes the warranties to the person to which it transfers, presents, or returns the substitute check for consideration and to any subsequent recipient that receives either the substitute check or a paper or electronic representation derived from the substitute check. These subsequent recipients could include a subsequent collecting or returning bank, the depositary bank, the drawer, the drawee, the payee, the depositor, and any indorser. The paying bank would be included as a warranty recipient, for example because it would be the drawee of a check or a transferee of a check that is payable through it.

2. The warranties flow with the substitute check to persons that receive a substitute check or a paper or electronic representation of a substitute check. The warranties do not flow to a person that receives only the original check or a representation of an original check that was not derived from a substitute check. However, a person that initially handled only the original check could become a warranty recipient if that person later receives a returned substitute check or a paper or electronic representation of a substitute check that was derived from that original check. (See § 229.34(g) regarding claims by a depositary bank that accepts deposit of an original check).

3. A reconverting bank also makes the warranties to a person to whom the bank

transfers a substitute check that the bank has rejected for deposit regardless of whether the bank received consideration.

XXXII. Section 229.53 Substitute Check Indemnity

A. 229.53(a) Scope of Indemnity

1. Each bank that for consideration transfers, presents, or returns a substitute check or a paper or electronic representation of a substitute check is responsible for providing the substitute-check indemnity.

2. The indemnity covers losses due to any subsequent recipient's receipt of the substitute check instead of the original check. The indemnity therefore covers the loss caused by receipt of the substitute check as well as the loss that a bank incurs because it pays an indemnity to another person. A bank that pays an indemnity would in turn have an indemnity claim regardless of whether it received the substitute check or a paper or electronic representation of the substitute check The indemnity would not apply to a person that handled only the original check or a paper or electronic image of the original check that was not derived from a substitute check.

3. A reconverting bank also provides the substitute check indemnity to a person to whom the bank transfers a substitute check (or a paper or electronic representation of a substitute check) related to a check that the bank has rejected for deposit regardless of whether the bank providing the indemnity has received consideration.

B. 229.53(b) Indemnity Amount

1. If a recipient of a substitute check is making an indemnity claim because a bank has breached one of the substitute-check warranties, the recipient can recover any losses proximately caused by that warranty breach.

Examples.

a. A drawer discovers that its account has been charged for two different substitute checks that were provided to the drawer and that were associated with the same original check. As a result of this duplicative charge, the paying bank dishonored several subsequently presented checks that it otherwise would have paid and charged the drawer returned-check fees. The payees of the returned checks also charged the drawer returned-check fees. The drawer would have a warranty claim against any of the warranting banks, including its bank, for breach of the warranty described in section 229.52(a)(1)(ii). The drawer also could assert an indemnity claim. Because there is only one original check for any payment transaction, if the collecting bank and presenting bank had collected the original check instead of using a substitute check the bank would have been asked to make only one payment. The drawer could assert its warranty and indemnity claims against the paying bank, because that is the bank with which the drawer has a customer relationship and the drawer has received an indemnity from that bank. The drawer could recover from the indemnifying bank the amount of the erroneous charge, as well as the amount of the returned-check fees charged by both the paying bank and the payees of the returned checks. If the drawer's account were an interest-bearing account, the drawer also could recover any interest lost on the erroneously debited amount and the erroneous returned-check fees. The drawer also could recover its expenditures for representation in connection with the claim. Finally, the drawer could recover any other losses that were proximately caused by the warranty breach.

b. In the example above, the paying bank that received the duplicate substitute checks also would have a warranty claim against the previous transferor(s) of those substitute checks and could seek an indemnity from that bank (or either of those banks). The indemnifying bank would be responsible for compensating the paying bank for all the losses proximately caused by the warranty breach, including representation expenses and other costs incurred by the paying bank in settling the drawer's claim.

* * * * *

3. The amount of an indemnity would be reduced in proportion to the amount of any amount loss attributable to the indemnified person's negligence or bad faith. This comparative-negligence standard is intended to allocate liability in the same manner as the comparative-negligence provision of section 229.38(b).

* * * * *

XXXIII. Section 229.54 Expedited Recredit for Consumers

A. * * *

2. A consumer must in good faith assert that the bank improperly charged the consumer's account for the substitute check or that the consumer has a warranty claim for the substitute check (or both). The warranty in question could be a substitute-check warranty described in section 229.52 or any other warranty that a bank provides with respect to a check under other law. A consumer could, for example, have a warranty claim under section 229.34(a) or (e), which contain returned-check warranties that are made to the owner of the check.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 11, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–30024 Filed 2–3–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL REGISTER

Vol. 79 Tuesday,

No. 23 February 4, 2014

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DEPARTMENT OF AGRICULTURE

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7 CFR Parts 4274, 4279, 4280, 4284, and 4290

RIN 0575–AC56

Environmental Policies and Procedures

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, U.S. Department of Agriculture (USDA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Rural Development, a mission area within the U.S. Department of Agriculture comprised of the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS) and Rural Utilities Service (RUS), hereafter referred to as the Agency, is proposing to unify and update environmental policies and procedures covering all Agency programs by consolidating two existing Agency regulations that implement the National Environmental Policy Act (NEPA) and other applicable environmental requirements. These rules supplement the regulations of the Council on Environmental Quality (CEQ), the regulations of the Advisory Council on Historic Preservation (ACHP), associated environmental statutes, Executive orders and Departmental Regulations. The majority of the proposed changes relate to the categorical exclusion provisions in the Agency's procedures for implementing NEPA. These proposed changes are intended to better align the Agency's regulations, particularly for those actions listed as categorical exclusions, to the Agency's current activities and recent experiences and to the CEQ's Memorandum for Heads of Federal Departments and Agencies entitled ''Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act'' issued on November 23, 2010, and to consolidate the provisions of the Agency's two current NEPA rules at 7 CFR parts 1794 and 1940, subpart G.

DATES: Comments on the proposed rule must be received on or before April 7, 2014. Comments on the reporting and recordkeeping aspects of this rule in accordance with the Paperwork Reduction Act of 1995 continue through April 7, 2014.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street SW., 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Mark S. Plank, Director, Environmental and Engineering Staff, Rural Utilities Service, Stop 1571, 1400 Independence Ave. SW., Washington, DC 20250–1571; email: *Mark.Plank@wdc.usda.gov*; telephone: (202) 720–1649.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

This section describes NEPA requirements, including the different levels of environmental review, and a description of how the Agency makes a determination regarding the appropriate level of environmental review. It also describes the Agency's mission and its current NEPA-implementing regulations.

A. National Environmental Policy Act

NEPA (Pub. L. 91–190, 42 U.S.C. 4321–4370) establishes a national environmental policy to, among other things, ''create and maintain conditions under which man and nature can exist in productive harmony'' (42 U.S.C. 4331(a)); sets goals for the protection, maintenance, and enhancement of the environment; and provides a process for carrying out the policy and working toward those goals. NEPA also created the Council on Environmental Quality (CEQ), which was later directed, by Executive order, to promulgate binding regulations to guide all Federal agencies in preparation of agency-specific regulations for implementing NEPA (Executive Order No. 11514, ''Protection and Enhancement of Environmental Quality'' [March 5, 1970], as amended by Executive Order No. 11991, ''Relating to Protection and Enhancement of Environmental Quality'' [May 24, 1977]). The CEQ regulations can be found at 40 CFR 1500–1508 and are referenced in this proposed rule.

As set forth in CEQ's NEPA-implementing regulations, the NEPA process requires different levels of environmental review and analysis of Federal agency actions, depending on the nature of the proposed action and the context in which it would occur. The three levels of analysis are: Categorical exclusion (CE), environmental assessment (EA), and environmental impact statement (EIS).

A CE is a category of actions that each Federal agency determines, by regulation, do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). The agency's procedures must provide for ''extraordinary circumstances'' in which a normally categorically excluded action may have a significant environmental effect. Examples of Agency CEs are routine financial transactions including, but not limited to, refinancing of debt; loans for purchase of real estate or equipment; and small-scale construction. Even if a proposed action is classified by an agency as a CE, such proposed action is still screened for any extraordinary circumstances that would indicate a potential to have significant impacts. If a CE applies, and there are no extraordinary circumstances, the Federal agency typically documents that determination in the project file. If, however, a CE applies and the agency determines that there are extraordinary circumstances, the agency would proceed to prepare an EA or an EIS.

An EA is prepared to determine whether the impacts of a particular proposal might be significant (40 CFR 1508.9). In an EA, a Federal agency briefly describes the need for the proposal, alternatives to the proposal, and the potential environmental

impacts of the proposed agency action and alternatives to that action, including the no action alternative. An EA results in either a Finding of No Significant Impact (FONSI) or a determination that the environmental impact may be significant and therefore an EIS is required.

A Federal agency is required to prepare an EIS for any major Federal action that may significantly affect the quality of the human environment (NEPA, 42 U.S.C. 4332(2)(C)). The EIS must include a detailed evaluation of: (1) The environmental impacts of the proposed action; (2) any adverse environmental effects that cannot be avoided; (3) alternatives to the proposed action; (4) the relationship between local, short-term resource uses and the maintenance and enhancement of long-term ecosystem productivity; and (5) any irreversible and irretrievable commitments of resources. NEPA requires that this evaluation be started once a proposal is concrete enough to warrant analysis and must be completed at the earliest possible time to ensure that planning and implementation decisions reflect the consideration of environmental values.

B. Agency's Mission

By statutory authority, the Agency is the leading Federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper. The Agency supports these communities in a dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and new markets.

To achieve its mission, the Agency provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. Like all Federal agencies, the Agency is responsible for determining the appropriate level of review for every proposed action. As part of the Agency's environmental review responsibilities under NEPA, the Agency's responsible official examines an individual proposed action to determine whether it qualifies for a CE under the Agency's NEPA regulations. The Agency's process is consistent with that described in guidance issued by CEQ on establishing, applying, and revising CEs (''Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act'' (CEQ CE Guidance)(75 FR 75628 (2010)). This guidance states:

> ''When determining whether to use a categorical exclusion for a proposed activity, a Federal agency must carefully review the description of the proposed action to ensure that it fits within the category of actions described in the categorical exclusion. Next, the agency must consider the specific circumstances associated with the proposed activity, to rule out any extraordinary circumstances that might give rise to significant environmental effects requiring further analysis and documentation'' in an EA or EIS (75 FR at 75631).

The Agency's existing and proposed regulations ensure that the Agency's responsible official follows the steps described by CEQ for determining whether a CE for a particular proposed action exists. The Agency requires applicants to describe their proposals in sufficient detail to enable the Agency to determine the required level of NEPA review. If the proposed action does not fall within an established CE or if there are extraordinary circumstances, the Agency's responsible official then determines if the action is one that normally requires the preparation of an EA or EIS. Those types of actions are specified in the Agency's existing and proposed regulations.

If a proposed action, which is not a CE, does not normally require the preparation of an EIS, the Agency's responsible official will proceed to prepare an EA to determine if the potential environmental impacts of the proposed action may be significant. If the Agency concludes, based on the EA, that the impacts would not be significant, the Agency will prepare and issue a FONSI. If, however, the Agency concludes that the impacts may be significant, the Agency's responsible official will proceed to issue a notice of intent to prepare an EIS.

The Agency's procedures for determining whether to apply a CE or to prepare an EA or EIS and the manner in which those determinations are documented are set forth in the Agency's existing and proposed NEPA regulations.

To achieve the Agency's mission and to improve the delivery of its programs, the Agency intends to consolidate and update the existing environmental regulations to eliminate confusion between the two existing NEPA regulations and to facilitate NEPA reviews.

C. Current Agency NEPA Regulations

Each Federal agency's NEPA implementing procedures are specific to the actions taken by that agency and supplement the CEQ regulations (40 CFR 1507.3). Both RHS/RBS and RUS have promulgated Agency NEPA regulations. The Agency also completes various other review requirements for its programs under the umbrella of NEPA, including historic preservation reviews under 16 U.S.C. 470f of the National Historic Preservation Act, and consultation on federally-listed species under 16 U.S.C. 1536 of the Endangered Species Act.

The environmental policies and procedures currently utilized by RHS and RBS to implement NEPA were published as a final rule by the Farmers Home Administration (FmHA) on January 30, 1984 (7 CFR part 1940, subpart G, 49 FR 3724) and were amended on September 19, 1988 (53 FR 36266). RHS and RBS are successor agencies to FmHA, which ceased to exist on October 20, 1994, pursuant to The Agricultural Reorganization Act of 1994 (Pub. L. 103–354). Also pursuant to this Act, the farm programs under FmHA were transferred to the Farm Service Agency (FSA) that was established by the 1994 USDA reorganization.

RUS was established as part of the same 1994 USDA reorganization that established RHS and RBS, and is comprised of Rural Electrification Administration (REA) programs combined with the Water and Waste Program from the former FmHA. The environmental policies and procedures currently applicable to RUS programs were published as a final rule on March 13, 1984, by the REA (7 CFR part 1794, 49 FR 9544), were revised and published as a final rule in 1998 (63 FR 68648) to accommodate the 1994 USDA reorganization, and have been amended through 2003 (68 FR 45157).

The Agency's existing regulations for implementing NEPA need to be updated to reflect the Agency's current structure and programs, CEQ guidance documents, and Executive orders. In addition, the Agency proposes to consolidate the Agency's approach to environmental reviews for all assistance programs within the USDA Rural Development mission area, rather than having separate NEPA procedures for RHS/RBS and RUS.

Under the proposed rule, 7 CFR part 1970 will replace 7 CFR part 1794 for RUS and 7 CFR part 1940, subpart G, for RBS and RHS. While 7 CFR part 1940, subpart G, will no longer apply to RHS

and RBS, it will continue to apply to FSA.

II. Purpose of the Proposed Agency NEPA Regulations

Under 7 CFR part 1970, subparts A through D, the Agency proposes to consolidate, simplify, and update the two existing NEPA rules. Although some substantive policy changes are being proposed to reflect recent environmental policies of Executive Orders and CEQ guidance, the Agency's main goal is to update and merge the two sets of existing regulations, rather than to promulgate new rules or requirements. The Agency believes that a consolidated environmental rule will be easier to read, understand, and use. In preparing the consolidated rule, the Agency sought to combine the requirements from both 7 CFR part 1940, subpart G, and 7 CFR part 1794 to eliminate redundancy; promote consistency among the RHS, RBS, and RUS programs; and reduce confusion on the part of applicants for Agency financial assistance and the public.

The proposed changes are intended to (1) better align the Agency's regulations with the CEQ NEPA regulations and recent guidance, and (2) update the provisions with respect to current technologies (e.g., renewable energy) and new and recent regulatory requirements.

The proposed consolidation encompasses the CEs currently in 7 CFR part 1940, subpart G, and in 7 CFR part 1794. In addition, the Agency is proposing to modify and add to its list of CEs in a manner consistent with CEQ regulations and guidance. CEQ encourages the development and use of CEs and has identified them as an ''essential tool'' in facilitating NEPA implementation so that more resource-intensive EAs and EISs can be ''targeted toward proposed actions that truly have the potential to cause significant environmental impacts.'' (CEQ CE Guidance, 75 FR at 75631). Appropriate reliance on CEs provides a reasonable, proportionate, and effective analysis for many proposed actions, thereby helping agencies reduce paperwork (40 CFR 1508.4) and delay (40 CFR 1508.5).

III. Invitation To Comment

The Agency encourages interested persons and organizations to submit written comments, which may include data, suggestions, or opinions. Commenters should include their name, address, and other appropriate contact information. Comments may be submitted by any of the means identified under **ADDRESSES**. Comments submitted by mail or hand delivery should be submitted in an unbound format, no larger than letter-size, suitable for copying and electronic filing. If confirmation of receipt is requested, a stamped, self-addressed, postcard or envelope should be enclosed. The Agency will consider all comments received during the comment period and will address comments in the preamble to the final regulation. Tribal consultation will be conducted during the public comment period for the proposed rule.

IV. Description of the Proposed Changes to the Agency's NEPA Regulations

The Agency is proposing both organizational and substantive changes to its NEPA-implementing regulations. These changes are described below. A section-by-section analysis of individual changes is provided in Section V.

A. Organizational Changes

Consolidation of the Agency's two existing rules for implementing the procedural provisions of NEPA and other applicable environmental requirements will simplify program application processes for applicants by making environmental requirements more clear and consistent across all programs.

In addition, under the proposed rule, NEPA procedures have been reorganized and revised to simplify provisions, as well as to provide more concise and comprehensive discussions of specific topics. In some cases, detail was removed because it relates primarily to internal Agency processes and thus is more appropriately addressed in staff instruction for Agency personnel or in separate guidance to applicants. For example, the Agency proposes to eliminate Exhibits A–M in 7 CFR part 1940, subpart G because these exhibits are internal guidance.

In other instances, additional clarification and detail were added to ensure consistency in NEPA compliance and implementation across all Agency programs. For example, additional detail was added to discussions of applicant responsibilities, definitions, actions subject to NEPA, limitations on actions during the NEPA process, scoping, public notices, and interagency cooperation.

The proposed NEPA regulations, which are intended to supplement the CEQ regulations, are organized into four subparts as described below:

Subpart A—Environmental Policies. This subpart contains the environmental policies and procedures of the Agency that integrate NEPA, as amended, with the planning, environmental review processes, and consultation procedures required by the environmental statutes, regulations, and Executive orders applicable to Agency programs.

Subpart B—NEPA Categorical Exclusions (CE). This subpart contains the descriptions of those categories of actions that the Agency has determined do not individually or cumulatively have a significant effect on the human environment. In consolidating and reorganizing the proposed CEs, the Agency grouped them by activity (e.g., routine financial actions) rather than by particular Agency program (e.g., Water and Waste or Community Facilities). The Agency took this approach to make clear that all CEs are applicable to each of the 86 programs the Agency currently administers, as long as the conditions within the CE are met and there are no extraordinary circumstances.

Subpart C—NEPA Environmental Assessments (EA). This subpart describes actions that require the preparation of an EA to determine whether the impacts of a proposed action may be significant and thus whether preparation of an EIS is warranted. It also describes the requisite components of an EA and FONSI, and includes a provision on supplementing an EA.

Subpart D—NEPA Environmental Impact Statements (EIS). This subpart describes actions for which the Agency will prepare an EIS. It also describes the contents of an EIS and a Record of Decision (ROD), which is the last step in the EIS process.

B. Substantive Changes

The Agency is also proposing consolidation of and substantive changes to its CEs, classification criteria and procedures for preparing EAs, and the preparation of EISs by third-party contractors. These proposed changes are described below.

1. Categorical Exclusions

The Agency is proposing to modify and add a number of CEs. In addition to combining the existing RHS/RBS and RUS CEs, the Agency is proposing some revisions to the existing CEs and is proposing new CEs. Further, the Agency recognizes that some CEs have a potential for significant environmental impacts because of the possible presence of extraordinary circumstances, such as sensitive environmental resources. For these CEs, the Agency is proposing to require applicants to submit environmental documentation regarding their requests for financial assistance. Finally, the Agency is proposing to add several CEs based on the experience of the Agency

and, in accordance with 40 CFR 1507.3(a), other Federal agencies with similar programs.

In addition to modifying existing CEs and adding new CEs, the Agency is proposing to eliminate several CEs currently listed in the RHS/RBS and RUS NEPA regulations because the Agency no longer undertakes those types of actions as a result of the 1994 USDA reorganization. These proposed modifications are described in more detail below. The section-by-section analysis in Section V.B describes the basis for each proposed CE as well as for the elimination of some CEs, currently specified in either 7 CFR part 1794 or 7 CFR part 1940, subpart G.

a. *New and Revised CEs.* Most of the proposed CEs are found in the existing Agency NEPA regulations. However, the Agency is proposing to revise the language of some existing CEs to reflect current agency programs. These revisions clarify, and in some instances, expand the applicability of the CEs and make the scope and quantitative aspects of the CEs more consistent with those adopted by other Federal agencies engaged in similar or identical actions. Such expansion includes the re-classification of Class I EAs, currently provided for in the existing RHS and RBS regulations as EAs for actions with low potential to effect environmental quality (7 CFR 1940.311), as CEs. Based on the EAs and FONSIs that have been prepared for these actions since 1984, the Agency has concluded that these types of activities, absent the presence of extraordinary circumstances, do not individually or cumulatively have significant environmental effects and thus are more appropriately classified as CEs.

In addition, the Agency is proposing new CEs to address Agency programs that have been enacted since the existing NEPA regulations were last updated. The range of Agency activities and programs has changed and expanded since the Agency's NEPA regulations were promulgated and later amended, growing to more than 86 programs in 2012.

In particular, there has been tremendous growth and development in the areas of energy efficiency and renewable energy. Over the last several years, this growth has given the Agency and other Federal agencies (e.g., the Department of Energy (DOE)), extensive experience with assessing the potential environmental impacts of these technologies. With the increase in development of energy efficiency and renewable energy, has come an increase in the number of applications to the Agency for financial assistance to promote energy efficiency and alternative energy development.

The Agency's proposal to add CEs based on the Agency's own experience as well as that of other Federal agencies is consistent with the CEQ CE Guidance. As CEQ noted in that guidance, a Federal agency may ''substantiate a categorical exclusion of its own based on another agency's experience with a comparable categorical exclusion and the administrative record developed when the other agency's categorical exclusion was established'' (CEQ CE Guidance, 75 FR at 75634). For several of the new CEs being proposed by the Agency, the Agency is relying on DOE's extensive experience with energy projects, which DOE has used in recent revisions to its own NEPA rule (76 FR 63764 (2011)). DOE's revised NEPA rule included several modifications and additions to its CEs, particularly relating to energy efficiency and renewable energy technologies. The Agency has reviewed DOE's CEs and the basis for those CEs, and has determined that many DOE actions eligible for a CE are comparable to actions undertaken by the Agency.

In the text of the proposed CEs, and as is done in the CEs in its existing regulations, the Agency uses the terms ''small,'' ''small-scale,'' ''minimal,'' and ''minor'' to limit the types and potential impacts of the activities that are eligible for a CE. While the Agency does not intend to define these terms specifically, in determining whether a particular proposed action qualifies for a CE, the Agency considers those terms in the context of a particular proposal, including its proposed size and location.

In assessing whether these terms apply to a particular proposed action, the Agency currently considers and would continue to consider factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste, in addition to the magnitude of the proposal. When considering the physical size of a proposed facility, for example, Agency environmental staff reviews the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action. This approach is similar to and consistent with that undertaken by DOE in the application of its CEs, as described in its recent NEPA rulemaking (76 FR 63764, 63768 (2011)).

The proposed rule also uses the term ''previously disturbed or developed'' to limit potential environmental impacts of CEs. The Agency has determined, based on experience, that the potential for certain actions to have significant impacts on the human environment is generally avoided when the action takes place within a previously disturbed or previously developed area. ''Previously disturbed or developed'' refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. This approach is similar to and consistent with that undertaken by DOE in the application of its CEs, as described in its recent NEPA rulemaking (76 FR 63764, 63768 (2011)).

For some proposed CEs, the Agency proposes the use of quantitative limitations or thresholds (acres, miles, feet, megawatts, kilovolts) to help further limit the potential for significant environmental impacts. These threshold values are based on the Agency's past experience in applying its existing CEs and preparing EAs that resulted in FONSIs, where actual project sizes could be correlated to impacts. The Agency's experience has shown that the proposal size is directly linked to impacts, where the greater the potential area affected, the greater the potential for significant impacts. In many cases, the threshold values are the same as those used in the existing Agency NEPA regulations. In other instances, however, changes in thresholds have been proposed to promote consistency among Agency programs and with the environmental requirements of other Federal agencies' programs that are similar in nature.

The Agency has reviewed and deliberated each proposed CE with respect to concept, coverage, applicability, and wording; and carefully examined the portion of the administrative record associated with each CE to ensure that the proposed CE fulfills the goal of balancing increased administrative efficiency with the avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements. The Agency has concluded that the proposed CEs encompass activities that have no inherent potential for significant impacts. Many of the Agency's conclusions regarding specific categorical exclusions are supported by

other Federal agencies that have established CEs for activities similar in nature, scope, and impact to those contemplated by the Agency. Based on the Agency's experience and that of other Federal agencies, the Agency determined that, in the absence of extraordinary circumstances, its proposed CEs will not individually or cumulatively pose significant environmental impacts.

b. Documentation Requirements. The Agency's proposed CEs are divided into two sections. The proposed CEs in § 1970.53 involve no or minimal construction and generally involve routine financial actions, information gathering activities, or modifications to existing facilities. For that reason, these CEs, due to their narrow scope, do not have the potential for extraordinary circumstances. Therefore, the CEs listed in proposed § 1970.53 would not require applicants to provide environmental documentation with their applications. Nonetheless, applicants may be required to provide environmental documentation at the Agency's request.

The CEs listed in proposed § 1970.54 would require applicants to submit environmental documentation with their applications for financial assistance. In the Agency's view, these proposed CEs involving small-scale development have an increased potential for disturbance of sensitive resources. Thus, the Agency proposes to require applicants to submit information regarding their proposals, including detailed site plans, location maps, and environmental surveys, to allow the Agency to determine whether there could be extraordinary circumstances.

An environmental report is currently required for CEs listed in RUS's NEPA regulation at 7 CFR 1794.22. Not all of those existing CEs would require documentation under the Agency's proposed NEPA rule, based on the Agency's conclusion that, for certain actions, environmental documentation is not necessary because of the low probability for extraordinary circumstances.

However, the Agency also concluded that some CEs that do not currently require an environmental report under the existing regulations at 7 CFR 1794.21 do have the potential for extraordinary circumstances. Thus, under the proposed rule, those proposed actions would require an applicant to submit environmental documentation. It should be noted that the environmental documentation required for CEs proposed in § 1970.54 is less than the information currently required for an environmental report (see 7 CFR 1794.32; RUS Bulletins 1794A–600 and 1794A–602). For those RHS and RBS Class I EA actions that are now proposed as CEs under part 1970, the documentation requirements would be similar to that provided in the RD 1940–20 form currently required under § 1940.311.

Differences between the existing and proposed CEs are addressed in more detail in the section-by-section analysis in Section V.B.

c. Multi-Tier Actions. Subpart B also provides that the Agency's approval of the initial funding to multi-tier entities (primary recipients) would be classified as CEs. Commitments of financial assistance to primary recipients who will, in turn, provide financial assistance in the future to qualified second tier or ultimate recipients under certain terms and conditions (§ 1970.55) would be subject to further environmental review by the Agency. The Agency will conduct its review in accordance with this part and on a case-by-case basis at the time when projects and ultimate beneficiaries are defined.

d. Eliminated CEs. The Agency is proposing to remove several types of actions from its list of CEs. Most of these relate to programs that are no longer under the purview of the Agency, except as noted below:

The following existing CEs involving subdivisions are being eliminated:

- *§ 1940.310(b)(2)* The approval of an individual building lot that is located on a scattered site and either not part of a subdivision or within a subdivision not requiring Rural Development's approval
- *§ 1940.310(b)(5)* The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions
- *§ 1940.310(b)(8)* The financing of housing construction or the approval of lots in a previously approved Rural Development subdivision. Please note that the financing of the housing construction portion of this CE has been incorporated into § 1970.53(c)(4).

The Agency proposes to eliminate §§ 1940.310(c)(3) and 1794.21(c)(1), which refer to project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities. These actions occur after the Agency has completed the NEPA process and has obligated funds for the project. Thus, these actions would have already been addressed as part of the request for financial assistance, and a separate section is not necessary.

The Agency also proposes to eliminate §§ 1940.310(d)(1) through 1940.310(d)(11), which are programs administered by FSA and are not eligible for Agency financing.

Finally, the Agency proposes to eliminate § 1794.22(b)(6), which refers to previously categorically excluded loan closing and servicing activities for which the purpose, operation, location, or design may have changed. The Agency recognizes that a previously approved action that is later altered would need to be re-examined to determine if the original application of the CE was still appropriate given the change in purpose, operation, location, or design. If the CE was no longer appropriate, the Agency would proceed to prepare an EA, or if necessary, an EIS.

All other CEs that are currently contained in 7 CFR parts 1940, subpart G, and 1794 are proposed for inclusion in the proposed CEs in § 1970.53 or 1970.54. For example, § 1794.21(b)(26), which refers to ''New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels'' is now included in proposed § 1970.54(a), ''Small-scale site-specific development,'' as long as the conditions of the CE are met and there are no extraordinary circumstances. For proposed § 1970.54(a) in particular, the Agency intends that proposals for financial assistance that fall within the stated parameters of the CE be eligible for a CE even though the proposed action may not be specifically listed as an example.

2. EA Policy

The Agency is proposing to eliminate the distinction in the RHS/RBS regulations for Class I and Class II EAs and the distinction in the RUS regulations for EAs with and without scoping. The Agency is also proposing to provide a formal process for the public review of EAs. These changes are described below.

a. Elimination of EA Categories. In the existing regulations, RHS and RBS distinguish between Class I and Class II EAs. Class I EAs are defined as those actions that are not listed as CEs and that require the preparation of an EA to determine if the proposal will have a significant impact on the environment (7 CFR 1940.311). Class II EAs ''have the potential for resulting in more varied and substantial environmental impacts'' and thus require a ''more detailed'' EA to determine if the proposed action requires the preparation of an EIS (7 CFR 1940.312). Further, RUS lists proposed actions that will normally require an EA (7 CFR 1794.23) and separately lists proposed actions that

require a ''scoping procedure'' in the development of the EA (7 CFR 1794.24).

To simplify its EA process and to make its NEPA regulations consistent with the CEQ regulations (which do not recognize different EA classifications), the Agency is proposing to eliminate these two EA classes. Under the proposed rule, the Agency would prepare EAs for all forms of financial assistance unless such actions are CEs or require the preparation of an EIS (proposed § 1970.101(b)). The proposed rule recognizes, however, that ''the amount of information and level of analysis provided in the EA must be commensurate with the magnitude of the proposal's activities and its potential to affect the quality of the human environment'' (proposed § 1970.102(a)).

As described more fully in the section-by-section analysis in Section V.C, several actions that were previously Class I EAs in the RHS and RBS regulations are now proposed as CEs because the Agency has concluded that those types of actions do not have the potential for imposing significant environmental impacts. All but one of these actions would require the applicant to submit environmental documentation to determine the presence or absence of extraordinary circumstances. Other actions that fall under the Class I EA classification would be eliminated because those actions are no longer undertaken by the Agency (i.e., the actions now fall under FSA's jurisdiction).

Under the existing regulations, at the discretion of the Agency, the Agency may require scoping meetings depending on the complexity of the proposal. The Agency is now proposing to remove the distinction between proposals normally requiring an EA and those requiring an EA with scoping. This does not represent a change in procedure, but continues to allow the Agency to exercise its discretion. Accordingly, the Agency determined that a separate classification is not necessary.

Except for proposals including electric transmission facilities of 230 kV or more nominal operating voltage and 20 miles or more in length, the remainder of the actions specifically listed in § 1940.311 and § 1940.312 (for RHS and RBS) and in § 1794.23 and § 1794.24 (for RUS) would require the preparation of an EA under the proposed NEPA rule. While the existing regulations define the specific proposals that require the preparation of an EA, the proposed rule simply states that all forms of financial assistance require the preparation of an EA unless they are categorically excluded or required to be the subject of an EIS. In light of the large number and varying types of programs implemented by the Agency, the proposed generic approach provides assurance that EAs will be prepared for proposals that may not have been previously encountered by the Agency and for future Agency programs.

b. Public Review of EAs. The Agency is proposing to establish a formal EA public notice and participation process that is consistent with the CEQ regulations and the existing part 1794, recent case law, and other Federal agencies' requirements for EAs. The Agency's proposed procedures would require EAs to be made available for public review and comment prior to completion and issuance of a FONSI, if the Agency determines that on the basis of the EA there are no significant impacts. Although the CEQ regulations require agencies to involve the public in the preparation of EAs ''to the extent practicable'' (40 CFR 1501.4(b)), there is no formal commenting requirement in those regulations. Federal agencies have typically declined to implement a public review and comment process similar to that required for EISs. Recently, however, courts have held that Federal agencies must permit some level of public participation when issuing an EA. Specifically, courts have held that a complete failure to involve or inform the public about an agency's preparation of an EA would violate NEPA. *See, e.g., California Trout* v. *Federal Energy Regulatory Commission,* 572 F.3d 1003 (9th Cir. 2009).

In keeping with the spirit of NEPA and the CEQ regulations and to follow the dictates of case law, the Agency is proposing a formal commenting process for EAs similar to that which is currently required under part 1794. This process would involve notification of the availability of an EA and the establishment of a 14- to 30-day public comment period. DOE has a similar provision in its NEPA regulations (10 CFR 1021.301(d)).

3. Third-Party Contracting

The Agency is proposing to improve efficiency in the NEPA process by revising the manner in which professional services of contractors to support the preparation of an EIS are procured. Under the proposed rule, applicants for financial assistance under all Agency programs would be required to fund EISs. In accordance with the CEQ regulations, applicants may undertake the necessary paperwork for the solicitation of a field of candidates under the Agency's direction and the Agency would select and approve all contractors (see proposed § 1970.152). Although funding for an EIS by applicants is currently allowed under § 1794.61, there is no similar provision in 7 CFR part 1940, subpart G. The proposed rule would allow all Agency programs to use a third-party contracting approach for the preparation of EISs.

Third-party contracting offers a more efficient approach for the preparation of an EIS, however it does not change current Agency responsibilities. The Agency would also remain responsible for: Selecting the EIS contractor; participating in the preparation of the EIS; and independently evaluating the scope and content of the EIS. This action is proposed to improve both the efficiency and the effectiveness of the Agency's environmental review processes and represents an important contribution to the Agency's ongoing efforts to streamline its operations.

V. Section-by-Section Analysis of the Proposed Agency NEPA Regulation

This section provides a detailed discussion of the proposed Agency NEPA regulation. For each section, the content of the proposed rule is briefly described. The Agency then discusses the manner in which the proposed rule relates to existing Agency NEPA regulations in part 1970, subpart G, and/or in part 1794. In most cases, the proposed rule is the same as an existing regulation or has been modified slightly for clarity or consistency between the RHS/RBS and RUS NEPA regulations. Where the Agency proposes substantive changes to its NEPA regulations, an explanation for the change is provided.

A. Subpart A—Environmental Policies

Purpose, Applicability, and Scope (§ 1970.1)

This proposed section describes the purpose of the Agency's environmental policies and procedures, which is to ensure compliance with NEPA and other applicable environmental requirements. It also explains that the Agency's environmental policies and procedures supplement the CEQ NEPA regulations (40 CFR parts 1500 through 1508).

This proposed section is similar to the information found in §§ 1940.301 and 1794.1 (Purpose); however, it has now been consolidated and reorganized into three separate paragraphs relating to purpose, applicability, and scope. The applicability paragraph is new and clarifies that the proposed rule applies to all Agency programs (RHS, RBS, and RUS). It also expands the existing discussion of scope to indicate that the Agency will take into account CEQ's

guidance and memoranda interpreting NEPA to the extent appropriate. In addition, this section incorporates and is in conformity with the procedures of Section 106 of the National Historic Preservation Act (NHPA) and Section 7 of the Endangered Species Act (ESA).

Some information in the existing regulations has been reorganized. Specifically, information relating to authorities, previously contained in § 1940.301(c), has been moved to proposed § 1970.3 (Authority). Information contained in § 1940.301(d) through (h), which covered a variety of topics (e.g., objectives and coordination with other agencies, responsible officials, covered actions, completion of an environmental review, and public involvement), are now captured elsewhere in the proposed rule, including: §§ 1970.4 (Policies), 1970.5 (Responsible Parties), 1970.8 (Actions Requiring Environmental Review), 1970.11 (Timing of the Environmental Review), and 1970.14 (Public Involvement).

By consolidating the requirements found in the existing regulations, this proposed section helps provide for a single, consistent, streamlined process that all Agency programs will follow in complying with NEPA and other applicable environmental requirements. NHPA and ESA are now specifically referenced because these are important environmental reviews the Agency completes for its programs under the umbrella of NEPA.

Authority (§ 1970.3)

This proposed section describes the many environmental laws, regulations, Executive orders, and USDA regulations that comprise the authority for the proposed 7 CFR part 1970. The list of authorities includes those found in the existing regulations (§§ 1940.301(c) and 1794.2), and has been updated and expanded to reflect new requirements that have been enacted since the existing regulations were published. These include new statutes, Executive Orders, Departmental regulations and a Departmental manual. In addition, two statutes referenced in § 1940.301(c) are not proposed for inclusion in the proposed rule because they are only applicable to the FSA, which is no longer part of the Agency. The implementing regulations of those two statutes are: Title 7, Part 658, Code of Federal Regulations, Department of Agriculture, Soil Conservation Service, Farmland Protection Policy; and Title 7, part 12, Code of Federal Regulations, Highly Erodible Land and Wetland Conservation.

Policies (§ 1970.4)

This proposed section states that it is Agency policy that applicant proposals must, whenever practicable, avoid or minimize adverse environmental impacts, conversion of wetlands and important farmlands, and development in floodplains where a practicable alternative [1] exists to meet development needs. Further, it is Agency policy to encourage reuse of real property defined as ''brownfields'' where possible; lend support to initiatives, resolutions, and programs designed to maximize international cooperation in addressing environmental problems; and consider opportunities to reduce greenhouse gas emissions. This proposed section is a consolidation of §§ 1940.303 (General policy) relating to the Agency decision-making process and the need to consider environmental impacts and alternatives early in the process; 1940.304 (Special policy) including special policies relating to land use and sensitive environmental resources; and 1940.305 (Policy implementation) relating to Agency responsibilities for environmental impact analysis, natural resource management, intergovernmental initiatives, and other protected resources. There is no analogous section in part 1794. The proposed section has also been updated to reflect new USDA policies, such as using the NEPA process, to the extent possible, to identify and encourage opportunities to reduce greenhouse gas emissions.

Responsible Parties (§ 1970.5)

This proposed section describes the responsibilities of the Agency and applicants. The Agency is responsible for all environmental decisions and findings related to its actions, and for compliance with all environmental laws, regulations, and Executive orders. The Agency responsibilities described are consistent with those identified in the CEQ regulations at 40 CFR 1506.5 (Agency responsibility).

With respect to the Agency's responsibilities, this proposed section is similar to § 1794.5 relating to the Agency's responsibility to comply with all environmental laws and Agency programs. It also includes the general Agency responsibilities found in 7 CFR part 1940, subpart G, but does not include most of the specific descriptions of Agency responsibilities found in §§ 1940.306 (National Office), 1940.307 (State Office), 1940.308 (District and County Office levels), and 1940.316, describing the duties of responsible officials specific to the environmental review process. These provisions were eliminated because the information concerns internal agency policy and procedures.

In addition, the proposed section highlights specific Agency responsibilities relating to mitigation measures. While these are not new to Agency NEPA practices, they are more clearly described in the proposed rule in order to be consistent with CEQ regulations and provide clarity to applicants and Agency staff. These responsibilities are consistent with the CEQ regulations (40 CFR 1505.2(c) and 1505.3) and with recent CEQ guidance on mitigation and monitoring (Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact, 76 FR 3843 (2010)). In particular, the proposed rule makes it clear that the Agency will include mitigation measures, as identified in the environmental review documentation, in Agency loan and grant commitment documents and that the Agency, guaranteed lender, or multi-tier primary recipients are responsible for monitoring and tracking the implementation, maintenance, and effectiveness of any required mitigation measures.

Provisions relating to the Agency's responsibility as a lead or cooperating agency are currently found in §§ 1940.325 (relating to being a cooperating agency), 1940.326 (related to being a lead agency), and 1794.14 (related to interagency involvement). Rather than repeating the CEQ regulations with regard to the definition and role of lead and cooperating agencies, however, the Agency proposes to simply reference the CEQ regulations in the proposed rule.

With respect to applicant responsibilities, most of the provisions in §§ 1940.309 and 1794.10 relating to an applicant's responsibility to prepare applicable environmental documentation are included in this proposed section. The Agency also proposes two additions. First, the Agency proposes to specify when it is appropriate for an applicant to coordinate and consult with state, Federal, and tribal agencies under Section 106 of NHPA. The circumstances in which an applicant may contact state, Federal, and tribal agencies directly is not addressed in the existing regulations and has been the

[1] ''Practicable alternative'' is the term used in Executive order 11988, Floodplain Management. NEPA requires consideration of ''reasonable'' alternatives in EAs and EISs.

source of some confusion among Agency staff and applicants.

In this section, the Agency also proposes to provide additional detail on and clarification of applicant's responsibilities relating to the type and adequacy of environmental information that must be submitted to the Agency in support of a request for financial assistance (e.g., environmental review information, supporting technical studies, or an EA). Reference to Agency forms (Request for Environmental Information) included in § 1940.309 has been eliminated because they will no longer be used.

The proposed section also describes the obligation of an applicant to assist the Agency in preparing an EIS such as conducting public involvement activities, issuing notices, and funding third-party contractors. Finally, this proposed section specifies that the Agency's consideration of a request for financial assistance may be affected by the applicant's willingness to cooperate with the Agency on environmental compliance.

Definitions and Acronyms (§ 1970.6)

This proposed section includes many, but not all, of the definitions found in the existing regulations at §§ 1940.302 and 1794.6. A list of acronyms relevant to the environmental review process within the Agency is also proposed to aid readers.

The existing regulations include some defined terms that have not been included in the proposed regulation because they are specific to only one Agency program, are no longer needed or used, are not directly related to the environmental review process, and/or are already defined in the CEQ regulations. The following terms defined in the existing regulations are not included in the proposed regulation:

- From 7 CFR 1940.302—''environmental review documents'' (refers to Agency forms no longer used), ''flood/flooding,'' (specific to one resource and better suited to staff instruction and/or applicant guidance), ''floodplains'' (critical action floodplain component is proposed for inclusion in the critical action definition), ''indirect impacts'' (defined in CEQ regulations under ''effects'' in 40 CFR 1508.8), ''mitigation measure'' (defined in CEQ regulations under ''mitigation'' in 40 CFR § 1508.20), ''practicable'' alternative (to be consistent with CEQ regulations that address ''reasonable'' alternatives at § 1502.14), ''preparer of environmental review documents'' (proposed for inclusion in staff instruction), and ''water resource project'' (specific to one program).
- From 7 CFR 1794.6—''Environmental Report,'' ''equivalent dwelling unit,'' ''important land resources,'' ''load design,'' ''multiplexing center,'' ''Natural Resource Management Guide,'' ''Supervisory Control and Data Acquisition System,'' and ''Third-Party Consultant.'' ''Third-party consultant'' is addressed under third-party contracting in proposed §§ 1970.5, 1970.11, and 1970.152. The rest of the terms are specific to RUS programs and, in some instances, refer to internal documents (Environmental Reports and Natural Resource Management Guides) that are not referenced in the proposed regulations. Such terms are better placed in staff instruction and/or applicant guidance.

The following definitions have been retained in the proposed rule, although some have been modified for additional clarification or to ensure applicability to all Agency programs. These are: ''Emergency'' (replaces ''emergency situation'') and ''no-action alternative'' in § 1940.302; and ''applicant,'' ''construction work plan,'' ''distributed resources'' (replaces ''distributed generation''), ''environmental review,'' ''loan/system designs'' (replaces ''loan design''), and ''preliminary architect/engineering report'' (replaces ''preliminary engineering report'') in § 1794.6.

New definitions are proposed for the following terms: ''Agency,'' ''critical action,'' ''design professionals,'' ''financial assistance,'' ''guaranteed lender'', ''historic property,'' ''Indian tribe,'' ''multi-tier recipient,'' and ''loan servicing actions.'' Such terms define actions (critical action, loan-servicing action), entities (multi-tier recipients, guaranteed lender, design professionals), and other terms not previously defined, but that are important to environmental policies and procedures within the Agency.

Actions Requiring Environmental Review (§ 1970.8)

This proposed section identifies the types of actions that the Agency considers to be major Federal actions subject to the requirements of NEPA and other applicable environmental requirements.

This proposed section is based on and further clarifies information found in § 1794.20 regarding parameters that will help Agency staff determine whether the applicant has sufficient control over the proposal to make the proposal subject to the requirements of NEPA and other applicable environmental requirements. Currently, § 1970.8 reiterates what is stated in § 1794.20 in that actions for which the applicant has less than 5 percent ownership control are not considered federal actions subject to this part. The agency determined that an inconsistency existed in § 1794.21(b)(17) in that a 5 percent or less ownership control was classified as a CE. The requirements in this proposed section are also similar to those in existing § 1794.3 and three sections in 7 CR part 1940, subpart G: §§ 1940.301(h), 1940.311, and 1940.312.

Section 1970.8(b)(2)(ii) provides that all Loan-servicing actions, including all consents or approvals given by an Agency, are major Federal actions. The consents and approvals of an Agency to be deemed major Federal actions would include, but not be limited to, consents and approvals given in connection with an entity that has previously received Agency funding and is required to seek Agency consent or approval under its existing agreements with the Agency as a prerequisite to receiving funding from another source. Under existing § 1794.3, RUS's approvals were deemed not to be major Federal actions by RUS. However, in order to have a more consistent analytical approach among agencies within USDA, under the proposed rule all Agency consents and approvals, including all consents and approvals given by RUS, will be deemed to be major Federal actions. Although an Agency's loan-servicing actions are deemed major Federal actions under § 1970.8(b)(2), the proposed rule provides that an Agency's loan-servicing actions may be classified as a CE under § 1970.53(a)(5).

This proposed section also recognizes the need to address certain major Federal actions that occur outside the borders of the United States, and identifies the geographic locations where NEPA and other applicable environmental requirements apply. NEPA applies not only to actions proposed within the United States, but also to actions proposed in any other commonwealth, territory, or possession of the U.S. such as Guam, Federated States of Micronesia, Republics of the Marshall Islands and of Palau, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, and Puerto Rico. The Republic of Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, in particular, are subject to Compacts of Free Association with the U.S. These compacts are Federal laws and specify that NEPA is generally applicable to major Federal actions that are proposed within those countries. See *http://www.usa.gov/Agencies/State_and_Territories.shtml.* This proposed section has been added to clarify NEPA's geographic

applicability outside of the U.S. to territories or associated states of the U.S.

Levels of Environmental Review (§ 1970.9)

This proposed section identifies three classes of actions and the related levels of environmental review for applicant proposals and Agency actions. The proposed section also requires applicants to describe their proposals in sufficient detail such that the Agency can properly determine the required level of review. The determination of the level of environmental review is not itself an action that requires NEPA review.

While the proposed section has no analogous sections in either 7 CFR parts 1794 or 1940, subpart G, information relating to the three levels of review is included in separate sections on CEs, EAs, and EISs (§§ 1970.310 through 1940.313—CEs, Class I and Class II EAs, and EISs, respectively; and §§ 1794.21 through 1794.25—CEs with and without Environmental Report, EAs with and without scoping, and EISs, respectively).

This proposed section was added (1) to consolidate information regarding the three levels of review and to make that information consistent with the CEQ regulations; (2) to describe the content and organization of the Agency's environmental policies and procedures; (3) to recognize that all aspects of a proposed action and proposals that are related to each other in such a way as to be a single course of action (connected actions) must be evaluated in a single environmental document (e.g., an Environmental Questionnaire, an EA, or an EIS), and (4) to address multi-year Telecommunication Program Loan/System Designs and multi-year Electric Program Construction Work Plans.

Raising the Level of Environmental Review (§ 1970.10)

This proposed section identifies the conditions that could trigger the need for a higher level of review than that classified in subparts B (CE) or C (EA) of the proposed rule. These conditions include site-specific environmental conditions or scientific controversy. In such situations, the Agency will determine whether extraordinary circumstances, as defined in § 1970.52, or the potential for significant environmental impacts warrant a higher level of review (e.g., a CE action would be raised to the level of an EA review, or an EA action would be raised to the level of an EIS review).

There are no analogous sections in 7 CFR parts 1940, subpart G, or 1794. While § 1940.319(g) acknowledges the potential for controversy and describes how environmental controversy should be addressed, it requires completion of a Class II EA in such circumstances. As has been noted previously, the distinction between Class I and Class II EAs in 7 CFR part 1940 has been eliminated. However, this proposed section makes it clear that an action that may be a Class I EA under the existing 7 CFR part 1940, subpart G, and that is now proposed to be a CE could require the preparation of an EA (or an EIS) if there are extraordinary circumstances related to the proposal (e.g., presence of sensitive resources or scientific controversy). The Agency is solely responsible for making this determination.

Timing of the Environmental Review Process (§ 1970.11)

The requirements in this proposed section are similar to §§ 1940.315, 1794.11, 1794.44, 1794.64, and 1794.73. Information relating to timing, previously contained in multiple sections in 7 CFR part 1794, based on the level of environmental review, is proposed for consolidation into this proposed section. Much of the detail in 7 CFR part 1940 relating to the Agency pre-application process and associated forms are proposed for elimination because those programs have been transferred to the FSA. This proposed section has also been revised to make it clear that the obligation of funds is directly tied to the conclusion of the environmental review process. It provides the specific steps that must be completed before the environmental review process is formally concluded.

The Agency is also proposing to add a provision relating to third-party contracting in this proposed section. Consistent with the CEQ regulations (40 CFR 1506.5(c)) and the practices of other agencies such as the U.S. Department of Energy (10 CFR 1021.215(d) and 1021.310) and the U.S. Environmental Protection Agency (40 CFR 6.303), the Agency is proposing to require applicants to solicit and procure professional services of third-party contractors to assist in the preparation of an EIS. The third-party contracting process is addressed in proposed § 1970.152, and the Agency's basis for this addition is described in Section V.C. below.

Proposed § 1970.11 makes it clear that the Agency is responsible for selecting a third-party EIS contractor and that applicants may not procure the services of any EIS contractor without approval by the Agency. This provision was added to ensure that the Agency would be in control of the preparation of an EIS.

Limitations on Actions During the NEPA Process (§ 1970.12)

This proposed section provides that applicants may not take actions concerning a proposal that may have an environmental impact or that would limit or affect the Agency's decision until the Agency's review process has been concluded. The requirements in this proposed section are consistent with CEQ regulations (40 CFR 1506.1) and similar to the existing regulations at §§ 1940.309(e) (relating to responsibilities of the applicant) and 1794.15 (Limitations on actions during the EIS process).

The proposed section allows the Agency to deny financial assistance where an applicant has been found to have engaged in anticipatory demolition as that term is used in the NHPA (Section 110(k)) referring to a historic property that may be purposefully destroyed or irreparably harmed. It also includes a provision regarding ongoing construction activities. Occasionally, applicants have applied for Agency financial assistance on a project after construction has started. Examples include when funding from another source has been withdrawn or the applicant incurs a cost overrun before construction is complete. The Agency has put in place stringent requirements to assure that the applicant is not attempting to avoid environmental compliance requirements. The proposed section describes the requirements that would apply in these types of circumstances.

Finally, this proposed section includes a discussion of when an applicant, with the prior written consent of the Agency, may make minimal expenditures in furtherance of a proposal prior to the completion of the NEPA process. This section is similar to that found in § 1794.15 (there is no analogous discussion in 7 CFR part 1940, subpart G). The proposed section is consistent with the CEQ regulations (40 CFR 1506.1(d)), which specifically allow for RUS (as successor to the Rural Electrification Administration (REA)) ''approval of minimal expenditures not affecting the environment (e.g., long leadtime equipment and purchase options) made by non-governmental entities seeking loans from [RUS].'' A specific reference to this CEQ provision is included in the proposed rule.

Consideration of Alternatives (§ 1970.13)

This proposed section provides that the Agency should consider all

reasonable alternatives when conducting a NEPA analysis. The Agency will also consider technical and economic feasibility when determining whether an alternative is reasonable. It also requires evaluation of the ''No Action'' alternative, at a minimum, for proposals subject to 7 CFR part 1970, subpart C (EAs). For proposals subject to 7 CFR part 1970, subpart D (EISs), the requirements of 40 CFR 1502.14 (Alternatives Including the Proposed Action) must be followed with respect to evaluation of reasonable alternatives.

This proposed section also recognizes that the level of analysis of alternatives will depend on the nature and complexity of the proposal. For example, an EA for a small project with limited potential environmental impacts is likely to need a less robust alternatives analysis than an EA or an EIS for a multi-faceted project with the potential for large impacts to sensitive resources. In some cases, analyzing only the proposed action and the No Action alternative may be appropriate.

The requirements in this proposed section are similar to those in § 1794.12. However, the factors the Agency will consider in determining whether an alternative is reasonable have been modified. The factors found in § 1794.12, while potentially applicable, are more specific to RUS programs (e.g., size, scope, state of technology; legal and socioeconomic concerns; availability of resources; and timing). For that reason, the Agency proposes to state more generally that factors such as economic and technical feasibility will be taken into account in determining whether a particular alternative should be considered reasonable. Additional details or examples are more appropriate for and will be provided in staff instruction and/or applicant guidance.

While there is no analogous section in 7 CFR part 1940, subpart G, existing § 1940.312(g) and (h) define ''No Action'' and ''practicable alternative,'' respectively. ''Practicable alternative'' is the term used in Executive Order 11988, Floodplain Management; the CEQ regulations require analysis of all ''reasonable'' alternatives (40 CFR 1502.14). In the existing regulations, § 1940.312(h) identifies three types of alternatives that must be analyzed to determine whether a ''practicable alternative'' exists, including alternative project sites or designs, projects with benefits similar to the proposed action, and the no action alternative. While these three types of alternatives are consistent with the range of ''reasonable'' alternatives that might be evaluated in an Agency EA or EIS, the modifier ''practicable'' is not used in this proposed rule in order to be consistent with the CEQ regulations.

Public Involvement (§ 1970.14)

This proposed section describes how the Agency will meet its responsibility to involve the public including minority or low-income populations, and consult with other agencies. To accomplish this, the Agency will publish notices, conduct meetings, and use other means as necessary to inform the public regarding the proposed action and associated NEPA process. This section also describes the scoping process, including scoping meetings, agency responsibilities for notifying the public, making documents publicly available, and the handling of public comments.

The requirements in this proposed section are similar to those currently found in §§ 1940.331 and 1794.13. However, the proposed section includes several revisions. One important revision is the elimination of references to Class I and Class II EAs in 7 CFR part 1940 and EAs with and without scoping in 7 CFR part 1794 as discussed previously. Accordingly, under the proposed section, scoping will be required for all EAs. This will fulfill the requirements and the spirit of NEPA as well as provide certainty to Agency staff, applicants, and other interested parties. While scoping is required for all EAs under the proposed section, the requirement for scoping meetings, previously identified for EAs with scoping under part 1794, is now at the Agency's discretion.

The proposed rule also requires public review of EAs. This provision is consistent with the requirements of 7 CFR part 1794, but represents a change from 7 CFR part 1940, which specifies no formal public involvement process for EAs. The section has also been updated to identify other appropriate methods of public involvement such as posting information on the Internet or using other electronic media.

The proposed section specifies the role of applicants in supporting the Agency's public involvement activities, including outreach to minority or low income populations and participation in consultation with Federal, state and local agencies; Federally recognized American Indian tribes and Alaska Native organizations; Native Hawaiian organizations; and interested parties. To assist Agency staff in reaching a wider and more diverse public, the proposed rule requires greater applicant support for outreach efforts than is described in the existing regulations. However, as a practical matter, Agency staff currently seeks and receives such support from applicants on an informal basis. The proposed rule would codify this practice. Additional information on scoping is provided in proposed § 1970.153, Notice of Intent and Scoping.

Interagency Cooperation (§ 1970.15)

This proposed section provides that the Agency will, when practicable, eliminate duplication of Federal, State, and local procedures by coordinating with other Federal agencies; adopting appropriate environmental documents prepared for or by other Federal agencies; cooperating with State and local governments, such as in the preparation of joint documents prepared under a given State Environmental Policy Act (SEPA); and incorporating other environmental documents by reference or adopting other documents in accordance with 40 CFR 1502.21 and 1506.3.

The requirements in this proposed section consolidate information previously found in multiple sections within the existing regulations, including §§ 1794.71, 1794.72, 1794.74, 1940.324 through 1940.329, and 1940.334. With respect to the sections currently found in 7 CFR part 1940, much of the detail relating to responsibilities as a lead and cooperating agency, incorporation by reference, and compliance with SEPAs has been eliminated, although the general requirements have been retained. The detailed information regarding compliance procedures is more appropriate for and will be included in staff instruction and/or applicant guidance.

Mitigation (§ 1970.16)

This proposed section consolidates information in the existing regulations pertaining to mitigation, and specifically addresses the monitoring of mitigation commitments. It also requires that all mitigation measures be included in Agency commitment and decision documents. The requirements in this proposed section are consistent with those in the existing § 1794.17. Although there is no analogous section in 7 CFR part 1940, subpart G, mitigation is defined in § 1940.302(f)), mitigation measures are discussed as part of Class II EAs in § 1940.318, and monitoring is the subject of § 1940.330. In practice, the Agency has typically considered and imposed mitigation measures where appropriate. Accordingly, the Agency is proposing to codify its ongoing commitment to mitigation and to mitigation monitoring in particular in this proposed rule.

Programmatic Analyses and Tiering (§ 1970.17)

This proposed section requires the Agency to consider preparing programmatic level environmental impact analyses for new programs or major changes to programs if better decision making will be fostered, or tiering if it would result in a reduction in delay and paperwork in accordance with 40 CFR 1502.20. As described in the CEQ regulations, a programmatic NEPA document refers to a broad-scope EIS or EA that identifies and assesses the environmental impacts of an agency program. Tiering, as defined in 40 CFR 1508.28, refers to the coverage of general matters in a broader EIS (policy or national programs) with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on issues specific to the statement subsequently prepared. Agencies are encouraged to tier their EISs to eliminate repetitive discussion of the same issues and focus on issues ripe for decision at each level of the environmental review (40 CFR 1502.20).

The requirements in this proposed section are consistent with the existing § § 1940.327 and 1794.16 related to tiering. However, information has been added to clarify for applicants when the Agency would consider the preparation of a programmatic analysis.

Emergencies (§ 1970.18)

This proposed section provides that when an emergency exists and the Agency determines that it is necessary to take urgently needed actions, the Agency may take actions necessary to control the immediate impacts of the emergency before preparing an environmental impact analysis and any required documentation. ''Emergency actions'' are defined in the proposed rule as those actions that are urgently needed to return damaged facilities to service and to mitigate harm to life, property, or important natural or cultural resources.

The requirements in this proposed section are similar to the existing § 1940.332. However, the proposed rule distinguishes among an urgent response, a CE or EA level action, and an EIS level action. It also eliminates the distinction between Class I and Class II EAs found in the existing regulations for reasons discussed above, and includes a definition of emergency action. There is no analogous section in 7 CFR part 1794. In accordance with 40 CFR 1506.11, if emergency circumstances make it necessary to take an action for an EIS level action, the Agency will contact CEQ about alternative arrangements.

B. Subpart B—Categorical Exclusions

Applying CEs (§ 1970.51)

This proposed section provides that the actions listed in §§ 1970.53 through 1970.55 are classes of actions that the Agency has determined do not normally individually or cumulatively have a significant effect on the environment. For an action to meet the requirements of a categorical exclusion: (1) An action must fit within the classes of actions listed in §§ 1970.53 through 1970.55; (2) there must be no extraordinary circumstances related to the proposal; and (3) the proposal must not be connected to other actions with potentially significant impacts.

The proposed regulation states that most of the CEs listed apply to any program of the Agency; only a few apply to a particular program because the specified activity occurs only under that program. In addition, a proposed action that consists of one or more components may be categorically excluded only if all components of the proposed action are eligible for a CE. For example, a proposal to rehabilitate an existing structure (§ 1970.53(c)(2)) and install a small solar electric project (§ 1970.53(d)(5)) could be categorically excluded because both components of the proposed action fall within a proposed CE.

Failure to comply with 7 CFR part 1970, subpart B will postpone further consideration of an applicant's proposal until such compliance is achieved or the applicant withdraws the proposal. If compliance is not achieved, the Agency will deny the request for financial assistance.

The requirements in the proposed section are similar to the existing §§ 1940.310(a) through (d) and 1940.317, and expand on §§ 1794.30 and 1794.31, which make a general reference to RUS CEs and their classification. The reference and discussion relating to connected actions is new, and has been added to the proposed rule to be consistent with the CEQ NEPA regulations (40 CFR 1508.18).

Extraordinary Circumstances (§ 1970.52)

This proposed section defines extraordinary circumstances as unique situations presented by specific proposals, such as characteristics of the geographic area affected by the proposal, scientific controversy about the environmental effects of the proposal, uncertain effects or effects involving unique or unknown risks, and unresolved conflicts concerning alternate uses of available resources within the meaning of § 102(2)(E) of NEPA. The section provides examples of what the Agency considers to be extraordinary circumstances. In the presence of extraordinary circumstances, an action that may fall within the definition of a CE will be the subject of an EA or an EIS prepared in accordance with, 7 CFR part 1970, subparts C and D.

The proposed section is similar to the existing 7 CFR 1940.310(a) and 1940.317(e), except that § 1940.317(e)(9), (10), and (11) relating to important farmland, prime forest lands, and prime rangelands are no longer listed as extraordinary circumstances. In accordance with the Farmland Protection Policy Act, however, actions that propose to convert important farmland to nonagricultural lands are still required to evaluate other practicable alternatives. In addition, the provisions in § 1940.311(d)(1) requiring the preparation of an EA for a proposal involving environmental controversy has been added to proposed § 1970.52.

The listing of extraordinary circumstances has also been expanded from 7 CFR part 1940 to include three new situations: (1) Any violation of applicable Federal, state, or local statutory, regulatory, permit, or Executive order requirements for environment, safety, and health; (2) certain activities relating to the management of Resource Conservation and Recovery Act regulated wastes; and (3) any proposal likely to cause uncontrolled or unpermitted releases of hazardous substances, pollutants, contaminants, or petroleum and natural gas products. While the Agency has considered these circumstances in practice, the Agency determined that they should be included in the formal rule.

There is no analogous section in 7 CFR part 1794, although ''extraordinary circumstances'' are referenced in §§ 1794.21 and 1794.30.

CEs Involving No or Minimal Construction (§ 1970.53)

The Agency has determined, based on experience, that the potential for actions to have significant impacts on the human environment is generally avoided when the action: (1) Includes no construction or no significant alteration of ambient conditions (including air and water emissions); (2) takes place within a previously disturbed or previously developed area; or (3) would be small-scale in nature with only localized impacts in an area that is limited in size based on a specific

threshold(s) (e.g., acreage) set by the Agency. The use and meaning of certain qualifying provisions, such as small-scale, are discussed in Section IV.

The CEs in this proposed section are for proposals that involve no or minimal alterations in the physical environment and typically occur on previously disturbed or developed land. They include routine financial actions, information gathering activities, and modifications to existing facilities. It is the Agency's view that the CEs in this proposed section typically do not involve extraordinary circumstances and have not resulted in significant environmental impacts in the past. For these reasons, applicants will not normally be required to provide environmental documentation on the proposed actions included in this section beyond the project description that is part of any application. However, the Agency may request additional environmental documentation from the applicant if the Agency determines that additional information is needed for the Agency to determine the appropriate level of NEPA review.

Most of the CEs in proposed § 1970.53 are the same as those currently found in the RHS/RBS and RUS regulations; a few new CEs are also proposed. Table 1 lists all of the proposed CEs in § 1970.53 and indicates whether they were derived from existing Agency CEs (and if so, where) or whether they are new. Table 1 also lists relevant Class I EAs, now classified as CEs (see Section V.C for additional detail).

The explanation and justification for proposing the new CEs in § 1970.53 is provided in Table 2. Some of the proposed new CEs are based on Agency experience in preparing EAs that have always resulted in FONSIs for these or similar types of proposals; some proposed CEs are based on a CE promulgated by another Federal agency for a similar type of proposal. As noted in Section IV, the adoption of CEs promulgated by other agencies is encouraged by the CEQ CE Guidance (75 FR 75628 (2010)).

Some RHS/RBS CE actions are not included in the proposed rule. Such actions are not included because they are administered by FSA and not eligible for Agency funding or they are included in proposed § 1970.53. These are:

§ 1940.310(d)(1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no shifts in land use are proposed beyond the limits stated in paragraphs (d)(10) and (11) of this section;

§ 1940.310(d)(2) Financial assistance for the purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (d)(10) and (11) of this section;

§ 1940.310(d)(3) Financial assistance for (i) the payment of annual operating expenses, which does not cover activities specifically addressed in this section or §§ 1940.311 or 1940.312 of this subpart; (ii) family living expenses; and (iii) refinancing debts;

§ 1940.310(d)(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

§ 1940.310(d)(5) Financial assistance for onsite water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

§ 1940.310(d)(6) Financial assistance for the installation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, designed to irrigate less than 80 acres, provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart.

§ 1940.310(d)(7) Financial assistance that solely involves the replacement or restoration of irrigation facilities, to include those facilities described in paragraph (d)(6) of this section, with minimal change in use, size, capacity, or location from the original facility(s) provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a Class I assessment be completed as specified in § 1940.317(g) of this subpart. Also, to qualify for this exclusion, the facilities to be replaced or restored must have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons. Otherwise, the action will be viewed as an installation of irrigation facilities.

§ 1940.310(d)(8) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart;

§ 1940.310(d)(9) Financial assistance for the conversion of (i) land in agricultural production to pastures or forests, or (ii) pastures to forests;

§ 1940.310(d)(10) Financial assistance for land-clearing operations of no more than 15 acres, provided no wetlands are affected, and financial assistance for any amount of land involved in tree harvesting conducted on a sustained yield basis and according to a Federal, State or other governmental unit approved forestry management and marketing plan; and

§ 1940.310(d)(11) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no State water quality standard or wetlands are affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. If a water quality standard would be impaired or antidegradation requirement not met, a Class I assessment is required as specified in § 1940.317(g) of this subpart.

TABLE 1—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.53

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
§ 1970.53 Categorical Exclusions Involving No or Minimal Construction (no documentation required)		
§ 1970.53(a) Routine Financial Actions		
§ 1970.53(a)(1) Refinancing of debt	§ 1940.310(c)(1). § 1940.310(d)(3).	
§ 1970.53(a)(2) Purchase, transfer, lease or other acquisition of real property with no or minimal change in use.	§ 1940.310(b)(1) § 1940.310(b)(9) § 1940.310(c)(1). § 1940.310(c)(2). § 1940.310(d)(1).	§ 1794.21(b)(1). § 1794.22(b)(7).
§ 1970.53(a)(3) Purchase, transfer or lease of personal property or fixtures with no or minimal change in operations.	§ 1940.310(c)(1) § 1940.310(c)(5) § 1940.310(d)(2)	§ 1794.21(b)(1). § 1794.21(b)(13). § 1794.21(c)(2).
§ 1970.53(a)(4) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses.	§ 1940.310(c)(1). § 1940.310(d)(3).	
§ 1970.53(a)(5) Actions taken by Agency after provision of financial assistance involving no or minimal construction or change in operations.	§ 1940.310(e)(2). Class I EAs: § 1940.311(d)(2) and § 1940.311(d)(3).	§ 1794.21(b)(2). § 1794.21(c)(4).
§ 1970.53(a)(6) Rural Business Investment Program Actions	1940.310(c)(7).	
§ 1970.53(a)(7) Guaranteed underwriting loans	New CE. See Table 2.	
§ 1970.53(b) Information Gathering and Technical Assistance		
§ 1970.53(b)(1) Information gathering, data analysis, document preparation, and information dissemination.	§ 1940.310(e)(1) § 1940.310(b)(10)	§ 1794.21(a)(1). § 1794.21(b)(11). § 1794.21(c)(3).
§ 1970.53(b)(2) Technical advice, training, planning assistance and capacity building.	§ 1940.310(b)(4) § 1940.310(b)(6). § 1940.310(c)(4). § 1940.310(e)(1).	§ 1794.21(c)(3).
§ 1970.53(b)(3) Site characterization, environmental testing, and monitoring with no significant alteration of existing ambient conditions.	§ 1940.310(e)(1)	§ 1794.21(b)(10). § 1794.21(b)(11).
§ 1970.53(c) Small-Scale Construction and Minor Modification Proposals		
§ 1970.53(c)(1) Minor modifications or revisions to previously approved projects where such activities do not significantly alter the purpose, operation, location, or design of the project as originally approved.	§ 1940.310(c)(6) Class I EA: § 1940.311(d)(2).	§ 1794.21(c)(4).
§ 1970.53(c)(2) Repair, upgrade, or replacement of equipment or fixtures in existing structures to improve habitability, increase energy efficiency, or reduce pollution.	§ 1940.310(b)(3) § 1940.310(b)(7) § 1940.310(c)(2) § 1940.310(d)(4).	§ 1794.21(a)(4). § 1794.21(b)(20). § 1794.21(b)(22).
§ 1970.53(c)(3) Any internal modification or minimal external modification, restoration, renovation, maintenance and replacement in-kind to an existing facility or structure.	§ 1940.310(b)(3) § 1940.310(b)(7) § 1940.310(c)(2)	§ 1794.21(b)(3). § 1794.21(b)(5). § 1794.21(b)(6). § 1794.21(b)(7). § 1794.21(b)(9). § 1794.22(b)(1).
§ 1970.53(c)(4) Construction of or improvements to a single-family dwelling or a multi-family housing project serving up to four families, except when financing is provided through a Rural Housing Site Loan.	§ 1940.310(b)(1). § 1940.310(b)(3). § 1940.310(b)(7). § 1940.310(b)(8).	
§ 1970.53(c)(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use.	§ 1940.310(d)(5)	§ 1794.21(b)(23). § 1794.22(b)(5) EA: § 1794.22(c)(1).
§ 1970.53(c)(6) Modifications of an existing water supply well to restore production in existing water well fields where there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well.		§ 1794.21(b)(23).
§ 1970.53(c)(7) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities.		§ 1794.21(b)(16).
§ 1970.53(c)(8) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest.	§ 1940.310(d)(9).	
§ 1970.53(c)(9) Land-clearing operations of no more than 15 acres	§ 1940.310(d)(10).	

TABLE 1—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.53—Continued

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
§ 1970.53(c)(10) Conversion of no more than 160 acres of pastureland to agricultural production..	§ 1940.310(d)(11).	
§ 1970.53(d) Small Energy or Telecommunications Proposals		
§ 1970.53(d)(1) Changes to existing telecommunication facilities or electric distribution and transmission lines that involve pole replacement or structural components where either the same or substantially equivalent support structures at the approximate existing support structure location are used.	.....	§ 1794.22(a)(5).
§ 1970.53(d)(2) Phase or voltage conversions, reconductoring, or upgrading of existing electric distribution lines or telecommunication facilities.	.....	§ 1794.21(b)(15).
§ 1970.53(d)(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures.	New CE. See Table 2.	
§ 1970.53(d)(4) Siting, construction, and operation of small ground source heat pump systems that would be located in previously disturbed land.	New CE. See Table 2.	
§ 1970.53(d)(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprints of the existing structure.	New CE. See Table 2.	
§ 1970.53(d)(6) Siting, construction, and operation of small biomass projects that would use feedstock produced on site and supply gas or electricity for the site's own energy needs.	New CE. See Table 2. Class I EA: § 1940.311(c)(4).	
§ 1970.53(d)(7) Construction of small (one megawatt or less) standby electric generating facilities and associated facilities for the purpose of providing emergency power for or startup of an existing facility.	.....	§ 1794.21(b)(21).
§ 1970.53(d)(8) Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.	.....	§ 1794.21(b)(7).
§ 1970.53(d)(9) Safety, environmental, or energy efficiency improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations) that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products.	.....	§ 1794.21(b)(20). § 1794.21(b)(24).
§ 1970.53(e) Promulgation of Rules or Formal Notices		
§ 1970.53(e) Promulgation of Rules or Formal Notices	§ 1940.310(e)(3).	
§ 1970.53(f) Agency Proposals for Legislation		
§ 1970.53(f) Agency Proposals for Legislation	New CE. See Table 2.	
§ 1970.53(g) Administrative Actions		
§ 1970.53(g) Administrative Actions	§ 1940.310(e)(4) ..... § 1940.310(e)(5)	§ 1794.21(a)(2). § 1794.21(a)(3).

TABLE 2—EXPLANATION FOR NEW PROPOSED CATEGORICAL EXCLUSIONS IN PROPOSED § 1970.53

New proposed categorical exclusion 7 CFR part 1970	Explanation
§ 1970.53(a)(7) Guaranteed underwriting loans pursuant to Section 313A of the Rural Electrification Act.	Under Section 313A of the Rural Electrification Act the Agency guarantees payments on bonds or notes issued by not-for-profit lenders to the Federal Financing Bank if the proceeds are used to make loans for any telephone or electric purposes, other than electric generation, consistent with the Rural Electrification Act, or to refinance bonds and notes issued for such purposes. Section 313A guarantees are not issued for specific purposes, projects or utility providers. It has been the Agency's experience for several years that the proceeds of Section 313A guaranteed bonds and notes have been used to refinance outstanding bonds and notes that are general obligations of the not-for-profit lender that are not associated with specific projects. Based on its experiences with these transactions since 2005, the Agency has determined that these proposed routine financial actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures.	The Agency is adopting a U.S. Department of Energy CE that addresses these types of activities (CE B4.7). The U.S. Department of Commerce also has a similar CE (CE A–6). Confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(4) Siting, construction, and operation of small ground source heat pump systems that would utilize closed loops.	The Agency is adopting a U.S. Department of Energy CE that addresses these types of activities (CE B5.19). Confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprint of the existing structure.	These systems are small (typically for single family housing or small businesses), promote the use of renewable energy, and typically disturb less than 0.25 acre. Given the footprint restriction, confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(d)(6) Siting, construction, and operation of small biomass projects that would use feedstock produced on site and supply gas or electricity for the site's own energy needs.	These systems are small in size and typically disturb less than 0.25 acre. They are normally sited within an existing site such as a farm's manure lagoon or other waste facility to convert bio-gas (usually methane) into electricity. Example actions include animal waste anaerobic digesters or gasifiers that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy. Given the on-site restriction, confirming the absence of extraordinary circumstances (such as threatened or endangered species), and based on its own experience, the Agency has determined that these proposed actions will not individually or cumulatively have a significant impact on the environment.
§ 1970.53(f) Agency Proposals for Legislation	This CE applies only to proposals for legislation that have no potential for significant impacts on the environment because they would allow for no or minimal construction or changes in operation.

As shown in Table 1, many CEs in § 1970.53 are based on, and consistent with, CEs found in § 1940.310, which has no applicant documentation requirements, and § 1794.21, which does not require the submission of an environmental report. In a few instances, CEs found in § 1794.22 (requiring an environmental report) or Class I EAs found in § 1940.311, both with documentation requirements, are included in a proposed § 1970.53 CE with no documentation requirements. In these instances, which are addressed in the relevant sections below, the documentation requirements would be reduced under the proposed rule.

The following paragraphs describe each of the proposed CEs in § 1970.53.

Routine Financial Actions (§ 1970.53(a))

The proposed CEs described in this paragraph apply to the following routine financial actions:

(1) Refinancing of debt, provided that the applicant is not using refinancing as a means of avoiding compliance with the environmental requirements. This is a routine financial transaction that provides financial assistance to existing businesses or other entities to facilitate their continuing operations by reducing their debt payments. This proposed CE consolidates the scope of two existing RHS/RBS CEs (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by the U.S. Department of the Interior (DOI) relating to routine financial actions including guarantees, financial

assistance, income transfers, audits, fees, bonds, and royalties (43 CFR 46.210(c)).

(2) Financial assistance for the purchase, transfer, lease, or other acquisition of real property when no or minimal change in use is reasonably foreseeable. ''No or minimal change'' is defined in the proposed rule as meaning ''no or only a small change in use, capacity, purpose, operation, or design is expected where the foreseeable type and magnitude of impacts would remain essentially the same.'' The condition relating to minimal change in use is currently used in § 1940.310(c)(2). This is a routine financial transaction that normally has no potential for significant environmental impacts because there is no change to existing conditions. Because Rural Housing Site Loans involve subdivision development that would have the potential for significant environmental impacts, such loans are not eligible for this CE. Since these loans are typically for subdivision developments, the Agency believes new subdivision developments should be reviewed as an EA.

This proposed CE consolidates the scope of seven existing Agency CEs (see Table 1). With respect to existing § 1794.22(a)(11), which relates to the purchase of existing facilities or a portion thereof where the use or operation will remain unchanged, the requirement of a facility environmental audit in the existing CE is included as part of staff instruction (subpart J, Environmental Risk Management).

The provisions of the proposed CE are also similar to CEs promulgated by the U.S. Department of Energy (DOE) (10 CFR part 1021, Appendix B to subpart D, B 1.24) and the U.S. Environmental Protection Agency (EPA) (40 CFR 6.204(a)(2)(vi)), which relate to the acquisition, transfer, lease, or disposition of interests in real property for reasonably foreseeable uses. By adopting these CEs, these agencies have similarly concluded that these types of actions do not result in significant environmental impacts.

(3) Financial assistance for the purchase, transfer, or lease of personal property or fixtures involving no or minimal reasonably foreseeable changes in operations. The meaning of ''no or minimal change'' is the same as described under proposed § 1970.53(a)(2).

This proposed CE provides a list of actions that are included under this CE. This proposed CE also includes the approval of minimal expenditures such as contracts for long lead-time equipment and purchase options by applicants. This provision was not included in 7 CFR part 1940–G, although it is consistent with § 1794.15(b)(2) and CEQ regulations (40 CFR 1506.1(d)).

This proposed CE consolidates six existing Agency CEs (see Table 1). The Agency's implementation of these existing CEs has not resulted in the imposition of significant environmental impacts. The provisions of the proposed CE are also similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.7 and B 1.24), EPA (40 CFR 6.204(a)(2)(vi)), and the U.S. Department of Commerce (DOC) (Department Administrative Order 216–6, A–7 and A–9), which relate to the purchase of personal property such as communications and electronic equipment.

(4) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses. This is a routine financial transaction that provides financial assistance to existing businesses for their continuing annual operating expenses. This proposed CE consolidates and simplifies the content of two existing RHS/RBS CEs (see Table 1). The Agency's implementation of these existing CEs has not resulted in the imposition of significant environmental impacts.

(5) Actions by the Agency after provision of financial assistance when those actions have no potential for significant adverse environmental impact because the actions would involve no or minimal construction or change in operations, such as foreclosure or certain consents and approvals. These actions generally include routine loan servicing actions. This proposed CE consolidates three existing Agency CEs (see Table 1), as well as two Class I EAs that have been reclassified as CEs based on Agency experience (see also Section V.C).

(6) Rural Business Investment Program actions. This CE is an existing provision under § 1940.310(c)(7), which involves actions that relate to non-leveraged program actions such as licensing by USDA of rural investment entities and leveraged program actions unless such Federal assistance is used to finance construction or development of land.

(7) Guaranteed underwriting loans issued by the Agency under Section 313A(a) of the Rural Electrification Act of 1936. This CE is new and is consistent with existing Agency practices but is presented separately for clarity. Under Section 313A of the Rural Electrification Act the Agency guarantees payments on bonds or notes issued to the Federal Financing Bank by not-for-profit lenders if the proceeds are used to make loans for any telephone or electric purposes, other than electric generation, consistent with the Rural Electrification Act, or to refinance bonds and notes issued for such purposes. Section 313A guarantees are not issued for specific purposes, projects or utility providers. It has been the Agency's experience for several years that the proceeds of Section 313A guaranteed bonds and notes have been used to refinance outstanding bonds and notes that were general obligations of the not-for-profit lender that were not underwritten for or associated with any specific projects. Based on its experiences with these transactions since 2002, the Agency has determined that these proposed routine financial actions will not individually or cumulatively have a significant impact on the environment.

Information Gathering and Technical Assistance (§ 1970.53(b))

The following proposed CEs described in this paragraph apply to routine administrative or financial assistance actions:

(1) Information gathering, data analysis, document preparation, and information dissemination. Some of the examples provided include research, literature surveys, computer modeling, conceptual design, feasibility studies, document distribution and classroom training. This proposed CE consolidates and clarifies five existing Agency CEs (see Table 1). While the proposed CE does not specifically address every activity found in the existing regulations (e.g., appraisals of nonfarm tracts and small farms for rural housing loans [§ 1940.310(b)(10)]), it is the Agency's intent that such activities are included. The description of the information gathering activities in this proposed CE is intended to be general in nature and not limited to the examples provided. The provisions of the proposed CE are similar to existing CEs promulgated by DOI (43 CFR 46.210(e) and 46.210(j)), DOC (Department Administrative Order 216–6, A–3), and EPA (40 CFR 6.204(a)(2)(iii)), which relate to data and information collection and dissemination, data analysis, and testing.

(2) Technical advice, training, planning assistance and capacity building. This proposed CE expands on five existing Agency CEs (see Table 1) and incorporates the provisions of an existing CE promulgated by DOC (Department Administrative Order 216–6, A–8) which relates to classroom-based training and exercises using existing facilities. Similar to proposed

§ 1970.53(b)(1), the description is intended to be general and not limited to the examples given.

(3) Site characterization, environmental testing, and monitoring where no significant alteration of existing conditions would occur. Example actions include air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment. This proposed CE expands on three existing Agency CEs (see Table 1) by incorporating provisions from existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 3.1), DOI (43 CFR 46.210(e)), and EPA (40 CFR 6.204(a)(2)(iii)), which relate to information and data collection, inventory (including field study), site characterization, and environmental monitoring activities. Similar to proposed § 1970.53(b)(1), the description is intended to be general and not limited to the examples given.

Small-Scale Construction and Minor Modification Proposals (§ 1970.53(c))

The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Minor modifications or revisions to previously approved projects provided such activities do not significantly alter the purpose, operation, location, or design of the project as originally approved. This proposed CE consolidates two existing Agency CEs (see Table 1), as well as a Class I EA that has been reclassified as a CE based on Agency experience (see also Section V.C).

(2) Repair, upgrade, or replacement of equipment or fixtures in existing structures for such purposes as improving habitability, reconstruction, energy efficiency, or pollution prevention. These actions normally have no potential for significant environmental impacts and this CE has been modified to incorporate seven existing Agency CEs (see Table 1). The provisions of the proposed CE are also similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 2.1, B 2.5, B 3.9(b), B 5.1, and B 6.3) and EPA (40 CFR 6.204(a)(1)(i)), which relate to routine maintenance, workplace enhancements, and facility safety and environmental improvements to an existing facility such as reducing emissions and waste generation, and conserving energy.

(3) Any internal modification or minimal external modification, restoration, renovation, maintenance and replacement in-kind to an existing facility or structure. These actions normally have no potential for significant environmental impacts. This proposed CE has been modified to incorporate nine existing Agency CEs (see Table 1). The provisions of the proposed CE are similar to an existing CE promulgated by DOC (Department Administrative Order 216–6, A–1,), which relates to minor renovations and additions to buildings, equipment, and grounds that do not result in a change to the functional use of the property.

(4) Construction of or improvements to a single-family dwelling or a multi-family housing project serving up to four families, except when financing is provided through a Rural Housing Site Loan. Rural Housing Site Loans are typically for subdivision developments and the Agency believes new subdivision developments should be reviewed as an EA. However, it is the Agency's intent that this proposed CE include the financing of housing construction or the approval of lots in a previously approved Agency subdivision, as found in existing § 1940.310(b)(8). This is a routine financial transaction that the Agency has conducted extensively over the past 26 years and for which no significant adverse effects have resulted. This proposed CE has been modified to incorporate five existing RHS/RBS CEs (see Table 1).

(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use. This is a routine financial transaction that normally has no potential for significant environmental impacts. This proposed CE has been modified to incorporate two existing Agency CEs (see Table 1). The provisions of the proposed CE are similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.18), which relates to the siting, construction, modification, and operation of water supply wells.

(6) Modifications of an existing water supply well to restore production in existing water well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the new or replacement well. This is a routine financial transaction that normally involves reviewing plans and information from State regulatory and permitting agencies and normally has no potential for significant environmental impacts. This proposed CE includes an existing RUS CE (see Table 1), and also incorporates provisions similar to a CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.18), which relates to the siting, construction, modification, and operation of water supply wells.

(7) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities. This proposed CE includes an existing RUS CE (see Table 1).

(8) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest. This is an action that normally has no potential for significant environmental impacts. This proposed CE includes an existing RHS/RBS CE (see Table 1).

(9) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting is to be conducted on a sustainable basis and according to a Federal, State, or other governmental unit approved forestry management plan. This is an action that normally has no potential for significant environmental impacts. This proposed CE includes an existing RHS/RBS CE (see in Table 1).

Small Energy or Telecommunications Proposals (§ 1970.53(d))

The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Changes to existing telecommunication facilities or electric distribution and transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure location are used. This is a routine action that extracts a component of the existing 7 CFR 1794.22(a)(5) to encompass pole replacement which the Agency has determined, based on past experience, does not result in significant impact to environmental resources. The threshold reference in the existing regulation (i.e., less than 20 percent pole replacement) was not included. Instead, the Agency added provisions that are similar to an existing CE promulgated by the Bureau of Land Management (BLM) (Department of the Interior Departmental Manual 516, Chapter 11, E 13), which relates to upgrading of existing facilities which involve no additional disturbances outside the right-of-way boundary. Such provisions help ensure that there is no potential for significant impact.

(2) Phase or voltage conversions, reconductoring, or upgrading of existing electric distribution lines or telecommunication facilities. This is routine action that normally has no potential for significant environmental

impacts and which includes an existing RUS CE (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by DOC (Department Administrative Order 216–6, A–5), which relates to upgrading of existing radio communication towers that do not require ground disturbance; and by BLM (Departmental Manual 516, Chapter 11, E–16), which relates to acquisition of easements for an existing road or issuance of rights-of-way for use of existing facilities or improvements for the same or similar purpose.

(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures. The provisions of this proposed new CE are based on a similar CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.7) for adding fiber optic cable to transmission facilities or burying fiber optic cable in existing powerline or pipeline rights-of-way (see Table 2).

(4) Siting, construction, and operation of small ground source heat pump systems that would be located in previously disturbed land. These systems are very small (typically for single family housing or small businesses), promote the use of renewable energy, and typically disturb less than 0.25 acre of previously disturbed land. For these reasons, the Agency has determined that this proposed new CE is a routine action that normally has no potential for significant environmental impacts. This proposed CE is also similar to a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.19) for the installation, modification, operation and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (see Table 2).

(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprint of the existing structure. These systems are small (typically for single family housing or small businesses), promote the use of renewable energy, and typically disturb less than 0.25 acre. For these reasons, and the fact that the activity would occur within an existing footprint (already disturbed), the Agency has determined that this proposed new CE is a routine action that normally has no potential for significant environmental impacts (see Table 2).

(6) Siting, construction, and operation of small biomass projects, such as animal waste anaerobic digesters or gasifiers that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy. These systems are small and typically disturb less than 0.25 acre. They are normally sited within an existing and previously disturbed site such as a farm's manure lagoon or other waste facility to convert bio-gas (usually methane) into electricity, and include no or only incidental export of energy. This type of proposed action is currently included as a Class I EA in § 1940.311(c)(4) (see also Section V.C). All of the EAs prepared for these types of actions have resulted in FONSIs. For this reason, the Agency is proposing that these actions should be classified as eligible for a new CE (see Table 2).

(7) Construction of small standby electric generating facilities of one megawatt or less total capacity and associated facilities, for the purpose of providing emergency power for or startup of an existing facility. This is a routine action for emergency preparedness purposes at existing sites and typically disturbs less than 0.25 acre. This proposed CE includes an existing RUS CE (see Table 1).

(8) Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms. This proposed CE includes an existing RUS CE (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.6), which relates to the additions and modifications to transmission facilities.

(9) Safety, environmental, or energy efficiency improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluents discharges, or waste products. This proposed CE includes two existing RUS CEs (see Table 1). The provisions of the proposed CE are also similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.1), which relates to actions to conserve energy and promote energy efficiency.

Promulgation of Rules or Formal Notices (§ 1970.53(e))

This paragraph proposes to categorically exclude the promulgation of rules or formal notices for policies, programs, or projects that have no potential for significant environmental impacts because they would allow for no or minimal construction or changes in operations. This proposed CE would apply to the vast majority of Agency rules or notices regarding new or revised existing programs where the proposed implementation has no potential for significant adverse environmental impacts because they involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. This proposed CE includes an existing RHS/RBS CE (see Table 1).

Agency Proposals for Legislation (§ 1970.53(f))

This paragraph proposes to categorically exclude Agency proposals for legislation that have no potential for significant environmental impacts because they would allow for no or minimal construction or changes in operations, where minimal change in use has been defined in the rule language in § 1970.53(a)(2). This proposed CE is new, but is consistent with other CEs listed in proposed § 1970.53 related to activities that involve no or only minor construction or changes in operation and which have been shown to have no significant impact based on Agency experience (see Table 2). All other proposed legislation would require preparation of an EA or, if necessary, an EIS (see proposed § 1970.151(b)(8)).

Administrative Actions (1970.53(g))

This paragraph proposes to categorically exclude administrative actions including procurement activities for goods and services, routine facility operations, and personnel actions. Such actions typically involve only paperwork type activities and have been shown to have no significant impact based on Agency experience. This proposed CE consolidates the content from four existing Agency CEs (see Table 1). This proposed CE is also based on similar CEs promulgated by DOE (10 CFR part 1021), Appendix A to subpart D, A.1 and EPA (40 CFR 6.204(a)(2)(i) which include routine administrative, financial, and personnel actions.

CE Involving Small-Scale Development (§ 1970.54)

The CEs in this proposed section are for proposals that require an applicant to submit environmental documentation with their application to facilitate Agency determination of extraordinary circumstances. The proposed section provides that the environmental documentation must be submitted by the applicant as directed by the Agency. The proposed section also describes what the applicant's environmental documentation must contain, and specifies that the documentation submitted must be accurate, complete, and capable of verification.

While CEs listed in both proposed §§ 1970.53 and 1970.54 are all subject to a review with respect to extraordinary circumstances, the proposed CEs listed in § 1970.54 involve small-scale development and, as a result, have a greater potential to involve extraordinary circumstances. For this reason, the Agency proposes that for the CEs in this section, applicants be required to submit environmental documentation with their application to facilitate Agency determination of the presence or absence of extraordinary circumstances. While in the Agency's experience, these actions generally do not pose the potential for significant environmental impacts, the Agency believes that additional scrutiny with regard to extraordinary circumstances would help ensure that the use of a CE was appropriate.

For the proposals listed in this section, failure to submit the required documentation will postpone further consideration of the applicant's proposal until the environmental documentation is submitted, or the Agency may deny the request for financial assistance. This provision highlights that, without sufficient information to determine the potential for extraordinary circumstances, the Agency cannot determine whether application of a CE within this section is appropriate. Without the ability to make such a finding, the Agency would be unable to approve the applicant's proposal. This approach is consistent with current Agency policy and practice and with NEPA requirements.

The proposed CEs in § 1970.54 (small-scale, site specific development, small-scale corridor development, and small energy proposals) are substantially the same as, or similar to, the Agency categorical exclusions (or Class I EAs) and/or other agencies current NEPA implementing regulations, with some modifications to clarify the intended applicability of the categorical exclusion. Table 3 lists all of the proposed CEs in § 1970.54 and indicates whether they were derived from existing Agency CEs (and if so, where) or whether they are new.

The explanation for proposing the new CEs in § 1970.54 is provided in Table 4. Some of the proposed new CEs are based on Agency experience in preparing EAs that have always resulted in FONSIs for these or similar types of proposals; some proposed CEs are based on a CE promulgated by another Federal agency for a similar type of proposal. As noted in Section IV, the adoption of CEs promulgated by other agencies is encouraged by the CEQ CE Guidance (75 FR 75628 (2010)).

TABLE 3—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.54

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
§ 1970.54 Categorical Exclusions Involving Small-Scale Development (documentation required)		
§ 1970.54(a) Small-Scale Site-Specific Development		
§ 1970.54(a) Financial assistance for small-scale site-specific development activities (including construction, expansion, repair, rehabilitation or other improvements for rural development) on no more than 10 acres and where the action would not cause a substantial increase in traffic.	§ 1940.310(d)(4) § 1940.310(d)(5) Class I EAs: § 1940.311(c)(7) § 1940.311(a)(1) § 1940.311(b)(1) § 1940.311(b)(3) § 1940.311(a)(2) § 1940.311(b)(2) Class II EA: § 1940.312(a)(1) [if less than 10 acres], otherwise an EA].	§ 1794.21(b)(4). § 1794.21(b)(8). § 1794.21(b)(12). § 1794.21(b)(19). § 1794.21(b)(25). § 1794.21(b)(26). § 1794.22(a)(3). § 1794.22(a)(4). § 1794.22(b)(3).
§ 1970.54(b) Small-Scale Corridor Development		
§ 1970.54(b)(1) Construction or repair of roads, streets and sidewalks (and related structures) that would occur within an existing right-of-way and with minimal change in use, size, capacity, purpose or location from the original infrastructure.	§ 1940.310(c)(2)	
§ 1970.54(b)(2) Improvement and expansion of existing water, waste water and gas utility systems occurring within one mile of currently served areas (irrespective of capacity increase), or including an increase in capacity of not more than 30 percent of existing user population.	§ 1940.310(d)(5) Class I EA: § 1940.311(b)(1)	§ 1794.22(b)(4). § 1794.22(b)(6).
§ 1970.54(b)(3) Replacement of utility lines [where road reconstruction is undertaken by non-Agency applicants] where relocation of lines is either within or immediately adjacent to the new road easement or right-of-way.		§ 1794.21(b)(14).
§ 1970.54(b)(4) Construction of new distribution lines and associated facilities less than 69 kV.		§ 1794.22(a)(1)(i).
§ 1970.54(b)(5) Installation of telecommunication lines, cables and related facilities.		§ 1794.22(a)(2).

TABLE 3—SOURCES FOR PROPOSED CATEGORICAL EXCLUSIONS IN § 1970.54—Continued

Proposed categorical exclusions 7 CFR part 1970	Source: RHS/RBS regulations (7 CFR part 1940–G)	Source: RUS regulations (7 CFR part 1794)
§ 1970.54(c) Small Scale Energy Proposals		
§ 1970.54(c)(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations and support facilities.	.....	§ 1794.22(a)(6). § 1794.22(a)(7).
§ 1970.54(c)(2) Construction of electric transmission lines 10 miles in length or less, but not for the integration of major new generation resources into a bulk transmission system.	.....	§ 1794.22(a)(1).
§ 1970.54(c)(3) Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric transmission lines 20 miles in length or less to enhance environmental and land use values, for reliability or access improvement.	.....	§ 1794.22(a)(5).
§ 1970.54(c)(4) Repowering or uprating modifications or expansion of an existing unit(s) up to 50 average MW at electric generating facilities where the action would be taken to maintain or improve efficiency, capacity, or energy output of the facility and where any air emissions from such activities are within the limits of an existing air permit.	.....	§ 1794.21(b)(24).
§ 1970.54(c)(5) Installation of new generating units or replacement of existing generating units at existing hydroelectric facility or dam where the action would result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment.	.....	§ 1794.22(a)(9).
§ 1970.54(c)(6) Installation of heat recovery steam generator and steam turbine where the turbine has a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations.	.....	§ 1794.22(a)(12).
§ 1970.54(c)(7) Construction of small electric generating facilities, excluding geothermal and solar electric projects, but including wind and biomass less than 10 average MW.	New CE. See Table 4.	
§ 1970.54(c)(8) Geothermal electric projects developed on up to 10 acres of land.	New CE. See Table 4.	
§ 1970.54(c)(9) Solar electric projects developed on up to 10 acres of land.	New CE. See Table 4.	
§ 1970.54(c)(10) Distributed resources of any capacity located at or adjacent to an existing landfill site or waste water treatment facility powered by refuse-derived fuel.	.....	§ 1794.22(a)(8).
§ 1970.54(c)(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 MW using an existing conduit.	New CE. See Table 4.	
§ 1970.54(c)(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency or promoting pollution prevention. This CE would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities.	New CE. See Table 4.	

TABLE 4—EXPLANATION FOR NEW PROPOSED CATEGORICAL EXCLUSIONS IN PROPOSED § 1970.54

New proposed categorical exclusion 7 CFR part 1970	Explanation
§ 1970.54(c)(7) Construction of small electric generating facilities, excluding geothermal and solar electric projects, but including wind and biomass less than 10 average MW.	This CE is similar to two CEs recently promulgated by the U.S. Department of Energy (CE B.5.18 and 5.20). In addition, Agency managers and environmental specialists have reviewed previous Agency EAs and determined that these types of proposals could be effectively evaluated at the CE level.
§ 1970.54(c)(8) Geothermal electric projects developed on up to 10 acres of land.	This CE is similar to a CE recently promulgated by the U.S. Department of Energy (CE B5.19). In addition, Agency managers and environmental specialists have reviewed EAs and determined that these types of proposals could be effectively evaluated at the CE level.
§ 1970.54(c)(9) Solar electric projects developed on up to 10 acres of land.	This CE is similar to two CEs recently promulgated by the U.S. Department of Energy (CE B5.16 and CE B5.17). In addition, Agency managers and environmental specialists have reviewed EAs and determined that these types of proposals could be effectively evaluated at the CE level.

TABLE 4—EXPLANATION FOR NEW PROPOSED CATEGORICAL EXCLUSIONS IN PROPOSED § 1970.54—Continued

New proposed categorical exclusion 7 CFR part 1970	Explanation
§ 1970.54(c)(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 MW using an existing conduit.	The Agency has 7 years of experience in conducting EAs for small energy proposals and has found that these types of facilities have no potential to cause significant environmental effects. Other federal agencies have existing CEs for these types of actions and RD wishes to be consistent across agencies. The U.S. Department of Energy and the Federal Energy Regulatory Commission both have similar CEs (CE B5.24 [DOE] and 18 CFR § 380.4(14) [FERC]).
§ 1970.54(c)(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency or promoting pollution prevention. This CE would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities.	This CE is similar to two CEs recently promulgated by the U.S. Department of Energy (B 5.2 and 6.8) and Department of Commerce (A–1). In addition, Agency managers and environmental specialists have reviewed EAs and determined that these types of proposals could be effectively evaluated at the CE level.

For those CEs in § 1970.54 shown to be consistent with CEs in §§ 1794.22 (CEs with ER) and 1940.311 (Class I EAs), the documentation requirements under the proposed rule would be very similar to the requirements for Class I EAs (e.g., FmHA form 1940–20), but less than the ER requirements currently found in 1794.22. Because ERs are specific to RUS, they are not referenced in the proposed regulation. The Agency has determined that, based on experience, the level of documentation specified in § 1970.54 will provide sufficient environmental information to facilitate Agency determination of extraordinary circumstances.

For a limited number of CEs currently found in § 1794.21 (no ER), the documentation requirements would be greater under the proposed rule, although some level of documentation is still required under the existing regulations to allow Agency evaluation of an applicant's proposal. The Agency requirement for such documentation is to ensure that no extraordinary circumstances would be present in such projects.

Small-scale site-specific development (§ 1970.54(a)). The proposed CE described in this paragraph applies to financial assistance where site development activities (including construction, expansion, repair, rehabilitation or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic.

The use of a 10-acre limit is based on current thresholds of 10 acres currently found in the existing § 1794.21(a)(22), which allows construction of facilities and buildings involving no more than 10 acres of physical disturbance or fenced property. The meaning of ''substantial'' relating to an increase in traffic is a subjective term (discussed in Section IV), the meaning of which is dependent on the size of the project and the existing roadway infrastructure, capacity, and motor vehicle use. In general, it refers to a noticeable effect on the roads and the businesses or residents that utilize them, with respect to whether there would be an increased number of motor vehicles on the road resulting in congestion, longer travel times, etc.

By its terms, this proposed CE does not apply to new industrial proposals or new energy generation over 100 kilowatts (e.g., ethanol and biodiesel production facilities), or those classes of actions listed in §§ 1970.53, 1970.101, or 1970.151.

This proposed CE is intended to apply to a wide range of rural development activities under the Agency's 86 programs. Rather than attempting to provide an exhaustive list of proposed actions to which the Agency intends this CE to apply, several examples of such purposes and activities are provided. An attempt to provide an exhaustive list could too easily result in a failure to include all appropriate proposed actions thereby preventing the application of this CE to activities for which the CE is appropriate.

One of the examples provided in this section is the construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of great scenic value. These limitations are based on a similar CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.19) and DOC (Department Administrative Order 216–6, A–4), which relate to siting, construction, and operation of microwave and radio communication towers. The threshold height of 450 feet or less is consistent with a threshold of ''over 450 feet in height'' for a new or existing antenna structure established by the Federal Communications Commission for an EA-level review (47 CFR 1.1307).

This proposed CE is intended to include numerous existing Agency CEs (see Table 3). Agency experience in implementing these projects has not resulted in significant environmental impacts. For this reason, the Agency proposes to continue to classify these actions as CEs. Examples include, but are not limited to:

- Group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater (§ 1940.311(b)(2)).
- Land clearing activity, funded as an independent action (similar to § 1940.311(c)(3), but less than 10 acres).
- New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels (§ 1794.21(b)(26)).
- Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, purpose, operation, location, or design from the original facility. (§ 1940.310(d)(5).
- Installation or enlargement of irrigation facilities where the system is designed to irrigate no more than 80 acres (§ 1940.310(d)(6) and consistent with § 1940.311(c)(1), Class I EA for irrigation of more than 80 acres).
- Replacement or restoration of irrigation facilities with no or minimal change in use, size, capacity, or location from original facility (§ 1940.310(d)(7)).

The provisions of this proposed CE are also similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 1.15) and

DOC (Department Administrative Order 216–6, A–1 and A–2), which relate to the siting, construction, modification, minor renovations, and additions to buildings and roads within or contiguous to already developed or previously disturbed areas or which do not result in a change in functional use. These CEs do not impose an acreage limitation.

Small-scale corridor development (§ 1970.54(b)). The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use, size, capacity, purpose or location from the original infrastructure. This proposed CE includes one existing Agency CE (see Table 3). The provisions of the proposed CE are also similar to existing CEs promulgated by DOC (Department Administrative Order 216–6, A–1) and BLM (Department of the Interior Departmental Manual 516, Chapter 11, E 13 and E 17), which relate to minor renovations and additions or upgrades to roads and existing rights-of-way.

(2) Improvement and expansion of existing water, waste water, and gas utility systems no greater than one mile out from currently served areas irrespective of the percent of increase in new capacity, or increasing capacity not more than 30 percent of the existing population [or providing capacity to serve no more than a 30 percent increase in the existing population]. This proposed CE includes three existing Agency CEs and one Class I EA (see Table 3). The provisions of the proposed CE are also similar to existing CEs promulgated by EPA (40 CFR 6.204(a)(1)(ii) and (iii)) and BLM (Department of the Interior Departmental Manual 516, Chapter 11, E 17), which relate to the minor upgrading or minor expansion of system capacity or rehabilitation of existing infrastructure systems. The proposed CE incorporates the existing Agency CEs with those promulgated by EPA because the two agencies often provide joint financing on the same proposals.

(3) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way. This proposed CE, which encompasses utilities such as water and sewer lines, includes an existing RUS CE (see Table 3).

(4) Construction of new distribution lines and associated facilities less than 69 kV. This proposed CE includes an existing RUS CE (see Table 3).

(5) Installation of telecommunications lines, cables, and related facilities. This proposed CE includes an existing RUS CE (see Table 3).

Small scale energy proposals (§ 1970.54(c)). For many years, the Agency has prepared EAs for small scale energy projects including renewable energy projects. All have resulted in a FONSI and have no potential for significant impact. For this reason, the Agency has concluded that these types of projects, with appropriate limitations, are appropriate for CEs. The Agency is also relying on the experience of other Federal agencies such as DOE who implement similar programs and have had similar experiences. The proposed CEs described in this paragraph apply to financial assistance for the following actions:

(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations and support facilities. This proposed CE includes two existing RUS CEs (see Table 3), although the proposed CE does not include construction of electric power lines and associated distance or voltage thresholds.

The provisions of the proposed CE are also similar to an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.11), which relates to construction and modification of electric power substations or interconnection facilities.

(2) Construction of electric transmission lines 10 miles in length or less, but not for the integration of major new generation resources into a bulk transmission system. This proposed CE includes one existing RUS CE (see Table 3), although the 25-mile threshold length included in § 1794.22(a)(1) has been changed to a 10-mile length threshold to be consistent with DOE. The latter is due to the fact that the Agency cooperates with DOE in the financing and permitting of multiple transmission projects and consistency is desirable. With respect to § 1794.22(a)(5), the portion of this existing CE involving more than 20 percent pole replacement will be considered the same as new construction and is partly captured under this proposed CE for new transmission lines 10 miles in length or less (see also § 1970.54(c)(3)). The provisions of the proposed CE are consistent with an existing CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.12), which relates to the construction of electric powerlines 10 miles in length or less, or 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.

(3) Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric transmission lines 20 miles in length or less to enhance environmental and land use values, for reliability or access improvement. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas. This proposed CE includes an existing RUS CE (see Table 3). With respect to § 1794.22(a)(5), the portion of this existing CE involving less than 20 percent pole replacement is partly captured under this proposed CE for rebuilding existing lines less than 20 miles. The provisions of the proposed CE are consistent with a CE promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 4.13), which relates to the upgrading and rebuilding of existing powerlines 20 miles in length of less.

(4) Repowering or uprating modifications or expansion of an existing unit(s) up to 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit. This proposed CE includes an existing RUS CE (see Table 3).

(5) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE includes an existing RUS CE (see Table 3).

(6) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE includes an existing RUS CE (see Table 3).

(7) Construction of small electric generating facilities (except geothermal and solar electric projects), including

those fueled with wind or biomass, capable of producing not more than 10 average MW. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE is new (see Table 4). In addition to relying on Agency experience in preparing EA/FONSIs for these types of actions for many years, the provisions of the proposed CE are similar to two CEs recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.18 and B 5.20), which relate to the installation, modification, operation, and removal of commercially available wind turbines (generally not more than two) and small-scale biomass power plants (generally less than 10 average MW), each located within a previously disturbed or developed area.

(8) Geothermal electric projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. The proposed CE is new (see Table 4) and would include new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities. The Agency has prepared EAs for these types of projects, all of which resulted in a FONSI. Thus, the Agency has concluded that these types of actions are appropriate for a CE. In addition, this proposed CE is similar to a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.19) for the installation, modification, operation, and removal of commercially available small-scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex). In addition, EAs prepared by DOE and BLM for these types of actions (and larger) have routinely resulted in findings of no significant impact.

(9) Solar electric projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less. The proposed CE is new (see Table 4) and would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities. The 10-acre and 10-mile limitations are consistent with proposed § 1970.54(a) and with thresholds used in DOE CEs. The provisions of the proposed CE are similar to two CEs recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.16 and B 5.17), which relate to the installation, modification, operation, and removal of commercially available solar photovoltaic systems and small-scale solar thermal systems located on or contiguous to a building, and if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Based on the experience of the Agency and DOE, the Agency has determined that this proposed CE normally has no potential for significant environmental impacts.

(10) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This proposed CE includes an existing RUS CE (see Table 3). In addition, the provisions of the proposed CE are similar to a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.21), which relates to the installation, modification, operation, and removal of commercially available methane gas recovery and utilization system installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant. DOE has similarly recognized that these types of actions do not result in significant environmental impacts.

(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or pipe into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included. This is a new CE (see Table 4), although its provisions are similar to a CE promulgated by the Federal Energy Regulatory Commission (18 CFR 380.4(14)) for small conduit hydroelectric facilities, and a CE recently promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.24), which relates to the installation, modification, operation, and removal of commercially available small-scale drop-in, run-of-the-river hydroelectric systems.

(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency, or promoting pollution prevention, safety, reliability and security. This includes, but is not limited to, retrofitting existing facilities to produce biofuels, and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility. The proposed new CE (see Table 4) would cover new programs to promote renewable energy conversions and energy efficiency improvements to existing facilities. The provisions of the proposed CE are similar to existing CEs promulgated by DOE (10 CFR part 1021, Appendix B to subpart D, B 5.2 and 6.8) and DOC (Department Administrative Order 216–6, A–1), which relate to the minor modifications to buildings that do not change functional use of the facility, and to equipment, existing pumps, and existing piping configurations conveying materials such as air, brine, carbon dioxide, geothermal system fluids, produced water, steam, and water). In particular, DOE CE B6.8 relates to minor modifications specifically for waste minimization and material reuse, including minor operational changes in existing facilities. In addition, the USDA Farm Service Agency (FSA) issued a final programmatic EIS for the Biomass Crop Assistance Program in June 2010. In the associated Record of Decision, FSA concluded that the collection, harvest, storage, and transportation of eligible materials for use in a biomass conversion facility and the establishment and production of eligible crops for conversion to bioenergy production would not have a significant environmental impact (75 FR 65995 (2010)).

CE for Multi-Tier Actions (§ 1970.55)

For a limited number of programs Congress directed the Agency to provide financial assistance to eligible recipients, including but not limited to: Intermediaries; community-based organizations, such as housing or community development non-profit organizations; rural electric cooperatives; or others organizations with similar financial arrangements who then, in turn, provide financial assistance to eligible recipients. The entities or organizations receiving the financial assistance from the Agency are considered ''primary recipients.'' As the direct recipients of this financial assistance, ''primary recipients'' then, in turn, provide financial assistance to other parties, referred to as ''secondary recipients'' or ''ultimate recipients.'' This series of transactions from the Agency to a primary recipient and subsequently to an ultimate recipient is termed a ''multi-tiered action.''

Under this proposed section, the Agency's approval of financial assistance to a primary recipient of a multi-tier program when such financial assistance will be extended in the future to presently unknown, eligible secondary or ultimate recipients will be categorically excluded, if the primary recipient agrees in writing to comply with certain covenants regarding the use of the financial assistance by the ultimate recipients. However, notwithstanding the primary recipient's agreement regarding the ultimate use of the Agency's financial assistance, compliance with NEPA and other applicable environmental requirements remains the responsibility of the Agency and nothing in the proposed section is intended to delegate those responsibilities to a primary or ultimate recipient.

There are no analogous CEs in either of the existing rules. The Agency is proposing this CE because the initial approval of financial assistance to a primary recipient is an action that has no immediate environmental effect. Under § 1940.11(a)(3) one of the multi-tier programs that has been administered since the mid-1980's (RHS's Housing Preservation Grant Program) required the preparation of an EA for the initial approval and obligation of federal funds. The Agency has prepared EAs for these types of projects, all of which resulted in a FONSI. Thus, the Agency has concluded that these types of actions for all multi-tier programs are appropriate for a CE.

Because the specific type, location, and scope of all proposals to be funded by a primary recipient are not known at the time financial assistance is provided to a primary recipient, the environmental effects of these proposals are not known or analyzed at the time the financial assistance is provided. However, although all of the details of the proposals of potential secondary recipients may be unknown at the time the financial assistance is provided to a primary recipient, the primary recipient is limited to making the financial assistance available to secondary recipients for the types of projects specified in the primary recipient's application.

Under this proposed CE, the primary recipient would screen all proposed uses of funds and determine if a categorical exclusion is appropriate pursuant to 7 CFR 1970.53 or 1970.54 and under the Agency's environmental policies and procedures when the specifics of a loan or grant to an ultimate recipient become known. If a proposal by an ultimate recipient is classified under § 1970.54, the primary recipient will either prepare the appropriate documentation or request additional environmental documentation from the ultimate recipient to ensure there are no extraordinary circumstances. If the ultimate recipient's proposal is classified under 7 CFR part 1970, subpart C or D, the primary recipient will seek the advice of the Agency and if necessary, the Agency will independently review and approve any EA or EIS that was required.

Primary recipients that fund projects without complying with the requirements of this proposed section would be subject to penalties, including withdrawal of Agency assistance, withdrawal of Agency authorizations, or suspension from participation in Agency programs. Despite the Primary recipient's responsibilities outlined in this part, the Agency maintains ultimate control and responsibility over the NEPA process through its oversight and review.

C. Subpart C—Environmental Assessments

General (§ 1970.101)

This proposed section describes the purpose of an EA and states that if, during the preparation of an EA, the Agency determines that the proposal will have a potentially significant impact on the quality of the human environment, the Agency will prepare an EIS. This proposed section also describes the types of Agency actions for which an EA will typically be prepared.

The requirements in this proposed section are consistent with existing §§ 1940.311, 1940.312, 1794.23 through 1794.24, 1794.40, and 1794.50. However, the Agency is proposing some revisions, as described below.

The proposed rule would eliminate the distinction between Class I and Class II EAs (§§ 1940.311 and 1940.312) and EAs with and without scoping (§§ 1794.23 and 1794.24). This is consistent with the CEQ NEPA regulations, which do not recognize different classifications of EAs.

As discussed above in Section V.B, the Agency has determined that some proposed actions that require the preparation of a Class I EA under the existing regulations are more appropriately classified as CEs. This determination is based on the Agency's experience in preparing EAs for these small-scale projects, all of which resulted in a FONSI. These EAs and FONSIs demonstrate that, absent extraordinary circumstances and in most instances, these types of actions do not individually or cumulatively have a significant impact on the environment. For this reason, the Agency is proposing to include these types of actions as CEs.

Table 5 provides a summary of the Class I EA actions in § 1940.311 that the Agency proposes to treat as CEs under the proposed regulations and indicates the Class I EA actions that are not proposed for inclusion in 7 CFR part 1970 because they are no longer within the Agency's jurisdiction. These are addressed in more detail following Table 5. All other Class I EA actions in § 1940.311 will continue to require EAs under the proposed 7 CFR part 1970.

TABLE 5—TREATMENT OF CLASS I EA ACTIONS IN PROPOSED PART 1970

Class I EA actions (§ 1940.311)	Treatment in proposed rule (part 1970)
§ 1940.311(a)(1)	CE in § 1970.54(a).
§ 1940.311(a)(2)	CE in § 1970.54(a).
§ 1940.311(a)(3)	CE in § 1970.55.
§ 1940.311(b)(1)	CE in §§ 1970.54(a), 1970.54(b)(2).
§ 1940.311(b)(2)	CE in § 1970.54(a).
§ 1940.311(b)(3)	CE in § 1970.54(a).
§ 1940.311(b)(4)	EA required.
§ 1940.311(c)(1)	EA required.
§ 1940.311(c)(2)	Not included in proposed rule—no longer in Agency jurisdiction.
§ 1940.311(c)(3)	EA required.
§ 1940.311(c)(4)	CE in § 1970.53(d)(6).
§ 1940.311(c)(5)	Not included in proposed rule—no longer in Agency jurisdiction.
§ 1940.311(c)(6)	Not included in proposed rule—no longer in Agency jurisdiction.

TABLE 5—TREATMENT OF CLASS I EA ACTIONS IN PROPOSED PART 1970—Continued

Class I EA actions (§ 1940.311)	Treatment in proposed rule (part 1970)
§ 1940.311(c)(7)	CE under § 1970.54(a).
§ 1940.311(c)(8)	EA required.
§ 1940.311(d)(1)	Included as extraordinary circumstance under § 1970.52.
§ 1940.311(d)(2)	CE in §§ 1970.53(a)(5), 1970.53(c)(1).
§ 1940.311(d)(3)	CE in § 1970.53(a)(5).

In general, most of the actions that required a Class I EA under the existing regulations are included in proposed § 1970.54 as CEs for which an applicant must submit documentation (see Table 5). Such documentation would be similar to that which applicants must currently provide for a Class I EA, but the burden on Agency staff to prepare an EA would be significantly reduced.

The following sections describe how the existing Class I EAs in § 1940.311 are addressed in proposed § 1970.54:

§ 1940.311(a)(1) Financial assistance for a multi-family housing project, including labor housing which comprises at least 5 units, but no more than 25 units. This Class I EA action is reclassified as a CE with documentation in the proposed rule and is captured in § 1970.54(a)(1) Affordable Multi-family housing. The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than number of units.

§ 1940.311(a)(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 25 lots. The agency no longer routinely conducts subdivision approvals, but still may approve lots. Lot approval is included in § 1970.54(a). The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than number of lots.

§ 1940.311(a)(3) Financial assistance for a housing preservation grant. As a multi-tier action, the approval of a housing preservation grant will be a CE under § 1970.55 and will not require documentation. However, the majority of subsequent actions are expected to be classified under §§ 1970.53 and 1970.54, where those classified under § 1970.54 would require documentation. This is based on Agency review and experience with the Housing Preservation Grant Program, and the existing regulation.

§ 1940.311(b)(1) Financial assistance for water and waste disposal facilities and natural gas facilities that meet certain specified criteria. This type of action is proposed for inclusion as a CE in the proposed rule and is captured in § 1970.54(a)(4) relating to utility infrastructure and in § 1970.54(b)(2) relating to the improvement and expansion of existing water, wastewater, and gas utility systems. The limitations for the proposed CEs include the size of the potentially affected area (less than 10 acres under § 1970.54(a)), or related to specific distance and capacity thresholds (under § 1970.54(b)(2)), rather than discharge volumes and general boundary conditions as under the existing regulations. While the capacity threshold has changed from ''no more than 20 percent'' under 7 CFR part 1940 to ''not more than 30 percent'' as proposed under 7 CFR part 1970, this change is consistent with the threshold for an EA (i.e., more than a 30 percent increase) in existing § 1794.22(c)(4).

§ 1940.311(b)(2) Financial assistance for group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater. This type of action is captured in § 1970.54(a)(3), Community Facilities such as municipal buildings, libraries, security services, fire protection, schools, health and recreation facilities if less than 10 acres. The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than number of beds.

§ 1940.311(b)(3) Financial assistance for the construction or expansion of facilities, such as fire stations, retail stores, libraries, outpatient medical facilities, service industries, in addition to manufacturing plants, office buildings, and wholesale industries that meet specified criteria. This type of action is captured in § 1970.54(a)(3), Community Facilities such as municipal buildings, libraries, security services, fire protection, schools, health and recreation facilities if less than 10 acres. The limitation for the proposed CE is now the size of the potentially affected area (less than 10 acres) rather than the type of facility.

§ 1940.311(c)(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in § 1940.312 of this subpart. This type of action, which is limited to no more than 10 acres in the proposed rule, is consistent with the 10-acre size limit placed on actions in proposed § 1970.54 and is captured in § 1970.54(a)(3), Community Facilities such as municipal buildings, libraries, security services, fire protection, schools, health and recreation facilities.

In other instances, however, proposed actions requiring a Class I EA under the existing regulations are proposed for inclusion as CEs that, in the proposed rule, will not require the applicant to submit environmental documentation (see Table 5). For these actions, burdens on both applicants and on Agency staff will be reduced as compared to the existing regulations. Based on past experience, the Agency has determined that the potential for extraordinary circumstances is low and that requiring applicants to submit environmental documentation is unnecessary. In addition, the proposed rule provides that the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist (proposed § 1970.53).

The following sections indicate how the existing Class I EAs are addressed in proposed § 1970.53:

§ 1940.311(c)(4) Financial assistance for the construction of energy producing facilities designed for on farm needs such as methane digesters and fuel alcohol production facilities; This Class I EA action is captured in § 1970.53(d)(6).

§ 1940.311(d)(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities, and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location or design of the project from what was originally approved. Loan-closing and servicing activities are captured in § 1970.53(a)(5), which provides that if ''such [servicing] actions involve foreseeable future changes, the Agency will classify the

action according to this part and the appropriate level of environmental review will be prepared prior to the approval of such action.'' Transfers, assumptions, subordinations, and construction management activities are not included as separate CEs in the proposed rule. Rather, the Agency considers these actions to be included within the definition of ''loan servicing.'' Amendments and revisions to all approved actions are captured in § 1970.53(c)(1).

§ 1940.311(d)(3) The lease or disposal of real property by the Agency which meets either of two specified criteria, including whether the lease or disposal is controversial for environmental reasons. Lease or disposal of real property is a CE in § 1940.310(e)(6)) and is proposed for inclusion in § 1970.53(a)(5). This proposed CE includes a provision that specifies if ''such [servicing] actions involve foreseeable future changes, the Agency will classify the action according to this part and the appropriate level of environmental review will be prepared prior to the approval of such action.'' The potential for environmental controversy is included as an extraordinary circumstance in § 1970.52.

The existing Class I EA regulations require an EA for any Federal action that is defined as a categorical exclusion but which is controversial for environmental reasons (§ 1940.311(d)(1)). In the proposed regulations, the Agency has included ''environmental controversy'' as an extraordinary circumstance that would cause a normally categorically excluded action to require the preparation of an EA (or if necessary an EIS).

Some Class I EA actions are not included in the proposed rule. Such actions are not included because these actions fall within the jurisdiction of the FSA and are not eligible for Agency financing. These are:

§ 1940.311(c)(2) Financial assistance for the development of farm ponds or lakes more than 5 acres in size, but no more than 10 acres, provided that no wetlands are affected.

§ 1940.311(c)(5) Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case the application will fall under Class II as defined in § 1940.312 of this subpart.

§ 1940.311(c)(6) Financial assistance to grazing associations.

One existing Electric Program CE (§ 1794.22(a)(10)) will now require an EA under the proposed rule. This action relates to the construction of new water supply wells not located within the boundaries of an existing well field or generating station site. Currently, it is a CE that would require the applicant to submit an ER as documentation. Given the level of documentation now required under the proposed rule (§ 1970.54), which is less than a full ER, and the potential for significant impacts on the public water supply (e.g., extensive drawdown from withdrawals) and on existing water quality (e.g., aquifer degradation), the Agency believes that an EA is more appropriate for the development of new commercial or industrial wells. Thus, under the proposed rule, this type of proposed action would require an EA. This approach is consistent with existing EA classes of action relating to wells in 7 CFR 1940.312 (Class II EAs) and with two proposed CEs in § 1970.53: § 1970.53(c)(5), for non-commercial (residential, farm/livestock) wells; and § 1970.53(c)(6), for modifications in an existing water well field, where no drawdown (other than immediate vicinity) or aquifer degradation would occur.

With respect to the Class II EA actions under § 1940.312, the following will either be eligible for a CE or require an EA under the proposed rule, depending on the size of the area affected:

§ 1940.312(a)(1) Financial assistance for a multi-family housing project, including labor housing, which comprises more than 25 units. Under the proposed rule, if such a facility would be 10 acres or less and there were no extraordinary circumstances, this action would be considered a CE under proposed § 1970.54(a)(1). The basis for CEs under proposed § 1970.54(a) is the size of the potentially affected area (less than 10 acres) rather than the number of units.

Finally, the following Class II EA actions are not proposed for inclusion in the proposed rule because these actions fall within the jurisdiction of the FSA and are not eligible for Agency financing:

§ 1940.312(c)(2) Financial assistance for the development of farm ponds or lakes either larger than 10 acres in size or for any smaller size that would affect a wetland;

§ 1940.312(c)(4) Financial assistance for the construction or enlargement of aquaculture facilities;

§ 1940.312(c)(5) Financial assistance for the conversion of more than 320 acres of pasture to agricultural production or for any smaller conversion of pasture to agricultural production that affects a wetland;

The remaining Class I and Class II EA actions in §§ 1940.311 and 1970.312 (except for those noted above), and all of the EAs listed in §§ 1794.23 and 1794.24, will continue to require EAs under the proposed 7 CFR part 1970 (see Table 5).

In addition to eliminating the distinction between different classes of EAs, the proposed rule would eliminate the descriptions of the types of actions that typically require the preparation of an EA. Instead, the proposed rule would require that an EA be prepared for all Agency actions that do not fall within the list of CEs in 7 CFR part 1970, subpart B or within the list of actions for which an EIS must be prepared in 7 CFR part 1970, subpart D. In addition, an EA (or an EIS if required) would be prepared for a normally categorically excluded action if there were extraordinary circumstances. The Agency determined that requiring the preparation of EAs for those applications for financial assistance that are not eligible for a CE, but for which an EIS is not necessarily required, will meet the requirements of NEPA and other applicable environmental requirements and provide certainty to Agency staff, applicants, and other interested parties.

Preparation of EAs (§ 1970.102)

This proposed section describes the required contents of an EA. It also describes how an EA is normally processed within the Agency, including the responsibilities of the Agency and the applicant. In sum, the proposed section provides for a single, streamlined process that all Agency programs will follow in preparing, considering, i.e., reviewing and accepting applicant provided documentation, and publishing EAs.

The proposed section is similar to the existing §§ 1940.318 and 1940.319 (Class II and Class I EAs respectively), although references to Farmers Home Administration forms have been removed as obsolete because the farm-related functions of the Agency were transferred to the FSA in 1995. In addition, the Agency believes that much of the information in these sections explain internal EA preparation procedures which are better placed in staff instruction.

Environmental Reports, under the existing RUS regulations, are prepared by applicants and normally serve as the EA following RUS review and approval. Information regarding the preparation of Environmental Reports in §§ 1794.41 and 1794.53 is not included in the proposed rule because such reports are specific to RUS. However applicant

documentation requirements are listed in §§ 1970.5, 1970.51, and 1970.102.

The Agency is proposing to require a 14- to 30-day public review and comment period for all EAs. While past Agency practice under 7 CFR part 1794 has been to allow a 30-day review period, the Agency determined that codifying the requirement is appropriate and that a 30-day comment period would not always be necessary. For example, a 14-day comment period could be appropriate for a proposed action with limited impacts in a small area for which there is no public concern. A large, complex proposal that has raised public concerns would warrant a 30-day comment period. CEQ regulations require some level of public involvement during the preparation of EAs (see Section IV.B.2.b, above). The Agency proposes to meet this standard by requiring EAs to be made available for public review and comment while maintaining flexibility and expediency in the EA process.

Supplementing EAs (§ 1970.103)

This proposed section is new and identifies the conditions under which a supplement to an EA will be required. There are no analogous sections in 7 CFR parts 1940 or 1794. The CEQ regulations describe requirements for supplementing EISs. The Agency has determined that it is good policy, and meets the letter and spirit of NEPA, to supplement an EA when changed circumstances warrant a re-evaluation of potential environmental impacts.

Finding of No Significant Impact (§ 1970.104)

This proposed section provides that the Agency may issue a FONSI only if the EA supports a finding that the proposed action will not have a significant impact on the human environment. This is the standard that is set forth in the CEQ NEPA regulations. If the EA does not support a FONSI, the Agency will proceed to prepare an EIS.

The proposed section also addresses what information the FONSI must include and requires that the Agency ensure that the applicant has committed to any mitigation necessary to support the FONSI and possesses the authority and ability to fulfill those commitments. If mitigation is needed to support a FONSI, mitigation must be a condition of financial assistance.

Although the existing Agency NEPA regulations discuss FONSIs in various sections (§§ 1940.318, 1940.319, 1794.43 and 1794.54), the requirements contained in this proposed section have no analogous provisions in the existing regulations. The proposed requirements are being added to clarify when a FONSI would be published and its required contents. The proposed requirement that the mitigation that is necessary to support a FONSI be a condition of financial assistance is being added in order to be consistent with recent CEQ guidance on mitigation and monitoring (*Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,* January 14, 2011, as found at: *http://ceq.hss.doe.gov/current_developments/new_ceq_nepa_guidance.html.*

D. Subpart D—Environmental Impact Statements

General (§ 1970.151)

This proposed section describes the purpose of an EIS and lists six specific Agency actions for which an EIS will be required. The list is not exclusive; other Agency actions not listed may require the preparation of an EIS in certain circumstances. Failure to achieve compliance with this part will postpone further consideration of the applicant's proposal until such compliance is achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

The specific Agency actions listed in the proposed section are similar to those in § 1794.25. However, in § 1794.25, water and waste and telecommunications programs are identified as actions not normally requiring the preparation of an EIS, although the Agency's environmental review process is used to identify those proposed actions for which the preparation of an EIS is necessary. Based on Agency experience, these actions have not typically required the preparation of an EIS. For this reason, the Agency is proposing that these types of actions should be the subject of EAs.

The inclusion of a specific list of actions in this proposed section differs significantly from § 1940.33, which indicates that a detailed listing cannot be identified given the variability of the types and locations of actions taken by the Agency. Rather, the existing regulation relies on the EA process to identify, on a case-by-case basis, those actions for which an EIS is necessary, and includes a detailed list of actions in §§ 1940.311 and 1940.312 for Class I and Class II EA actions.

In its proposed NEPA rule, the Agency has determined that a better approach is to specifically identify those actions that are eligible for a CE (see subpart B) and those that require the preparation of an EIS. All other actions will require the preparation of an EA (see subpart C) to determine whether the potential environmental impacts may be significant. The proposed approach gives Agency staff and applicants a clear understanding of the type of NEPA review that will be required for particular proposals, with all others requiring the preparation of an EA.

With respect to the proposed Agency actions identified in this proposed section, the basis for their inclusion is as follows:

(1) Proposals for which an EA was initially prepared and that may result in significant impacts that cannot be mitigated: this is consistent with the CEQ regulations that require the preparation of an EIS if an agency, after preparing an EA, concludes that the potential environmental impacts may be significant.

(2) Siting, construction (or expansion), and decommissioning of major treatment, storage, and disposal facilities for hazardous wastes as designated in 40 CFR part 261: This is consistent with DOE Appendix D to subpart D of part 1021, D11.

(3) Proposals that change or convert the land use of parcels greater than 640 acres in area: (DOI DM 516 11.8 B7)

(4) New electric generating facilities other than gas-fired combustion turbines of more than 50 average MW output, and all new associated electric transmission facilities shall be covered in an EIS. This is currently included in § 1794.25(a)(1).

(5) New mining operations when the applicant has effective control (i.e., applicant's dedicated mine or purchase of a substantial portion of the mining equipment): This is currently included in § 1794.25(a)(2).

(6) Agency proposals for legislation that may have a significant environmental impact: This is consistent with the CEQ NEPA regulations (40 CFR 1506.8).

EIS Funding and Professional Services (§ 1970.152)

This proposed section provides that, unless otherwise approved by the Agency, an applicant must fund the preparation of an EIS and any supplemental documentation prepared in support of an applicant's proposal. The section provides that it is the Agency's responsibility to determine the scope and content of the NEPA documents to be prepared by any third-party contractors.

As indicated in the CEQ regulations, an EIS may be prepared by a contractor selected by the Agency and paid by the applicant. However, the Agency must

exercise control over the scope, content, and development of the EIS (40 CFR 1506.5(c)). The selected contractor is required to execute the necessary disclosures, indicating that the contractor has no interest in the results of the EIS.

Under the proposed third-party contracting arrangement, the applicant is required to fund the preparation of the EIS by the contractor that the Agency selects. The applicant is responsible for procurement and contracting while the Agency is responsible for directing the work of the contractor and for determining the scope and content of the EIS.

As is the case with many Federal agencies entering into third-party contracting agreements, such an arrangement is typically described in an agreement among the Agency, the EIS contractor, and the applicant. The proposed rule provides that these agreements will describe each party's role and responsibilities during the EIS process. Further, the proposed rule requires that a disclosure statement be prepared by the Agency and executed by each third-party contractor performing environmental services. This disclosure statement requires the contractor to certify that it has no interest in the outcome of the EIS.

Although the funding and contractual responsibilities will be required of applicants, the proposed rule will not change the current Agency responsibilities for EIS preparation. The Agency would still be responsible for selecting the EIS contractor and for the scope and content of the EIS prepared by the EIS contractor. The Agency would also prepare the scope of work and technical evaluation criteria for use in the solicitation package for evaluating contractor submittals for the preparation of the EIS.

Currently, existing § 1940.336(d) authorizes the Agency to secure outside professional services to assist in completing EISs in a direct Federal procurement in accordance with the Federal Acquisition Regulations. However, such regulation contains no provision requiring applicants to fund those professional services. Because the Federal procurement process can be lengthy and create burdens on Agency administrative staff, this section has been proposed to transfer the EIS procurement and funding burden to applicants to reduce the Agency's burden and costs.

Section 18 of the Rural Electrification Act of 1936, as amended (the RE Act), and existing 7 CFR part 1789 allow applicants under the RE Act to fund the preparation of an EIS by a third-party contractor, if the applicant elects to do so. However, unlike under the proposed § 1970.152, a consultant hired under Section 18 of the RE Act is the client of the Agency, not the client of the applicant. This proposed section would not change the current practice of permitting an Agency acting under Section 18 of the RE Act and 7 CFR part 1789 from using a consultant funded by an applicant who consents to paying for such consultant.

Notice of Intent and Scoping (§ 1970.153)

This proposed section requires the Agency to publish a Notice of Intent (NOI) in the **Federal Register** that an EIS will be prepared and that one or more scoping meetings may be held. In addition, the applicant is required to publish a similar notice in at least one newspaper of local circulation, or provide similar information through other distribution methods as approved by the Agency.

The proposed section describes the content of the NOI and the scoping activities that the Agency will undertake, such as informing Federal, state, and local agencies and tribes of the proposal.

The proposed section primarily consolidates requirements in the existing §§ 1940.320(c), 1940.331(b), 1794.51, and 1794.52. Much of the information provided in § 1794.52 relating to scoping meetings has been included in § 1970.14 on public involvement. The Agency has also determined that much of the detailed information pertaining to the scoping process and public notice requirements found in 7 CFR part 1940 outline internal procedures and are not included in the proposed rule. To avoid redundancy, the Agency is also proposing to remove existing provisions that merely restate CEQ regulations.

Preparation of the EIS (§ 1970.154)

This proposed section provides that EISs will be prepared in accordance with the format outlined in the CEQ NEPA-implementing regulations using an interdisciplinary approach. The proposed section describes the process the Agency will use to file the draft and final EISs with EPA's Office of Federal Activities, publish a Notice of Availability of the draft and final EISs in the **Federal Register**, consider public comments received on the draft EIS, and respond to public comments in the final EIS. It also identifies applicant responsibilities for publishing announcements and support in responding to comments.

The proposed section primarily consolidates requirements in the existing §§ 1940.320 and 1794.61. In addition, some portions of § 1970.320 are not included in this proposed section because they are either included elsewhere in the proposed rule (Responsibility in § 1940.320(a) and Scoping process in § 1940.320(c)), or refer to internal procedures that are better suited to staff instruction (Organizing the EIS process in § 1940.329(b)).

Supplementing EISs (§ 1970.155)

This proposed section provides that a supplement to a draft or final EIS will be announced, prepared, and circulated in the same manner (exclusive of meetings held during the scoping process) as a draft and final EIS. The proposed section also describes the circumstances in which a supplemental EIS will be prepared and provides that the Agency will publish an NOI to prepare a supplement to a draft or final EIS.

The proposed section consolidates and revises requirements in the existing §§ 1940.323 and 1794.62. The proposed section is consistent with § 1940.323, although the details found in § 1970.323(b), (c) and (d) relating to changes in circumstance where a Class II EA may be prepared, coordination between the preparer and approving official, and other internal procedures and are not included in the proposed rule. Reference to an information supplement (§ 1794.62(c)) is not included in the proposed regulation because it is specific to RUS and internal procedure.

Record of Decision (§ 1970.156)

This proposed section provides a definition of the Record of Decision (ROD) and provides a reference to 40 CFR 1505.2 that describes the contents of a ROD. Notices informing the public of the availability of the ROD will be published in the **Federal Register**. The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the **Federal Register**.

The proposed section consolidates requirements in the existing §§ 1940.322 and 1794.63. The proposed section expands the existing regulations to address requirements related to the publication of a ROD. These requirements were added to clarify the Agency's environmental review process and to that ensure the Agency's regulations would be consistent with CEQ regulations (40 CFR 1506.10).

Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be not significant by the Office of Management and Budget. The EO 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 this EO.

The Agency determined that this regulation involves combining two existing intra-Agency regulations that supplement the NEPA procedures of the Council on Environmental Quality and the NHPA procedures of the Council on Historic Preservation that are established bodies of technical regulations which the Agency must necessarily update routinely to keep the regulations operationally current. The Agency has concluded that the net effect of the rule will be beneficial due to the streamlining and updated adherence to statutes and, therefore, does not warrant preparation of a regulatory evaluation as the anticipated impact is positive.

Unfunded Mandates Reform Act

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

This proposed rule would consolidate and update the Agency's existing rules governing compliance with NEPA to better align the Agency's regulations, particularly its categorical exclusions, with its current activities and recent experiences, and update the provisions with respect to current programs and regulatory requirements. The proposed rule would result in no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

In this rule, the Agency proposes amendments that modify and clarify procedures for considering the environmental effects of the Agency's actions within the agencies' decision making process, thereby enhancing compliance with the letter and spirit of NEPA. The Agency has reviewed 7 CFR part 1940, subpart G, ''Environmental Program'' and part 1794, ''Environmental Policies and Procedures'' and determined that this rule qualifies for categorical exclusion (CE) under 7 CFR 1940.310(e)(3) and 7 CFR 1794.21(a)(1), because it is a strictly procedural rulemaking and no extraordinary circumstances exist that require further environmental analysis. Therefore, the Agency has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS).

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

The Agency has examined this proposed rule and determined, under E.O. 13132, ''Federalism,'' that this does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this proposed rule would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by E.O. 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the Agency certifies that the rule will not have an economically significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, the Agency has determined that this proposed rule will not have a significant economic impact on a substantial number of these small entities for the reasons explained below. Consequently, the Agency has not prepared a regulatory flexibility analysis. This determination is based on the purpose of this regulation, which is to streamline the environmental review for proposed actions, resulting in a decrease in the burdens associated with carrying out such reviews. The estimated number of applications to be submitted to Agency for all programs during the fiscal years 2012 through 2014 is an average of 120,283 applications per year. Of that total, some 89% are classified as private individuals, 4% are classified as private, non-individuals, and 7% are classified as State, local, and Tribal governments. Of the 4% classified as private, non-individuals, some 80%, or 3,845 applicants would be classified as small business entities affected by the proposed 1970 regulations. However, the proposed revisions included in this rule are expected to reduce the aggregate amount of environmental documentation required from applicants due primarily to decreased RUS CE documentation requirements and decreased numbers of EAs required for all programs. This results from: (1) Proposed new CEs based upon the Agency's extensive experience over many years under both existing Agency NEPA rules in completing EAs for those actions resulting in findings of no

significant effect, and (2) reduction in the amount of information required under the RUS existing NEPA rule by applicants for CEs. In addition, the only impacts are on those who choose to participate in Agency programs, whereby small entity applicants will not be affected to a greater extent than individuals or large entity applicants.

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

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

Executive Order 12372, Intergovernmental Review of Federal Programs

This rule is not subject to the provisions of E.O. 12372, which require intergovernmental consultation with State and local officials, because this rule provides general guidance on NEPA and related environmental reviews of applicants' proposals. Applications for Agency programs will be reviewed individually under E.O. 12372 as required by program procedures.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

The Agency has determined that this proposed rule does have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is subject to the requirements of Executive Order 13175. Consequently, USDA will host a series of webinars and toll-free teleconferences based tribal consultation sessions that will be scheduled concurrently with the comment period of this proposed rule. The Agency believes this is the most cost effective way to consult with tribes on this rule and will allow maximum participation from tribal leaders or their designees.

Additionally, the Agency will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule. The policies contained in this rule do not have implications that preempt Tribal law.

Programs Affected

The Agency's programs affected by this proposed rulemaking are shown in the Catalog of Federal Domestic Assistance (CFDA) with numbers as indicated:

CFDA No.	Program title
10.350	Technical Assistance to Cooperatives.
10.352	Value-Added Producer Grants.
10.405	Farm Labor Housing Loans and Grants.
10.411	Rural Housing Site Loans and Self-Help Housing Land Development Loans.
10.415	Rural Rental Housing Loans.
10.420	Rural Self-Help Housing Technical Assistance.
10.427	Rural Rental Assistance Payments.
10.433	Rural Housing Preservation Grants.
10.441	Technical and Supervisory Assistance Grants.
10.442	Housing Application Packaging Grants.
10.446	Rural Community Development Initiative.
10.760	Water and Waste Disposal Systems for Rural Communities.
10.761	Technical Assistance and Training Grants.
10.762	Solid Waste Management Grants.
10.763	Emergency Community Water Assistance Grants.
10.766	Community Facilities Loans and Grants.
10.767	Intermediary Relending Program.
10.768	Business and Industry Loans.
10.769	Rural Business Enterprise Grants.
10.770	Water and Waste Disposal Loans and Grants (Section 306C).
10.771	Rural Cooperative Development Grants.
10.773	Rural Business Opportunity Grants.
10.781	Water and Waste Disposal Systems for Rural Communities—ARRA.
10.788	Very Low to Moderate Income Housing Loans—Direct.
10.789	Very Low to Moderate Income Housing Loans—Guaranteed.
10.850	Rural Electrification Loans and loan guarantees.
10.851	Rural Telephone Loans and Loan guarantees.
10.854	Rural Economic Development Loans and Grants.
10.855	Distance Learning and Telemedicine Loans and Grants.
10.856	1890 Land Grant Institutions Rural Entrepreneurial Outreach Program.
10.857	State Bulk Fuel Revolving Fund Grants.
10.858	RUS Denali Commission Grants and Loans.
10.859	Assistance to High Energy Cost-Rural Communities.
10.861	Public Television Station Digital Transition Grant Program.
10.863	Community Connect Grant Program.
10.864	Grant Program to Establish a Fund for Financing Water and Wastewater Projects.
10.886	Rural Broadband Access Loans and Loan Guarantees.

All active CDFA programs can be found at *www.cfda.gov* under Department of Agriculture, Rural Development. Programs not listed in this section or not listed on the CDFA Web site but are still being serviced by the Agency will nevertheless be covered by the requirements of this action.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency will seek OMB approval of the reporting and recordkeeping requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Environmental Policies and Procedures.

OMB Number: 0575–AC56.

Type of Request: New collection.

Abstract: consists of the Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service, hereafter referred as the Agency. The Agency is consolidating, simplifying, and updating the different Agency environmental requirements into common environmental policies and procedures. The proposed rule, 7 CFR part 1970, Subparts A through D, will replace 7 CFR part 1794 (the current RUS Environmental Policies and Procedures) and 7 CFR part 1940–G, Environmental Program (the current RHS/RBS environmental regulation). The revised and consolidated policies and procedures will implement the National Environmental Policy Act (NEPA), other applicable environmental requirements, and supplement the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of NEPA. This action is taken to improve both the efficiency and the effectiveness of the Agency's environmental review processes.

The information required under the proposed rule is similar to much of the information currently being required under the two existing regulations. Under these regulations, the current information being collected is approved under OMB control numbers 0572–0117 and 0575–0094. The proposed rule, however, is changing the level of information required from lenders or borrowers, depending upon the level of environmental review determined for a specific project, or category of projects.

Proposed § 1970.54 defines as categorically excluded for NEPA review purposes proposals that are smaller scale in nature, but requires applicants to provide sufficient information to determine there are no extraordinary circumstances that would disqualify the proposal from being considered a CE.

Proposed § 1970.55 establishes as CEs Agency actions related to intermediaries. It requires applicants to provide sufficient information to determine there are no extraordinary circumstances that would disqualify the proposal from being considered a CE.

Proposed §§ 1970.101 and 102 establish and define Agency actions that would ordinarily require NEPA review on the level of an EA. It provides the requirements that pertain to the circumstances, preparation, review, and approval processes for EAs. The Agency will require an applicant to prepare an EA for those proposals which normally require the services of a design professional. In addition, these sections require applicants to provide site-specific environmental information on the proposed project, information on alternatives to the proposed project, if applicable, and to describe any mitigation actions proposed for the project. Applicants are also required to prepare and publish public notices to inform the public and other interested parties of the availability of the EA for review and comment, and provide all public comments and responses to the Agency, as appropriate.

Proposed § 1970.103 establishes a process for supplementing existing EAs, as needed. It requires applicants to provide any new information needed to supplement an existing EA in light of changes to the proposal.

Proposed § 1970.104 provides that the Agency may issue a Finding of No Significant Impact (FONSI), when the EA supports a finding that the proposed action will not have a significant effect on the human environment. The environmental review process for an EA is complete when a FONSI is issued. This section requires an applicant to prepare and publish public notices to inform the public and other interested parties of the availability of the FONSI.

Proposed § 1970.151 sets forth those actions that require the preparation of an Environmental Impact Statement (EIS).

Proposed § 1970.152 requires applicants to fund the preparation of an EIS, and provides for selecting and procuring environmental professional services to prepare an EIS. It expressly provides that the Agency may use consultants procured by applicants as approved by the Agency.

Proposed § 1970.153 requires applicants to publish a Notice of Intent to prepare an EIS and to support the Agency's scoping process.

Proposed § 1970.154 establishes the process for preparing an EIS and requires the applicant to publish public notices announcing the availability of the EIS, and to support the Agency in responding to all public comments.

Proposed § 1970.155 establishes Agency policy for Supplemental EIS's. It requires the applicant to provide information on any substantial change in its proposal and to notify the Agency when there is new environmental information relevant to the proposed action that would affect the EIS.

Proposed § 1970.155 establishes a process to prepare a Record of Decision (ROD) for all EISs and requires an applicant to publish public notices on the availability of the ROD.

The information requirements contained in the proposed rule require lenders and applicants, as applicable, to provide the Agency with environmental information. This information is vital to the Agency's ability to fulfill its responsibilities and ensure compliance under NEPA and other applicable environmental laws, regulations, and executive orders

The following estimates are based on the predicted average burden over the first three years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 92 hours per response.

Respondents: Rural developers, farmers and ranchers, rural businesses, public bodies, local governments, lenders.

Estimated Number of Respondents: 4,429.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 4,429.

Estimated Total Annual Burden (hours) on Respondents: 407,062.

Copies of this information collection may be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742 or by calling (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the new Agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including the use of

appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Review Under E-Government Act Compliance

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

List of Subjects

7 CFR Part 1703

Community development, Grant programs-education, Grant programs—health, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1709

Administrative practice and procedure, Electric utilities, Grant programs—energy, Rural areas.

7 CFR Part 1710

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

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1720

Electric power, Electric utilities, 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 1726

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

7 CFR Part 1737

Loan programs—communication, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1738

Broadband, Loan programs—communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1739

Broadband, Grant programs—communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1740

Communications, Grant programs—digital televisions, Rural areas, Television.

7 CFR Part 1753

Communications equipment, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

7 CFR Part 1774

Community development, Grant programs, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply.

7 CFR Part 1775

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1779

Loan programs—housing and community development, Rural areas, Waste treatment and disposal, Water supply.

7 CFR Part 1780

Community development, Community facilities, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1781

Community development, Community facilities, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 1782

Accounting, Appeal procedures, Auditing, Debts, Delinquency, Grant programs—agriculture, Insurance, Loan programs—agriculture, Reporting and recordkeeping requirements.

7 CFR Part 1794

Environmental Impact Statements.

7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy Conservation, Housing, Housing Standards, Loan programs—agriculture, Low and moderate income housing, Rural housing.

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—housing and community development, Loan programs—agriculture.

7 CFR Part 1942

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Industrial park, Loan programs—housing and community development, Loan security, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

7 CFR Part 1944

Administrative practice and procedure, Grant programs—housing and community development, Home improvement, Loan programs—housing and community development, Migrant labor, Nonprofit organizations, Reporting and recordkeeping requirements, Rural housing.

7 CFR Part 1948

Business and industry, Coal, Community development, Community facilities, Energy, Grant programs—housing and community development, Housing, Planning, Rural areas, Transportation.

7 CFR Part 1951

Accounting servicing, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1955

Government acquired property, Government property management, Sale

of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

7 CFR Part 1980

Home improvement, Loan programs—rural development assistance, Loan programs—housing and community development, Mortgage insurance, Mortgages, Rural areas.

7 CFR Part 3550

Administrative practice and procedure, Conflict of interests, Environmental impact statements, Equal credit opportunity, Fair housing, Grant programs—housing and community development, Housing.

7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflict of interests, Government property management, Grant programs—housing and community development, Insurance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 3565

Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages.

7 CFR Part 3570

Accounting, Account servicing, Administrative practice and procedure, Conflicts of interests, Debt restructuring, Environmental impact statements, Foreclosure, Fair Housing, Government property management, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Sale of government acquired property, Subsidies.

7 CFR Part 3575

Community facilities, Guaranteed loans, Loan programs.

7 CFR Part 4274

Community development, Economic Development, Loan programs—business, Rural areas.

7 CFR Part 4279

Loan programs—business and industry, Loan Programs—rural development assistance, Rural areas.

7 CFR Part 4280

Direct loan programs, Economic development, Energy, Energy efficiency improvements, Grant programs, Guaranteed loan programs, Loan programs—business and industry, Renewable energy systems, Rural areas.

7 CFR Part 4284

Business and industry, Economic development, Community development, Community facilities, Grant programs—Housing and community development, Loan programs—Housing and community development, Loan security, Rural areas.

7 CFR Part 4287

Loan Programs—Business and industry, Loan Programs—Rural development assistance, Rural areas.

For the reasons set forth in the preamble, chapters XVII, XVIII, XXXV and XLII of Subtitle B, title 7, Code of Federal Regulations are proposed to be amended as follows:

Subtitle B—Regulations of the Department of Agriculture

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—RURAL DEVELOPMENT

■ 1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Subpart E—[AMENDED]

■ 2. Amend § 1703.125 by revising paragraph (j) to read as follows:

§ 1703.125 Completed application.

* * * * *

(j) *Environmental impact and historic preservation.* The applicant must provide details of the project's impact on the environment and historic preservation, in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' which contains the Agency's policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment. The application must contain a separate section entitled ''Environmental Impact of the Project.''

* * * * *

Subpart F—[AMENDED]

■ 3. Amend § 1703.134 by revising paragraph (h) to read as follows:

§ 1703.134 Completed application.

* * * * *

(h) *Environmental impact and historic preservation.* The applicant must provide details of the project's impact on the environment and historic preservation, in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' which contains the Agency's policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment. The application must contain a separate section entitled ''Environmental Impact of the Project.''

* * * * *

Subpart G—[AMENDED]

■ 4. Amend § 1703.144 by revising paragraph (h) to read as follows:

§ 1703.144 Completed application.

* * * * *

(h) *Environmental impact and historic preservation.* The applicant must provide details of the project's impact on the environment and historic preservation, in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' which contains the Agency's policies and procedures for implementing a variety of Federal statutes, regulations, and Executive orders generally pertaining to the protection of the quality of the human environment. The application must contain a separate section entitled ''Environmental Impact of the Project.''

* * * * *

PART 1709—ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

■ 5. The authority citation for part 1709 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

Subpart A—[AMENDED]

■ 6. Amend § 1709.17 by revising paragraphs (a) and (c) to read as follows:

§ 1709.17 Environmental review.

(a) All grants made under this subpart are subject to the requirements of 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

(c) Projects that are selected for grant awards by the Administrator will be reviewed by the Agency in accordance with 7 CFR part 1970, ''Environmental

Policies and Procedures,'' prior to final award approval. The Agency may require the selected applicant to submit additional information, as may be required, concerning the proposed project in order to complete the required reviews and to develop any project-specific conditions for the final grant agreement.

Subpart B—[AMENDED]

■ 7. Amend § 1709.117 by revising paragraph (b)(12) to read as follows:

§ 1709.117 Application requirements.

* * * * *

(b) * * *

(12) *Environmental information.* The application must include information about project characteristics and site specific conditions that may involve environmental, historic preservation and other resource issues. This information must be presented in sufficient detail so as to facilitate the Agency's identification of projects that may require additional environmental review in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' before a final grant award can be approved.

* * * * *

■ 8. Amend § 1709.124 by revising paragraph (a) to read as follows:

§ 1709.124 Grant award procedures.

(a) *Notification of applicants.* The Agency will notify all applicants in writing whether they have been selected for a grant award. Applicants that have been selected as finalists for a competitive grant award will be notified in writing of their selection and advised that the Agency may request additional information in order to complete the required environmental review in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' and to meet other pre-award conditions.

* * * * *

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO ELECTRIC LOANS AND GUARANTEES

■ 9. 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 C—[AMENDED]

■ 10. Revise § 1710.117 to read as follows:

§ 1710.117 Environmental considerations.

Borrowers are required to comply with 7 CFR part 1970, ''Environmental Policies and Procedures'' and other applicable environmental laws, regulations and Executive orders.

Subpart D—[AMENDED]

■ 11. Amend § 1710.152 by revising paragraph (d) to read as follows:

§ 1710.152 Primary support documents.

* * * * *

(d) *Environmental Information.* This documentation is used to determine what effect the construction of the facilities included in the construction work plan will have on the environment. A borrower must follow the policy and procedural requirements set forth in 7 CFR part 1970, ''Environmental Policies and Procedures.''

Subpart F—[AMENDED]

■ 12. Amend § 1710.250 by revising paragraph (i) to read as follows:

§ 1710.250 General.

* * * * *

(i) A borrower's CWP or special engineering studies must be supported by the appropriate level of environmental review documentation, as set forth in 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart I—[AMENDED]

■ 13. Amend § 1710.401 by revising paragraph (c)(2)(iii) to read as follows:

§ 1710.401 Loan application documents.

* * * * *

(c) * * *

(2) * * *

(iii) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures'';

* * * * *

PART 1717-POST—LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

■ 14. 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—[AMENDED]

■ 15. Amend § 1717.850 by revising paragraph (d) to read as follows:

§ 1717.850 General.

* * * * *

(d) *Environmental considerations.* The environmental requirements of 7 CFR part 1970, ''Environmental Policies and Procedures,'' apply to applications for lien accommodations, subordinations, and lien releases.

* * * * *

■ 16. Amend § 1717.855 by revising paragraph (f) to read as follows:

§ 1717.855 Application Contents: Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities and certain other community infrastructure.

* * * * *

(f) Environmental documentation, in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures;''

* * * * *

PART 1720—GUARANTEES FOR BONDS AND NOTES ISSUED FOR ELECTRIFICATION OR TELEPHONE PURPOSES

■ 17. The authority citation for part 1720 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 7 U.S.C. 940C.

■ 18. Add § 1720.16 as follows:

§ 1720.16 Environmental review.

All guarantees made under this subpart are subject to the requirements of 7 CFR part 1970, ''Environmental Policies and Procedures.''

PART 1721-POST—LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

■ 19. The authority citation for part 1721 continues to read as follows:

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

Subpart A—[AMENDED]

■ 20. Amend § 1721.1 by revising paragraph (c) introductory text to read as follows:

§ 1721.1 Advances.

* * * * *

(c) *Certification.* Pursuant to the applicable provisions of the RUS loan contract, borrowers must certify with each request for funds to be approved for advance that such funds are for projects in compliance with this section and must also provide for those that cost in excess of $100,000, a contract or work order number as applicable and a CWP cross-reference project coded identification number.

* * * * *

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

■ 21. 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 A—[AMENDED]

■ 22. Revise § 1724.9 to read as follows:

§ 1724.9 Environmental compliance.

Borrowers must comply with the requirements of 7 CFR part 1970, ''Environmental Policies and Procedures.''

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

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

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

Subpart A—[AMENDED]

■ 24. Amend § 1726.14 by revising the definition of ''Approval of proposed construction'' to read as follows:

§ 1726.14 Definitions.

* * * * *

Approval of proposed construction means RUS approval of a construction work plan or other appropriate engineering study and RUS approval, for purposes of system financing, of the completion of all appropriate requirements of part 1970 of this chapter.

* * * * *

■ 25. Revise § 1726.18 to read as follows:

§ 1726.18 Pre-loan contracting.

Borrowers must consult with RUS prior to entering into any contract for material, equipment, or construction if a construction work plan, loan, or loan guarantee for the proposed work has not been approved. While the RUS staff will work with the borrower in such circumstances, nothing contained in this part is to be construed as authorizing borrowers to enter into any contract before the availability of funds has been ascertained by the borrower and all the requirements of 7 CFR part 1970, ''Environmental Policies and Procedures,'' have been fulfilled.

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

■ 26. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.;* Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart C—[AMENDED]

■ 27. Amend § 1737.22 by revising paragraph (b)(4) to read as follows:

§ 1737.22 Supplementary information.

* * * * *

(b) * * *

(4) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart E—[AMENDED]

■ 28. Amend § 1737.41 by revising paragraph (b)(2)(iii) to read as follows:

§ 1737.41 Procedure for obtaining approval.

* * * * *

(b) * * *

(2) * * *

(iii) Evidence that the borrower has satisfied the applicable requirements of 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart J—[AMENDED]

■ 29. Amend § 1737.90 by revising paragraph (a)(6) to read as follows:

§ 1737.90 Loan approval requirements.

(a) * * *

(6) All environmental requirements must be met (see 7 CFR part 1970, ''Environmental Policies and Procedures'').

* * * * *

PART 1738—RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES

■ 30. The authority citation for part 1738 continues to read as follows:

Authority: Pub. L. 107–171, 7 U.S.C. 901 *et seq.*

Subpart D—[AMENDED]

■ 31. Amend § 1738.156 by revising paragraph (a)(8) to read as follows:

§ 1738.156 Other Federal requirements.

* * * * *

(a) * * *

(8) 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart E—[AMENDED]

■ 32. Amend § 1738.212 by revising paragraph (a)(9) to read as follows:

§ 1738.212 Network design.

(a) * * *

(9) Environmental documentation prepared in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures''; and

* * * * *

Subpart F—[AMENDED]

■ 33. Amend § 1738.252 by revising paragraph (a) to read as follows:

§ 1738.252 Construction.

(a) Construction paid for with broadband loan funds must comply with 7 CFR parts 1788 and 1970, RUS Bulletin 1738–2, and any other guidance from the Agency.

* * * * *

PART 1739—BROADBAND GRANT PROGRAM

■ 34. The authority citation for part 1739 continues to read as follows:

Authority: Title III, Pub. L. 108–199, 118 Stat. 3.

Subpart A—[AMENDED]

■ 35. Amend § 1739.15 by revising paragraph (l)(8) to read as follows:

§ 1739.15 Completed application.

* * * * *

(l) * * *

(8) Environmental documentation developed in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 1740—PUBLIC TELEVISION STATION DIGITAL TRANSITION GRANT PROGRAM

■ 36. The authority citation for part 1740 continues to read as follows:

Authority: Consolidated Appropriations Act, 2005; Title III: Rural Development Programs; Rural Utilities Service; Distance Learning, Telemedicine, and Broadband Program; Public Law 108–447.

Subpart A—[AMENDED]

■ 37. Amend § 1740.9 by revising paragraph (k) to read as follows:

§ 1740.9 Grant application.

* * * * *

(k) *Environmental impact and historic preservation.* The applicant must

provide details of the digital transition's impact on the environment and historic preservation, and comply with 7 CFR part 1970, ''Environmental Policies and Procedures.'' Submission of environmental documentation alone does not constitute compliance with 7 CFR part 1970.

PART 1753—TELECOMMUNICATIONS SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

■ 38. The authority citation for part 1753 continues to read as follows:

Authority: 5 U.S.C. 501, 7 U.S.C. 901 *et seq.*

Subpart D—[AMENDED]

■ 39. Amend § 1753.25 by revising paragraph (f)(3) to read as follows:

§ 1753.25 General.

* * * * *

(f) * * *

(3) 7 CFR part 1970, ''Environmental Policies and Procedures,'' as well as with other laws, regulations, and Executive orders regarding environmental protection.

* * * * *

PART 1774—SPECIAL EVALUATION ASSISTANCE FOR RURAL COMMUNITIES AND HOUSEHOLDS PROGRAM (SEARCH)

■ 40. The authority citation for part 1774 continues to read as follows:

Authority: 7 U.S.C. 1926(a)(2)(C).

Subpart A—[AMENDED]

■ 41. Revise § 1774.7 to read as follows:

§ 1774.7 Environmental requirements.

The policies and regulations contained in 7 CFR part 1970, ''Environmental Policies and Procedures,'' apply to grants made in accordance with this part.

■ 42. Amend § 1774.8 by revising paragraph (d) to read as follows:

§ 1774.8 Other Federal statutes.

* * * * *

(d) 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 1775—TECHNICAL ASSISTANCE GRANTS

■ 43. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—[AMENDED]

■ 44. Revise § 1775.7 to read as follows:

§ 1775.7 Environmental requirements.

The policies and regulations contained in 7 CFR part 1970, ''Environmental Policies and Procedures,'' apply to grants made for the purposes in §§ 1775.36 and 1775.66.

■ 45. Amend § 1775.8 by revising paragraph (d) to read as follows:

§ 1775.8 Other Federal statutes.

* * * * *

(d) 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 1779—WATER AND WASTE DISPOSAL PROGRAMS GUARANTEED LOANS

■ 46. The authority citation for part 1779 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

■ 47. Amend § 1779.9 by revising the first sentence to read as follows:

§ 1779.9 Environmental requirements.

Facilities to be financed must undergo an environmental impact analysis in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.'' * * *

■ 48. Amend § 1779.52 by revising paragraph (b)(3) to read as follows:

§ 1779.52 Processing.

* * * * *

(b) * * *

(3) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 1780—WATER AND WASTE LOANS AND GRANTS

■ 49. The authority citation for part 1780 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart B—[AMENDED]

■ 50. Amend § 1780.31 by revising paragraph (e) to read as follows:

§ 1780.31 General.

* * * * *

(e) During the earliest discussion with prospective applicants, the Agency will advise prospective applicants on environmental requirements and evaluation of potential environmental consequences of the proposal. Pursuant to 7 CFR part 1970, ''Environmental Policies and Procedures,'' the environmental review requirements should be performed by the applicant simultaneously and concurrently with the proposal's engineering planning and design.

■ 51. Amend § 1780.33 by revising paragraph (f) introductory text to read as follows:

§ 1780.33 Application requirements.

* * * * *

(f) *Environmental documentation.* The applicant must submit two copies of environmental documentation developed in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart C—[AMENDED]

■ 52. Revise § 1780.55 to read as follows:

§ 1780.55 Preliminary engineering reports and environmental documentation.

Preliminary engineering reports (PERs) must conform to customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency. Environmental documentation must be provided in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

PART 1782—SERVICING OF WATER AND WASTE PROGRAMS

■ 53. The authority citation for part 1782 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1981; 16 U.S.C. 1005.

■ 54. Revise § 1782.9 to read as follows:

§ 1782.9 Environmental requirements.

Servicing actions involving lease or sale of Agency-owned property will be reviewed for compliance with 7 CFR part 1970, ''Environmental Policies and Procedures.'' The appropriate environmental review will be completed prior to approval of the servicing action.

PART 1794—[REMOVED AND RESERVED]

■ 55. Remove and reserve part 1794.

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS—COOPERATIVES SERVICE, RURAL UTILITIES SERVICE AND FARM SERVICE AGENCY

PART 1924—CONSTRUCTION AND REPAIR

■ 56. The authority citation for part 1924 will continue to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C 1989; 42 U.S.C 1480.

■ 57. Revise § 1924.6 paragraph (a)(9) to read as the follows:

§ 1924.6 Performing development work.

* * * * *

(a) * * *

(9) *Environmental requirements.* The provisions of 7 CFR part 1970, ''Environmental Policies and Procedures'' will apply to all loans and grants including those being assisted under the HUD section 8 housing assistance payment program for new construction.

* * * * *

Subpart A—[AMENDED]

■ 58. Amend Exhibit J to Subpart A of Part 1924, Part A, section II by revising the third paragraph to read as follows:

Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Setup

* * * * *

Part A * * *

II. * * *

Part 7 CFR 1970, ''Environmental Policies and Procedures'' of this chapter applies on scattered sites, in subdivisions and rental projects to the development, installation and set-up of manufactured homes. To determine the level of environmental analysis required for a particular application, each manufactured home or lot involved will be considered as equivalent to one housing unit or lot. The implementation of Agency environmental policies and the consideration of important land use impacts are of particular relevance in the review of proposed manufactured home sites and in achieving the two purposes highlighted below. Because of the development, installation and set-up of manufactured home communities, including scattered sites, rental projects, and subdivisions, differ in some requirements from conventional site and subdivision development; two of the purposes of this exhibit are to:

* * * * *

■ 59. Amend Exhibit J to Subpart A of Part 1924, Part A, section V by revising paragraph (B)(3) to read as follows:

Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Setup

* * * * *

Part A * * *

V. * * *

B. * * *

3. 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

■ 60. Amend Exhibit J to Subpart A of Part 1924, Part B by revising paragraph (I)(C) to read as follows:

Exhibit J to Subpart A of Part 1924—Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Setup

* * * * *

Part B * * *

I. * * *

C. The finished grade elevation beneath the manufactured home or the first flood elevation of the habitable space, whichever is lower, must be above the 100-year return frequency flood elevation. This requirement applies wherever manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. As is stated in EO 11988 and 7 CFR part 1970, ''Environmental Policies and Procedures,'' it is the Agency's policy not to approve or fund any proposal in a 100-year floodplain area unless there is no practicable alternative to such a floodplain location.

* * * * *

Subpart C—[AMENDED]

■ 61. Amend Exhibit C to Subpart C of Part 124 by revising paragraph (I)(A) to read as follows:

Exhibit C to Subpart C of Part 1924—Checklist of Visual Exhibits and Documentation for RRH, RCH and LH Proposals

* * * * *

I. * * *

A. *Environmental Information.* Documentation regarding the proposed project's environmental effects, in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures'' as applicable. Guidance concerning assembly of the information is available at any Agency office or on the Agency's Web site.

* * * * *

PART 1942—ASSOCIATIONS

■ 62. The authority citation for part 1942 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—[AMENDED]

■ 63. Amend § 1942.17 by revising paragraph (j)(7) to read as follows:

§ 1942.17 Community facilities.

* * * * *

(j) * * *

(7) *Environmental requirements.* Environmental requirements will be documented by the Agency in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

■ 64. Amend § 1942.18 by revising paragraph (d)(1) to read as follows:

§ 1942.18 Community facilities—Planning, bidding, contracting, constructing.

* * * * *

(d) * * *

(1) *Natural resources.* Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. The Agency's environmental considerations are under 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart C—[AMENDED]

■ 65. Revise § 1942.105 to read as follows:

§ 1942.105 Environmental review.

The Agency must conduct and document an environmental review for each proposed project in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.'' The review should be completed as soon as possible after receipt of an application. The loan approving official must determine an adequate environmental review has been completed before requesting an obligation of funds.

Subpart G—[AMENDED]

■ 66. Amend § 1942.310 by revising paragraph (b) to read as follows:

§ 1942.310 Other considerations.

* * * * *

(b) *Environmental requirements.* The requirements of 7 CFR part 1970, ''Environmental Policies and Procedures,'' apply to this subpart.

* * * * *

PART 1944—HOUSING

■ 67. The authority citation for Part 1944 continues to read as follows:

Authority: 5 U.S.C 301; 42 U.S.C. 1480.

Subpart I—[AMENDED]

■ 68. Amend § 1944.410 by revising paragraphs (b)(1)(ii) and (c)(1) to read as follows:

§ 1944.410 Processing preapplications, applications, and completing grant dockets.

* * * * *

(b) * * *

(1) * * *

(ii) As appropriate, an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B–2, ''Guidance to Applicants for Preparing Environment Reports'' or Exhibit C–2, ''Guidance to

Applicants for Preparing Environmental Assessments.''

* * * * *

(c) *Form AD–622, ''Notice of Preapplication Review Action.''* (1) If the applicant is eligible and after the State Director has returned the preapplication information and as appropriate, the an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B–2, ''Guidance to Applicants for Preparing Environment Reports'' or Exhibit C–2, ''Guidance to Applicants for Preparing Environmental Assessments.'' to the District Office, the District Director will, within 10 days, prepare and issue Form AD–622. The original Form AD–622 will be signed and delivered to the applicant along with the letter of conditions, a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

* * * * *

Subpart K—[AMENDED]

■ 69. Amend § 1944.526 by revising the heading and paragraphs (a)(5), (b)(1)(i), and (c)(1)(i) to read as follows:

§ 1944.526 Preapplication procedures.

(a) * * *

(5) An original and one copy of environmental documentation specified in 7 CFR part 1970, ''Environmental Policies and Procedures.''

(b) * * *

(1) * * *

(i) Complete any required environmental review procedures as specified in 7 CFR part 1970, ''Environmental Policies and Procedures,'' and attach to the application.

* * * * *

(c) * * *

(1) * * *

(i) Make a determination regarding the appropriate level of environmental review in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

■ 70. Amend § 1944.531 by revising the heading, paragraph (c)(10), removing paragraph (c)(11), and redesignating paragraphs (c)(12) and (c)(13) as paragraphs (c)(11) and (c)(12) respectively, to read as follows:

§ 1944.531 Application submission.

* * * * *

(c) * * *

(10) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

■ 71. Amend Exhibit B to Subpart K of Part 1944 by revising paragraph (A)(4) to read as follows:

EXHIBIT B TO SUBPART K OF PART 1944—ADMINISTRATIVE INSTRUCTIONS FOR STATE OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM

A. * * *

4. As appropriate, environmental documentation as outlined in 7 CFR part 1970, Exhibit B–2, ''Guidance to Applicants for Preparing Environment Reports'' or Exhibit C–2, ''Guidance to Applicants for Preparing Environmental Assessments.''

* * * * *

■ 72. Amend Exhibit C to Subpart K of Part 1944 by revising paragraph (A)(4) to read as follows:

EXHIBIT C TO SUBPART K OF PART 1944—INSTRUCTIONS FOR DISTRICT OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM

A. * * *

4. As appropriate, environmental documentation as outlined in 7 CFR part 1970, Exhibit B–2, ''Guidance to Applicants for Preparing Environment Reports'' or Exhibit C–2, ''Guidance to Applicants for Preparing Environmental Assessments.''

* * * * *

Subpart N—[AMENDED]

■ 73. Revise § 1944.672 to read as follows:

§ 1944.672 Environmental Requirements.

Part 1970 of this chapter will be followed regarding environmental requirements. The approval of an HPG grant for the repair, rehabilitation, or replacement of dwellings shall be classified as a Categorical Exclusion, pursuant to § 1970.53. As part of their preapplication materials, applicants shall submit environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' for the geographical areas proposed to be served by the program. The applicant shall refer to Exhibit F–1 of this subpart (available in any Rural Development State or District Office) for guidance.

■ 74. Revise § 1944.676(c) to read as follows:

§ 1944.676 Preapplication procedures.

* * * * *

(c) The application must submit as appropriate, an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B–2, ''Guidance to Applicants for Preparing Environment Reports'' or Exhibit C–2, ''Guidance to Applicants for Preparing Environmental Assessments,'' in accordance with exhibit F–1 of this subpart.

* * * * *

PART 1948—RURAL DEVELOPMENT

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

■ 75. The authority citation for part 1948, subpart B continues to read as follows:

Authority: Section 601, Pub. L. 95–620, delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

■ 76. Amend § 1948.84 by revising paragraphs (d)(8) and (i)(13), removing paragraph (i)(14), and redesignating paragraphs (i)(15), (i)(16), and (i)(17) as paragraphs (i)(14), (i)(15), and (i)(16) respectively, to read as follows:

§ 1948.84 Application procedure for site development and acquisition grants.

* * * * *

(d) * * *

(8) As appropriate, an original and one copy of environmental documentation as outlined in 7 CFR part 1970, Exhibit B–2, ''Guidance to Applicants for Preparing Environment Reports'' or Exhibit C–2, ''Guidance to Applicants for Preparing Environmental Assessments.''

* * * * *

(i) * * *

(13) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 1951—SERVICING AND COLLECTIONS

■ 77. The authority citation for part 1951 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart R—[AMENDED]

■ 78. Amend § 1951.872 by revising paragraph (b) to read as follows:

§ 1951.872 Other regulatory requirements.

* * * * *

(b) *Environmental requirements.* (1) Unless specifically modified by this

section, the requirements of 7 CFR part 1970, ''Environmental Policies and Procedures,'' apply to this subpart. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) Environmental documentation will be provided in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 1955—PROPERTY MANAGEMENT

■ 79. The authority citation for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—[AMENDED]

■ 80. Amend § 1955.63 by revising paragraph (b) to read as follows:

§ 1955.63 Suitability determination.

* * * * *

(b) *Grouping and subdividing farm properties.* To the maximum extent practicable, the Agency will maximize the opportunity for beginning farmers and ranchers to purchase inventory properties. Farm properties may be subdivided or grouped according to § 1955.140, as feasible, to carry out the objectives of the applicable loan program. Properties may also be subdivided to facilitate the granting or selling of a conservation easement or the fee title transfer of portions of a property for conservation purposes. The environmental effects of such actions, in conjunction with farm loan programs, will be considered pursuant to subpart G of part 1940 of this chapter. For rural development program actions, environmental effects will be considered in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart C—[AMENDED]

■ 81. Amend § 1955.136 by revising the heading and paragraphs (a) and (b) to read as follows:

§ 1955.136 Environmental requirements.

(a) Environmental impact analyses in accordance with 7 CFR part 1970 must be prepared prior to final decisions on disposal actions.

(b) All environmental impact analyses shall address the requirements of Departmental Regulation 9500–3, ''Land Use Policy,'' in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

* * * * *

■ 82. Amend § 1955.137 by revising paragraph (a)(3)(i) to read as follows:

§ 1955.137 Real property located in special areas or having special characteristics.

(a) * * *

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on program-eligible and non-program (NP)-ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined, for farm loan program actions, in, paragraph 3b (1) and (2) of Exhibit C of subpart G of part 1940 of this chapter and for rural development program actions in 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

■ 83. Amend § 1955.140 by revising paragraph (a) to read as follows:

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property, other than Farm Loan Programs property, may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property, guidance will be requested from the National Office for all properties other than RHS projects. When farm inventory property is larger than a family-size farm, the county official will subdivide the property into one or more tracts to be sold in accordance with § 1955.107. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. Environmental effects related to farm loan program actions should also be considered pursuant to subpart G of part 1940 of this chapter. For rural development program actions, environmental effects should be considered in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

■ 84. Add part 1970 to read as follows:

PART 1970—ENVIRONMENTAL POLICIES AND PROCEDURES

Subpart A—Environmental Policies

1970.1 Purpose, applicability, and scope.
1970.2 [Reserved]
1970.3 Authority.
1970.4 Policies.
1970.5 Responsible parties.
1970.6 Definitions and acronyms.
1970.7 [Reserved]
1970.8 Actions requiring environmental review.
1970.9 Levels of environmental review.
1970.10 Raising the level of environmental review.
1970.11 Timing of the environmental review process.
1970.12 Limitations on actions during the NEPA process.
1970.13 Consideration of alternatives.
1970.14 Public involvement.
1970.15 Interagency cooperation.
1970.16 Mitigation.
1970.17 Programmatic analysis and tiering.
1970.18 Emergencies.
1970.19–1970.50 [Reserved]

Subpart B—NEPA Categorical Exclusions

1970.51 Applying CEs.
1970.52 Extraordinary circumstances.
1970.53 CEs involving no or minimal construction. 1970.54 CEs involving small-scale development.
1970.55 CEs for Multi-Tier Actions.
1970.56–1970.100 [Reserved]

Subpart C—NEPA Environmental Assessments

1970.101 General.
1970.102 Preparation of EAs.
1970.103 Supplementing EAs.
1970.104 Finding of No Significant Impact.
1970.105–1970.150 [Reserved]

Subpart D—NEPA Environmental Impact Statements

1970.151 General.
1970.152 EIS funding and professional services.
1970.153 Notice of intent and scoping.
1970.154 Preparation of the EIS.
1970.155 Supplementing EISs.
1970.156 Record of decision.
1970.157–1970.200 [Reserved]

Authority: 7 U.S.C. 6941 *et seq.,* 42 U.S.C. 4241 *et seq.;* 40 CFR parts 1500 through 1508; 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Environmental Policies

§ 1970.1 Purpose, applicability, and scope.

(a) *Purpose.* The purpose of this part is to ensure that the Agency complies with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), and other applicable environmental requirements in order to make better decisions based on an understanding of the environmental consequences of proposed actions, and take actions that

protect, restore, and enhance the quality of the human environment.

(b) *Applicability.* This part contains the environmental policies and procedures applicable to programs administered by the Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS); herein referred to as ''the Agency.''

(c) *Scope.* This part integrates NEPA with other planning, environmental review processes, and consultation procedures required by other Federal laws, regulations, and Executive Orders applicable to Agency programs. This part also supplements the Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA, 40 CFR parts 1500 through 1508. To the extent appropriate, the Agency will also take into account CEQ guidance and memoranda. This part will also incorporate and comply with the procedures of Section 106 (36 CFR 800.8) of the National Historic Preservation Act (NHPA) and Section 7 (50 CFR part 402) of the Endangered Species Act (ESA).

§ 1970.2 [Reserved]

§ 1970.3 Authority.

This part derives its authority from a number of statutes, Executive orders, and regulations, including but not limited to those listed in this section. Both the Agency and the applicant, as appropriate, must comply with these statutes, Executive orders, and regulations, as well as any future statutes, Executive orders, and regulations that affect the Agency's implementation of this part.

(a) National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(b) Council on Environmental Quality Regulations Implementing the National Environmental Policy Act (40 CFR parts 1500 through 1508);

(c) U.S. Department of Agriculture, NEPA Policies and Procedures (7 CFR part 1b).

(d) Department of Agriculture, Enhancement, Protection and Management of the Cultural Environment (7 CFR parts 3100 through 3199);

(e) Archaeological and Historic Preservation Act of 1960, as amended, (16 U.S.C. 469 *et seq.*);

(f) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa *et seq.*);

(g) Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*);

(h) Clean Air Act (42 U.S.C. 7401 *et seq.*);

(i) Clean Water Act (Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*);

(j) Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*);

(k) Coastal Barrier Improvement Act (42 U.S.C. 4028 *et seq.*);

(l) Coastal Zone Management Act (16 U.S.C. 1456);

(m) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 103) (CERCLA);

(n) Consolidated Farm and Rural Development Act, Sections 307(a)(6)(A) (7 U.S.C. 1927(a)(6)(A)) and 363 (7 U.S.C. 2006e);

(o) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*);

(p) Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*);

(q) Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461 *et seq.*);

(r) Housing and Community Development Act of 1992 (42 U.S.C. 542(c)(9));

(s) Migratory Bird Treaty Act (16 U.S.C. 703–711);

(t) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(u) National Trails System Act (16 U.S.C. 1241 *et seq.*);

(v) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*);

(w) Noise Control Act (42 U.S.C. 4901 et seq.);

(x) Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*);

(y) Resource Conservation and Recovery Act (42 U.S.C. 6901);

(z) Safe Drinking Water Act—(42 U.S.C. 300f *et seq.*);

(aa) Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq.*);

(bb) Wilderness Act (16 U.S.C. 1131 *et seq.*);

(cc) Compact of Free Association Between the United States and the Republic of the Marshall Islands and Between the United States and the Federated States of Micronesia (Public Law 108–188);

(dd) Compact of Free Association Between the United States and the Republic of Palau (Public Law 99–658);

(ee) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(ff) Executive Order 11593, Protection and Enhancement of the Cultural Environment;

(gg) Executive Order 11988, Floodplain Management;

(hh) Executive Order 11990, Protection of Wetlands;

(ii) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations;

(jj) Executive Order 12372, Intergovernmental Review;

(kk) Executive Order 13112, Invasive Species;

(ll) Executive Order 13175, Consultation and Coordination with Indian Tribal Governments;

(mm) Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds;

(nn) Executive Order 13287, Preserve America;

(oo) Executive Order 13016, Federal Support of Community Efforts along American Heritage Rivers;

(pp) Executive Order 13352, Facilitation of Cooperative Conservation;

(qq) Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management;

(rr) Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance;

(ss) Agriculture Departmental Regulation (DR) 5600–2, Environmental Justice;

(tt) Agriculture Departmental Regulation (DR) 9500–3, Land Use Policy;

(uu) Agriculture Departmental Regulation (DR) 9500–4, Fish and Wildlife Policy; and

(vv) Agriculture Departmental Manual (DM) 5600–001, Environmental Pollution Prevention, Control, and Abatement Manual.

§ 1970.4 Policies.

(a) Applicants proposals must, whenever practicable, avoid or minimize adverse environmental impacts; avoid or minimize conversion of wetlands and important farmlands as defined in the Farmland Protection Policy Act and its implementing regulations issued by the USDA Natural Resources Conservation Service; avoid development in floodplains when practicable alternatives exist to meet developmental needs; and avoid or minimize potentially high and adverse impacts to minority or low-income populations within the proposed action's area of impact. Avoiding development in floodplains includes avoiding development in the 500-year floodplain, as shown on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps, where the proposed actions and facilities are defined as critical actions in § 1970.6. There are no exceptions to this policy and the Agency shall not fund the proposal unless there is a demonstrated, significant need for the proposal and no practicable alternative exists to the proposed conversion of the above resources.

(b) The Agency encourages the reuse of real property defined as brownfields per Section 101 of CERCLA where the reuse of such property is complicated by the presence or potential presence of a hazardous substance, pollutant, or other contaminant, provided that the level of such does not threaten human health and the environment for the proposed land use. The Agency will defer to the agency with regulatory authority under the appropriate law in determining the appropriate level of contaminant for a specific proposed land use. The Agency will evaluate the risk based upon the applicable regulatory agency's review and concurrence with the proposal.

(c) The Agency and applicant will involve other Federal agencies with jurisdiction by law or special expertise, state and local governments, Indian tribes and Alaska Native organizations, Native Hawaiian organizations, and the public, early in the Agency's environmental review process to the fullest extent practicable. To accomplish this objective, the Agency and applicant will:

(1) Ensure that environmental amenities and values be given appropriate consideration in decision making along with economic and technical considerations;

(2) At the earliest possible time, advise interested parties of the Agency's environmental policies and procedures and required environmental impact analyses during early project planning and design; and

(3) Make environmental assessments (EA) and environmental impact statements (EIS) available to the public for review and comment in a timely manner.

(d) The Agency and applicant will ensure the completion of the environmental review process prior to the irreversible and irretrievable commitment of Agency resources in accordance with § 1970.11. The environmental review process is concluded when the Agency approves the applicability of a Categorical Exclusion (CE), issues a Finding of No Significant Impact (FONSI), or issues a Record of Decision (ROD).

(e) If an applicant's proposal does not comply with Agency environmental policies and procedures, further consideration of the application will be deferred until compliance can be demonstrated, or the application may be rejected. Any applicant that is directly and adversely affected by an administrative decision made by the Agency under this part may appeal that decision, to the extent permissible under 7 CFR part 11.

(f) The Agency recognizes the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, will lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of humankind's world environment in accordance with NEPA, 42 U.S.C. 4321 *et seq.*

(g) The Agency will use the NEPA process, to the maximum extent feasible, to identify and encourage opportunities to reduce greenhouse gas (GHG) emissions caused by proposed Federal actions that would otherwise result in the emission of substantial quantities of GHG.

§ 1970.5 Responsible parties.

(a) *Agency.* The following paragraphs identify the general responsibilities of the Agency.

(1) The Agency is responsible for all environmental decisions and findings related to its actions and will encourage applicants to design proposals to protect, restore, and enhance the environment.

(2) If the Agency requires an applicant to submit environmental information, the Agency will outline the types of information and analyses required in guidance documents. The Agency will independently evaluate the information submitted.

(3) The Agency will advise applicants and applicable lenders of their responsibilities to consider environmental issues during early project planning and that specific actions listed in § 1970.12, such as initiation of construction, cannot occur prior to completion of the environmental review process or it could result in a denial of financial assistance.

(4) The Agency may act as either a lead agency or a cooperating agency in the preparation of an environmental review document. If the Agency is a cooperating agency, the Agency will fulfill the cooperating agency responsibilities outlined in 40 CFR 1501.6.

(5) Mitigation measures described in the environmental review documentation must be included as conditions in Agency financial commitment documents, such as a conditional commitment letter.

(6) The Agency, guaranteed lender, or multi-tier recipients will monitor and track the implementation, maintenance, and effectiveness of any required mitigation measures.

(b) *Applicants.* Applicants must:

(1) Consult with Agency staff to determine the appropriate level of environmental review and to obtain publicly available resources at the earliest possible time for guidance in identifying all relevant environmental issues that must be addressed and considered during early project planning and design throughout the process.

(2) Where appropriate, contact State and Federal agencies to initiate consultation on matters affected by this part. This part authorizes applicants to coordinate with State and Federal agencies on behalf of the Agency. However, applicants are not authorized to initiate consultation in accordance with Section 106 with Indian tribes on behalf of the Agency. In those cases, applicants need the express written authority of the Agency and consent of Indian tribes in order to initiate consultation.

(3) Provide information to the Agency that the Agency deems necessary to evaluate the proposal's potential environmental impacts and alternatives.

(i) Applicants must ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the Agency office processing the application. Incomplete materials or delayed submittals may jeopardize consideration of the applicant's proposal by the Agency and may result in no award of financial assistance.

(ii) Applicants must clearly define the purpose and need for the proposal and inform the Agency promptly if any other Federal, State, or local agencies may be involved in financing, permitting, or approving the proposal, so that the Agency may coordinate and consider participation in joint environmental reviews.

(iii) As necessary, applicants must develop and document reasonable alternatives that meet their purpose and need while improving environmental outcomes.

(iv) Applicants must prepare environmental review documents according to the format and standards provided by the Agency. The Agency must independently evaluate the final documents submitted. All environmental review documents must be objective, complete, and accurate in order for them to be finally accepted by the Agency. Applicants may employ a design or environmental professional or technical service provider to assist them in the preparation of their environmental review documents.

(A) Applicants are not required to prepare environmental review documents for proposals that involve

limited, routine Agency activities listed in § 1970.53.

(B) For CEs listed in § 1970.54, applicants must prepare environmental documentation as required.

(C) When an EA is required, the applicant must prepare an EA that meets the requirements in subpart C of this part, including, but not limited to, information and data collection and public involvement activities. When the applicant prepares the EA, the Agency will make its own independent evaluation of the environmental issues and take responsibility for the scope and content of the EA.

(D) Applicants must cooperate with and assist the Agency in all aspects of preparing an EIS that meets the requirements specified in subpart D of this part, including, but not limited to, information and data collection and public involvement activities. Once authorized by the Agency in writing, applicants are responsible for funding all third-party contractors used to prepare the EIS.

(4) Applicants will provide any additional studies, data, or document revisions requested by the Agency during the environmental review and decision-making process. The studies, data, or documents required will vary depending upon the specific project and its impacts. Examples of studies that the Agency may require an applicant to provide are biological assessments under the ESA, archeological surveys under the NHPA, wetland delineations, surveys to determine the floodplain elevation on a site, air quality conformity analysis, or other such information needed to adequately assess impacts.

(5) Applicants will ensure that no actions are taken (such as any demolition, land clearing, initiation of construction, or advance of interim construction funds from a guaranteed lender), including incurring any obligations with respect to their proposal, that may have an adverse impact on the quality of the human environment or that may limit the choice of reasonable alternatives during the environmental review process. Limitations on actions by an applicant prior to the completion of the Agency environmental review process are defined in CEQ regulations at 40 CFR 1506.1 and 7 CFR 1970.12.

(6) Applicants will promptly notify the Agency processing official when changes are made to their proposal so that the environmental review and documentation may be supplemented or otherwise revised as necessary.

(7) Applicants will incorporate any mitigation measures identified and any required monitoring in the environmental review process into the plans and specifications and construction contracts for the proposals. Applicants must provide such mitigation measures to consultants responsible for preparing design and construction documents, or provide other mitigation action plans. Applicants are required to maintain, as applicable, mitigation measures for the life of the loans or refund term for grants.

(8) Applicants will cooperate with the Agency on achieving environmental policy goals. If an applicant is unwilling to cooperate with the Agency on environmental compliance, the Agency will deny the requested financial assistance.

§ 1970.6 Definitions and acronyms.

(a) *Definitions.* Terms used in this part are defined in 40 CFR part 1508, 36 CFR 800.16, and this section.

Agency. USDA Rural Development, which includes RHS, RBS, and RUS, and any successor agencies.

Applicant. An individual or entity requesting financial assistance including but not limited to loan recipients, grantees, guaranteed lenders, or licensees.

Construction work plan. An engineering planning study that is used in the Electric Program to determine and document a borrower's 2- to 4-year capital construction investments that are needed to provide and maintain adequate and reliable electric service to a borrower's new and existing members.

Critical action. Any activity for which even a slight chance of flooding would be hazardous as determined by the Agency. Critical actions include activities that create, maintain, or extend the useful life of structures or facilities that produce, use, or store highly volatile, flammable, explosive, toxic, or water-reactive materials; maintain irreplaceable records; or provide essential utility or emergency services (such as data storage centers, electric generating facilities, water treatment facilities, wastewater treatment facilities, large pump stations, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or facilities that are likely to contain occupants who may not be sufficiently mobile to avoid death or serious injury in a flood.

Design professionals. Engineers or architects providing professional design services to applicants during the planning, design, and construction phases of proposals submitted to the Agency for financial assistance.

Distributed resources. Sources of electrical power that are not directly connected to a bulk power transmission system, having an installed capacity of not more than 10 Mega volt-amperes (MVA), connected to an electric power system through a point of common coupling. Distributed resources include both generators (distributed generation) and energy storage technologies.

Emergency. A disaster or a situation that involves an immediate or imminent threat to public health or safety as determined by the Agency.

Environmental review. Any or all of the levels of environmental analysis described under this part.

Financial assistance. A loan, grant, or loan guarantee provided by the Agency to an applicant.

Guaranteed lender. The organization making, servicing, and/or collecting the loan which is guaranteed by the Agency under applicable regulations to the extent that such servicing and collecting has not been assigned to the Agency.

Historic property. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria. (See 36 CFR 800.16(l)).

Indian tribe. An Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (See 36 CFR 800.16(m)).

Loan-servicing actions. All Agency actions on a particular loan after loan closing or, in the case of guaranteed loans, after the issuance of the loan guarantee, including but not limited to transfers, assumptions, consents, subordinations, foreclosures, and sales or leases of Agency-owned real property obtained through foreclosure.

Loan/System designs. Engineering studies to support a loan application and the determination that a system design provides telecommunication services most efficiently to proposed subscribers in a proposed service area, in accordance with the Telecommunications Program guidance.

Multi-tier action. Refers to specific programs administered by the Agency that provide financial assistance to eligible recipients, including but not limited to: Intermediaries; community-based organizations, such as housing or community development non-profit organizations; rural electric cooperatives; or other organizations with similar financial arrangements who, in turn, provide financial assistance available to eligible recipients. The entities or organizations receiving the initial Agency financial assistance are considered ''primary recipients.'' As the direct recipient of this financial assistance, ''primary recipients'' provide the financial assistance to other parties, referred to as ''secondary recipients'' or ''ultimate recipients.'' The multi-tier action programs include Housing Preservation Grants (42 U.S.C. 1490m), Multi-Family Housing Preservation Revolving Loan Fund (73 FR 48368), Intermediary Relending Program (7 U.S.C. 1932 note and 42 U.S.C. 9812), Rural Business Enterprise Grant Program (section 310B(c)(2) (Consolidated Farm and Rural Development Act)), Rural Economic Development Loan and Grant Program (7 U.S.C. 940c), Household Water Well System Grant Program (7 U.S.C. 1926e), and any other such programs so identified in the future through **Federal Register** notice.

No action alternative. An alternative that describes the reasonably foreseeable future environment in the event a proposed Federal action is not taken. This forms the baseline condition against which the impacts of the proposed action and other alternatives are compared and evaluated.

Preliminary Architectural/Engineering Report. Documents prepared by the applicant's design professional in accordance with applicable Agency guidance for Preliminary Architectural Reports for housing, business, and community facilities proposals and for Preliminary Engineering Reports for water and wastewater proposals.

Previously Disturbed or Developed Land. Land that has been changed such that its functioning ecological processes have been and remain altered by human activity.

Third-party contracts. Refers to the preparation of EISs by contractors paid by the applicant. Under the Agency's direction and in compliance with 40 CFR 1506.5(c), the applicant may undertake the necessary paperwork for the solicitation of a field of candidates. Federal procurement requirements do not apply to the Agency because it incurs no obligations or costs under the contract, nor does the Agency procure anything under the contract.

(b) *Acronyms.*

CE—Categorical Exclusion
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
CEQ—Council on Environmental Quality
EA—Environmental Assessment
EIS—Environmental Impact Statement
EPA—United States Environmental Protection Agency
ESA—Endangered Species Act
FEMA—Federal Emergency Management Agency
FONSI—Finding of No Significant Impact
GHG—Greenhouse Gas
kV—kilovolt (kV)
kW—kilowatt (kW)
MW—megawatt
MVA—Mega volt-amperes
NEPA—National Environmental Policy Act
NHPA—National Historic Preservation Act
NOI—Notice of Intent
RBIC—Rural Business Investment Companies
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
ROD—Record of Decision
SCADA—Supervisory Control and Data Acquisition Systems
SEPA—State Environmental Policy Act
USDA—United States Department of Agriculture
USGS—United State Geological Survey
USEPA—United States Environmental Protection Agency

§ 1970.7 [Reserved]

§ 1970.8 Actions requiring environmental review.

(a) The Agency must comply with the requirements of NEPA for all major Federal actions within the:

(1) United States borders and any other commonwealth, territory or possession of the United States such as Guam, American Samoa, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico; and

(2) Republic of the Marshall Islands, the Federated States of Micronesia and the Republic of Palau, subject to applicable Compacts of Free Association.

(b) Except as provided in paragraph (c) of this section, the Agency has determined the following to be major Federal actions:

(1) Financial assistance;

(2) Certain loan servicing actions with the potential to have an effect on the environment, as determined by the Agency, including, but not limited to:

(i) Sale or lease of Agency-owned real property;

(ii) Any form of consent including a consent to the release of a lien or security interest (except when the debt to the Agency is being paid in full); or

(iii) Any request by a third party that the Agency accept the imposition of a lien or security interest of another creditor on assets previously pledged to the Agency;

(3) Promulgation of procedures or regulations for new or significantly revised programs; and

(4) Legislative proposals (see 40 CFR 1506.8).

(c) For environmental review purposes, the Agency has identified and established categories of proposed actions (§§ 1970.53 through 1970.55, 1970.101, and 1970.151). An applicant may propose to participate with other parties in the ownership of a project. In such a case, the Agency shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposed project prior to determining its classification. Where the applicant proposes to participate with other parties in the ownership of a proposed project and all applicants cumulatively own:

(1) Five percent (5%) or less, the project is not considered a Federal action subject to this part;

(2) Thirty-three and one-third percent (33⅓%) or more, the project shall be considered a federal action subject to this part;

(3) More than five percent (5%) but less than thirty-three and one-third percent (33⅓%), the Agency shall determine whether the applicant participants have sufficient control and responsibility to alter the development of the proposal such that the Agency's action will be considered a Federal action subject to this part. Consideration shall be given to such factors as:

(i) Whether construction would be completed regardless of the Agency's financial assistance or approval;

(ii) The stage of planning and construction;

(iii) Total participation of the applicant;

(iv) Participation percentage of each participant; and

(v) Managerial arrangements and contractual provisions.

§ 1970.9 Levels of environmental review.

(a) The Agency has identified classes of actions and the level of environmental review required for applicant proposals and Agency actions

in subparts B (CEs), C (EAs), and D (EISs) of this part. An applicant seeking financial assistance from the Agency must sufficiently describe its proposal so that the Agency can properly classify the proposal (i.e., determine the level of environmental review necessary).

(b) If an action is not identified in the classes of actions listed in subparts B, C, or D of this part, the Agency will determine what level of environmental review is appropriate.

(c) A single environmental document will evaluate an applicant's proposal and any other activities that are closely related, connected, interdependent, or likely to have significant cumulative effects. When a proposal represents one segment of a larger interdependent proposal being funded jointly by various entities, the level of environmental review will normally include the entire proposal.

(d) Upon submission of multi-year Telecommunication Program Loan/System Designs or multi-year Electric Program Construction Work Plans, the Agency will identify the appropriate classification for all proposals listed in the applicable design or work plan and may request any additional environmental information at or prior to the time of approval.

§ 1970.10 Raising the level of environmental review.

Environmental conditions, scientific controversy, or other characteristics unique to a specific proposal can trigger the need for a higher level of environmental review than described in subparts B or C of this part. When necessary, the Agency will determine whether extraordinary circumstances (see § 1970.52) or the potential for significant environmental impacts warrant a higher level of review. The Agency is solely responsible for determining the level of environmental review to be conducted and the adequacy of environmental review that has been performed.

§ 1970.11 Timing of the environmental review process.

(a) Once an applicant decides to request Agency financial assistance, the environmental review process must be initiated at the earliest possible time to ensure that planning, design, and other decisions reflect environmental policies and values, avoid delays, and minimize potential conflicts. This includes early coordination with the Agency, all funding partners, and regulatory agencies, in order to minimize duplication of effort.

(b) The environmental review process must be concluded before completion of the obligation of funds.

(c) The environmental review process is formally concluded when all of the following have occurred:

(1) The Agency has reviewed the appropriate environmental review document for completeness;

(2) All required public notices have been published and public comment periods have elapsed;

(3) All comments received during any established comment period have been considered and addressed appropriately by the Agency;

(4) The environmental review document has been approved by the Agency; and

(5) The appropriate environmental decision document has been executed by the Agency after § 1970.11(c)(1) through (4) have been concluded.

(d) For proposed actions listed in § 1970.151 and to ensure Agency compliance with the conflict of interest provisions in 40 CFR 1506.5(c), the Agency is responsible for selecting any third-party EIS contractor and participating in the EIS preparation. For more information regarding acquisition of professional services and funding of a third-party contractor, refer to § 1970.152.

§ 1970.12 Limitations on actions during the NEPA process.

(a) *Limitations on actions.* Applicants must not take actions concerning a proposal that may potentially have an environmental impact or would otherwise limit or affect the Agency's decision until the Agency's environmental review process is concluded. If such actions are taken, the Agency may deny the request for financial assistance.

(b) *Anticipatory demolition.* If the Agency determines that an applicant has intentionally significantly adversely affected a historic property with the intent to avoid the requirements of Section 106 of the NHPA (such as demolition or removal of all or part of the property) the Agency may deny the request for financial assistance in accordance with Section 110(k) of the NHPA.

(c) *Recent construction.* When construction is in progress or has recently been completed by applicants who can demonstrate no prior intent to seek Agency assistance at the time of application submittal to the Agency, the following requirements apply:

(1) In cases where construction commenced within 6 months prior to the date of application, the Agency will determine and document whether the applicant initiated construction to avoid environmental compliance requirements. If any evidence to that effect exists, the Agency may deny the request for financial assistance.

(2) If there is no evidence that an applicant is attempting to avoid environmental compliance requirements, the application is subject to the following additional requirements:

(i) The Agency will promptly provide written notice to the applicant that the applicant must halt construction if it is ongoing and fulfill all environmental compliance responsibilities before the requested financing will be provided;

(ii) The applicant must take immediate steps to identify any environmental resources affected by the construction and protect the affected resources; and

(iii) With assistance from the applicant and to the extent practicable, the Agency will determine whether environmental resources have been adversely affected by any construction and this information will be included in the environmental document.

(d) *Minimal expenditures.* In accordance with 40 CFR 1506.1(d), nothing shall preclude the Agency from approving minimal expenditures by the applicant not affecting the environment (e.g., long lead-time equipment, purchase options, or environmental or technical documentation needed for Agency environmental review). To be minimal, the expenditure must not exceed the amount of loss which the applicant could absorb without jeopardizing the Government's security interest in the event the proposed action is not approved by the Agency, and must not compromise the objectivity of the Agency's environmental review process.

§ 1970.13 Consideration of alternatives.

The purpose of considering alternatives to a proposed action is to explore and evaluate whether there may be reasonable alternatives to that action that may have fewer or less significant negative environmental impacts. When considering whether the alternatives are reasonable, the Agency will take into account factors such as economic and technical feasibility. The extent of the analysis on each alternative will depend on the nature and complexity of the proposal. Environmental review documents must discuss the consideration of alternatives as follows:

(a) For proposals subject to subpart C of this part, the environmental effects of the ''No Action'' alternative must be evaluated. All EAs must evaluate other reasonable alternatives whenever the

proposal involves potential adverse effects to environmental resources.

(b) For proposals subject to subpart D of this part, the Agency will follow the requirements in 40 CFR part 1502.

§ 1970.14 Public involvement.

(a) *Goal.* The goal of public involvement is to engage affected or interested parties and share information and solicit input regarding environmental impacts of proposals. This helps the Agency to better identify potential environmental impacts and mitigation measures and allows the public to review and comment on proposals under consideration by the Agency. The nature and extent of public involvement will depend upon the public interest and the complexity, sensitivity, and potential for significant environmental impacts of the proposal.

(b) *Responsibility to involve the public.* The Agency will require applicant assistance throughout the environmental review process, as appropriate, to involve the public as required under 40 CFR 1506.6. These activities may include, but are not limited to:

(1) Coordination with Federal, state, and local agencies; Federally recognized American Indian tribes; Alaska Native organizations; Native Hawaiian organizations; and the public;

(2) Providing meaningful opportunities for involvement of affected minority or low-income populations, which may include special outreach efforts, so that potential disproportionate effects on minority or low-income populations are reduced to the maximum extent practicable;

(3) Publication of notices;

(4) Organizing and conducting meetings; and

(5) Providing translators, posting information on electronic media, or any other additional means needed that will successfully inform the public.

(c) *Scoping.* In accordance with 40 CFR 1501.7, scoping is an early and open process to identify significant environmental issues deserving of study, de-emphasize insignificant issues, and determine the scope of the environmental review process.

(1) Public scoping meetings allow the public to obtain information about a proposal and to express their concerns directly to the parties involved and help determine what issues are to be addressed and what kinds of expertise, analysis, and consultation are needed. For proposals classified in §§ 1970.101 and 1970.151, scoping meetings may be required at the Agency's discretion. The Agency may require a scoping meeting whenever the proposal has substantial controversy, scale, or complexity.

(2) If required, scoping meetings will be held at reasonable times, in accessible locations, and in the geographical area of the proposal at a location the Agency determines would best afford an opportunity for public involvement.

(3) When held, applicants must attend and participate in all scoping meetings. When requested by the Agency, the applicant must organize and arrange meeting locations, publish public notices, provide translation, provide for any equipment needs such as those needed to allow for remote participation, present information on their proposal, and fulfill any related activities.

(d) *Public notices.* (1) The Agency is responsible for meeting the public notice requirements in 40 CFR 1506.6, but will require the applicant to provide public notices of the availability of environmental documents and of public meetings so as to inform those persons and agencies who may be interested in or affected by an applicant's proposal. The Agency will provide applicants with guidance as to specific notice content, publication frequencies, and distribution requirements. Public notices issued by the Agency or the applicant must describe the nature, location, and extent of the applicant's proposal and the Agency's proposed action; notices must also indicate the availability and location of pertinent information.

(2) Notices generally must be published in a newspaper(s) of general circulation within the proposal's affected areas and other places as the Agency determines. The notice must be published in the non-classified section or a designated public notice section of the newspaper. If the affected area is largely non-English speaking or bilingual, the notice must be published in both English and non-English language newspapers serving the affected area, if both are available. The Agency will determine the use of other distribution methods for communicating information to affected individuals and communities if those are more likely to be effective.

(3) The number of times notices regarding EAs must be published is specified in § 1970.102(b)(6)(ii). Other distribution methods may be used in special circumstances when a newspaper notice is not available or is not adequate. Additional distribution methods may include, but are not limited to, direct public notices to adjacent property owners or occupants, mass mailings, radio broadcasts, internet postings, posters, or some other combination of public announcements.

(4) Formal notices required for EIS-level proposals pursuant to 40 CFR part 1500 will be published by the Agency in the **Federal Register**.

(e) *Public availability.* Documents associated with the environmental review process will be made available to the public at convenient locations specified in public notices and, where appropriate, on the Agency's Web site. Environmental documents which are voluminous or contain hard-to-reproduce graphics or maps should be made available for viewing at one or more locations, such as an Agency field office, public library, or the applicant's place of business. Upon request, the Agency will promptly provide interested parties copies of environmental review documents without charge to the extent practicable, or at a fee that is not more than the cost of reproducing and shipping the copies.

(f) *Public comments.* All comments should be directed to the Agency. Comments received by applicants must be forwarded to the Agency in a timely manner. The Agency will assess and consider all comments received.

§ 1970.15 Interagency cooperation.

In order to reduce delay and paperwork, the Agency will, when practicable, eliminate duplication of Federal, state, and local procedures by participating in joint environmental document preparation, adopting appropriate environmental documents prepared for or by other Federal agencies, and incorporating by reference other environmental documents in accordance with 40 CFR 1506.2 and 1506.3.

(a) *Coordination with other Federal agencies.* When other Federal agencies are involved in an Agency action listed in § 1970.101 or § 1970.151, the Agency will coordinate with these agencies to determine cooperating agency relationships as appropriate in the preparation of a joint environmental review document. The criteria for making this determination can be found at 40 CFR 1501.5.

(b) *Adoption of documents prepared for or by other Federal agencies.* The Agency may adopt EAs or EISs prepared for or by other Federal agencies if the proposed actions and site conditions addressed in the environmental document are substantially the same as those associated with the proposal being considered by the Agency. The Agency will consider age, location, and other reasonable factors in determining the usefulness of the other Federal documents. The Agency will complete

an independent evaluation of the environmental document to ensure it meets the requirements of this part. If any environmental document does not meet all Agency requirements, it will be supplemented prior to adoption. Where there is a conflict in the two agencies' classes of action, the Agency may adopt the document provided that it meets the Agency's requirements.

(c) *Cooperation with state and local governments.* In accordance with 40 CFR 1500.5 and 1506.2, the Agency shall cooperate with state and local agencies to the fullest extent possible to reduce delay and duplication between NEPA and comparable state and local requirements.

(1) *Joint environmental documents.* To the extent practicable, the Agency will participate in the preparation of a joint document to ensure that all of the requirements of this part are met. Applicants that request Agency assistance for specific proposals must contact the Agency at the earliest possible date to determine if joint environmental documents can be effectively prepared. In order to prepare joint documents the following conditions must be met:

(i) Applicants must also be seeking financial, technical, or other assistance such as permitting or approvals from a State or local agency that has responsibility to complete an environmental review for the applicant's proposal; and

(ii) The Agency and the State or local agency may agree to be joint lead agencies where practicable. When State laws or local ordinances have environmental requirements in addition to, but not in conflict with those of the Agency, the Agency will cooperate in fulfilling these requirements.

(2) *Incorporating other documents.* The Agency cannot adopt a non-Federal environmental document under NEPA. However, if an environmental document is not jointly prepared as described in paragraph (c)(1) of this section (e.g., prepared in accordance with a State environmental policy act [SEPA]), the Agency will evaluate the document as reference or supporting material for the Agency's environmental document.

§ 1970.16 Mitigation.

(a) The goal of mitigation is to avoid, minimize, rectify, reduce, or compensate for the adverse environmental impacts of an action. The Agency will seek to mitigate potential adverse environmental impacts resulting from Agency actions. All mitigation measures will be included in Agency commitment or decision documents.

(b) Mitigation measures, where necessary for a FONSI or, where applicable, ROD, will be discussed with the applicant and with any other relevant agency and, to the extent practicable, incorporated into Agency commitment documents, plans and specifications, and construction contracts so as to be legally binding.

(c) The Agency, applicable lenders, or any intermediaries will monitor implementation of all mitigation measures during development of design, final plans, inspections during the construction phase of projects, as well as in future servicing visits. The Agency will direct applicants to take necessary measures to bring the project into compliance. If the applicant fails to achieve compliance, all advancement of funds and the approval of cost reimbursements will be suspended. Other measures may be taken by the Agency to redress the failed mitigation as appropriate.

§ 1970.17 Programmatic analyses and tiering.

In accordance with 40 CFR 1502.20 and to foster better decision making, the Agency may consider preparing programmatic-level NEPA analyses and tiering to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.

§ 1970.18 Emergencies.

When an emergency exists and the Agency determines that it is necessary to take emergency action before preparing a NEPA analysis and any required documentation, the following provisions apply:

(a) *Urgent response.* The Agency and the applicant, as appropriate, may take actions necessary to control the immediate impacts of an emergency. Emergency actions include those that are urgently needed to return damaged facilities to service and to mitigate harm to life, property, or important natural or cultural resources. When taking such actions, the Agency and the applicant, when applicable, will take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practicable.

(b) *CE- and EA-level actions.* If the Agency proposes longer-term emergency actions other than those actions described in paragraph (a) of this section, and such actions are not likely to have significant environmental impacts, the Agency will document that determination in a finding for a CE or in a FONSI for an EA prepared in accordance with these regulations. If the Agency finds that the nature and scope of proposed emergency actions are such that they must be undertaken prior to preparing any NEPA analysis and documentation associated with a CE or EA, the Agency will identify alternative arrangements for compliance with this part with the appropriate agencies.

(1) Alternative arrangements for environmental compliance are limited to actions necessary to control the immediate impacts of the emergency.

(2) Alternative arrangements will, to the extent practicable, attempt to achieve the substantive requirements of this part.

(c) *EIS-level actions.* If the Agency proposes emergency actions other than those actions described in paragraphs (a) or (b) of this section and such actions are likely to have significant environmental impacts, then the Agency will consult with the CEQ about alternative arrangements in accordance with CEQ regulations at 40 CFR 1506.11 as soon as possible.

§§ 1970.19–1970.50 [Reserved]

Subpart B—NEPA Categorical Exclusions

§ 1970.51 Applying CEs.

(a) The actions listed in §§ 1970.53 through 1970.55 are classes of actions that the Agency has determined do not individually or cumulatively have a significant effect on the human environment (referred to as ''categorical exclusions'' or CEs).

(1) Actions listed in § 1970.53 do not normally require applicants to submit environmental documentation with their applications. However, these applicants may be required to provide environmental information later at the Agency's request.

(2) Actions listed in § 1970.54 normally require the submission of environmental documentation by applicants to allow the Agency to determine whether extraordinary circumstances (as defined in § 1970.52(a)) exist. When the Agency determines that extraordinary circumstances exist, an EA or EIS, as appropriate, will be required and, in such instances, applicants may be required to provide additional environmental information later at the Agency's request.

(3) Actions listed in § 1970.55 relate to financial assistance whereby the applicant is a primary recipient of a multi-tier program providing financial assistance to secondary or ultimate recipients without specifying the use of

such funds for eligible actions at the time of initial application and approval. The decision to approve or fund such initial proposals has no discernible environmental effects and is therefore categorically excluded provided the primary recipient enters into certain agreements with the Agency for future reviews. The primary recipient is limited to making the Agency's financial assistance available to secondary recipients for the types of projects specified in the primary recipient's application. Second-tier funding of proposals to secondary or ultimate recipients will be screened for extraordinary circumstances by the primary recipient and monitored by the Agency. If the primary recipient determines that extraordinary circumstances exist on any second-tier proposal, it must be referred to the Agency for the appropriate level of review under this part in accordance with subparts C and D of this part.

(b) To find that a proposal is categorically excluded, the Agency must determine the following:

(1) The proposal fits within a class of actions that is listed in §§ 1970.53 through 1970.55;

(2) There are no extraordinary circumstances related to the proposal (see § 1970.52); and

(3) The proposal is not ''connected'' (see 40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts, is not related to other proposed actions with cumulatively significant impacts (see 40 CFR 1508.25(a)(2)), and is not precluded by 40 CFR 1506.1.

(d) A proposal that consists of more than one categorically excluded action may be categorically excluded only if all components of the proposed action are eligible for a CE.

(e) If, at any time during the environmental review process, the Agency determines that the proposal does not meet the criteria listed in §§ 1970.53 through 1970.55, an EA or EIS, as appropriate, will be required.

(f) Failure to achieve compliance with this part will postpone further consideration of an applicant's proposal until such compliance is achieved or the applicant withdraws the proposal. If compliance is not achieved, the Agency will deny the request for financial assistance.

§ 1970.52 Extraordinary circumstances.

(a) Extraordinary circumstances are unique situations presented by specific proposals, such as characteristics of the geographic area affected by the proposal, scientific controversy about the environmental effects of the proposal, uncertain effects or effects involving unique or unknown risks, and unresolved conflicts concerning alternate uses of available resources within the meaning of Section 102(2)(E) of NEPA.

(b) Pursuant to §§ 1970.53 and 1970.54, the Agency will consider a proposal's potential to cause any significant adverse environmental effects to be an extraordinary circumstance. Significant adverse environmental effects that the Agency considers to be extraordinary circumstances include, but are not limited to:

(1) Any violation of applicable Federal, state, or local statutory, regulatory, permit, or Executive order requirements for environment, safety, and health.

(2) Siting, construction, or major expansion of Resource Conservation and Recovery Act permitted waste storage, disposal, recovery, or treatment facilities (including incinerators), even if the proposal includes categorically excluded waste storage, disposal, recovery, or treatment actions.

(3) Any proposal that is likely to cause uncontrolled or unpermitted releases of hazardous substances, pollutants, contaminants, or petroleum and natural gas products.

(4) An adverse effect on the following environmental resources:

(i) Historic properties;

(ii) Federally listed threatened or endangered species, critical habitat, Federally proposed or candidate species;

(iii) Wetlands (those actions that require an individual permit under the Clean Water Act, Section 404 regulations);

(iv) Floodplains (those actions that introduce fill or structures into a floodplain where Executive Order 11988 requires consideration of alternatives to avoid adverse effects and incompatible development in floodplains. Actions that do not adversely affect the hydrologic character of a floodplain, such as buried utility lines or subsurface pump stations, are not considered extraordinary circumstances);

(v) Areas having formal Federal or state designations such as wilderness areas, parks, or wildlife refuges; wild and scenic rivers; or marine sanctuaries;

(vi) Special sources of water (such as sole source aquifers, wellhead protection areas, and other water sources that are vital in a region);

(vii) Coastal barrier resources or, unless exempt, coastal zone management areas; and

(viii) Coral reefs.

(5) The existence of controversy based on effects to the human environment brought to the Agency's attention by a Federal, tribal, state, or local government agency.

(c) In the presence of extraordinary circumstances, a normally excluded action will be the subject of an EA or an EIS, as appropriate, prepared in accordance with subparts C or D of this part, respectively.

§ 1970.53 CEs involving no or minimal disturbance.

The CEs in this section are for proposals for financial assistance that involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. These actions normally do not require an applicant to submit environmental documentation with the application. However, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist. The CEs in this section also include CEs for certain Agency actions.

(a) *Routine financial actions.* These CEs apply to the following routine financial actions:

(1) Refinancing of debt, provided that the applicant is not using refinancing as a means of avoiding compliance with environmental requirements.

(2) Financial assistance for the purchase, transfer, lease, or other acquisition of real property when no or minimal change in use is reasonably foreseeable. Rural Housing Site Loans are not eligible for this CE.

(i) Real property includes land and any existing permanent or affixed structures.

(ii) ''No or minimal change in use is reasonably foreseeable'' means no or only a small change in use, capacity, purpose, operation, or design is expected where the foreseeable type and magnitude of impacts would remain essentially the same.

(3) Financial assistance for the purchase, transfer, or lease of personal property or fixtures where no or minimal change in operations is reasonably foreseeable. These include:

(i) Approval of minimal expenditures not affecting the environment such as contracts for long lead-time equipment and purchase options by applicants under the terms of 40 CFR 1506.1(d) and 7 CFR 1970.12;

(ii) Acquisition of end-user equipment and programming for telecommunication distance learning;

(iii) Purchase, replacement, or installation of equipment necessary for the operation of an existing facility (such as Supervisory Control and Data

Acquisition Systems (SCADA), energy management or efficiency improvement systems, standby internal combustion electric generators, battery energy storage systems, and associated facilities for the primary purpose of providing emergency power);

(iv) Purchase of vehicles (such as those used in business, utility, community, or emergency services operations);

(v) Purchase of existing water rights where no associated construction is involved;

(vi) Purchase of livestock and essential farm equipment, including crop storing and drying equipment;

(vii) Purchase of stock in an existing enterprise to obtain an ownership interest in that enterprise.

(4) Financial assistance for operating (working) capital for an existing operation to support day-to-day expenses;

(5) Loan-servicing actions by the Agency after provision of financial assistance when such actions have no potential for significant adverse environmental impact because the actions would involve no or minimal construction or change in operations in the foreseeable future. These actions include, but are not limited to: Foreclosure, sale or lease of Agency-owned real property obtained through foreclosure, Agency consents or approvals under existing agreements, and other such servicing actions, if such actions will have no or minimal construction or change in current operations in the foreseeable future. If such actions involve more than minimal construction or change in operations in the foreseeable future, the Agency will classify the action according to this part and the appropriate level of environmental review will be conducted prior to the approval of such action. If such actions are not ripe for immediate review, the Agency will require that the applicant or the party seeking Agency consent, as applicable, complete a separate environmental review as soon as the plans are sufficiently ripe to determine if such construction or change in operations will be classified as a CE, EA, or EIS under this part;

(6) Rural Business Investment Program actions as follows:

(i) Non-leveraged program actions that include licensing by USDA of Rural Business Investment Companies (RBIC); or

(ii) Leveraged program actions that include licensing by USDA of RBIC and Federal financial assistance in the form of technical grants or guarantees of debentures of an RBIC, unless such Federal assistance is used to finance construction or development of land; and

(7) Guarantees issued to the Federal Financing Bank by the Agency under Section 313A(a) of the Rural Electrification Act of 1936 for guaranteed underwriting loans.

(b) *Information gathering and technical assistance.* These CEs apply to financial assistance for:

(1) Information gathering, data analysis, document preparation, real estate appraisals, environmental site assessments, and information dissemination. Examples of these actions are:

(i) Information gathering such as research, literature surveys, inventories, and audits.

(ii) Data analysis such as computer modeling.

(iii) Document preparation such as strategic plans; conceptual designs; management, economic, planning, or feasibility studies; energy audits or assessments; environmental analyses; and survey and analyses of accounts and business practices.

(iv) Information dissemination such as document mailings, publication, and distribution; and classroom training and informational programs.

(2) Technical advice, training, planning assistance, and capacity building. Examples of these actions are:

(i) Technical advice, training, planning assistance such as guidance for cooperatives and self-help housing group planning.

(ii) Capacity building such as leadership training, strategic planning, and community development training.

(3) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur. This includes, but is not limited to, air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small-scale air, water, or weather monitoring equipment.

(c) *Minor construction proposals.* These CEs apply to financial assistance for:

(1) Minor amendments or revisions to previously approved projects provided such activities do not alter the purpose, operation, location, or design of the project as originally approved;

(2) Repair, upgrade, or replacement of equipment or fixtures in existing structures for such purposes as improving habitability, reconstruction, energy efficiency, or pollution prevention;

(3) Any internal modification or minimal external modification, restoration, renovation, maintenance, and replacement in-kind to an existing facility or structure;

(4) Construction of or improvements to a single-family dwelling or a multi-family housing project serving up to four families, except when financing is provided through a Rural Housing Site loan;

(5) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use;

(6) Modifications of an existing water supply well to restore production in existing commercial well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation of the aquifer from the replacement well;

(7) New utility service connections to individual users or construction of utility lines or associated components where the applicant has no control over the placement of the utility facilities;

(8) Conversion of land in agricultural production to pastureland or forests, or conversion of pastureland to forest;

(9) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting is to be conducted on a sustainable basis and according to a Federal, state, or other governmental unit approved forestry management plan; and

(10) Conversion of no more than 160 acres of pastureland to agricultural production.

(d) *Energy or telecommunication proposals.* These CEs apply to financial assistance for:

(1) Changes to existing telecommunication facilities or electric transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used;

(2) Phase or voltage conversions, reconductoring, upgrading, or rebuilding of existing electric distribution lines or telecommunication facilities;

(3) Addition of telecommunication cables and related facilities to electric transmission and distribution structures;

(4) Siting, construction, and operation of small, ground source heat pump systems that would be located on previously disturbed land;

(5) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on an existing structure with no expansion of the footprint of the existing structure;

(6) Siting, construction, and operation of small biomass projects, such as

animal waste anaerobic digesters or gasifiers, that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy;

(7) Construction of small standby electric generating facilities of one average megawatt (MW) or less total capacity and associated facilities, for the purpose of providing emergency power for or startup of an existing facility;

(8) Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms; and

(9) Safety, environmental, or energy efficiency improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products.

(e) *Promulgation of rules or formal notices.* The promulgation of rules or formal notices for policies or programs which are administrative or financial procedures for implementing Agency assistance activities.

(f) *Agency proposals for legislation.* Agency proposals for legislation that have no potential for significant environmental impacts because they would allow for no or minimal construction or change in operations.

(g) *Administrative actions.* Agency procurement activities for goods and services; routine facility operations; personnel actions, including but not limited to, reduction in force or employee transfers resulting from workload adjustments, and reduced personnel or funding levels; and other such management actions related to the operation of the Agency.

§ 1970.54 CEs involving small-scale development.

The CEs in this section are for proposals for financial assistance that require an applicant to submit environmental documentation with their application to facilitate Agency determination of extraordinary circumstances. At a minimum, this documentation will include a complete description of all components of the applicant's proposal and any connected actions, including its specific location on detailed site plans as well as location maps equivalent to a U.S. Geological Survey (USGS) quad map; and information from authoritative sources acceptable to the Agency confirming the presence or absence of sensitive environmental resources in the area that could be affected by the applicant's proposal. The environmental documentation submitted must be accurate, complete, and capable of verification. The Agency may request additional information as needed to make an environmental determination. Failure to submit the required documentation will postpone further consideration of the applicant's proposal until the environmental documentation is submitted, or the Agency may deny the request for financial assistance. The Agency will review all additional documentation and determine if extraordinary circumstances exist. The Agency will also review such documentation and may determine that classification as an EA or an EIS is more appropriate than a CE classification.

(a) *Small-scale site-specific development.* These CEs apply to proposals where site development activities (including construction, expansion, repair, rehabilitation, or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic. Examples of such purposes and activities are identified in paragraphs (a)(1) through (a)(9) of this section. This paragraph does not apply to new industrial proposals or new energy generation over 100 kilowatts (kW) (such as ethanol and biodiesel production facilities) or those classes of action listed in §§ 1970.53, 1970.101, or 1970.151.

(1) Multi-family housing.

(2) Business development.

(3) Community facilities such as municipal buildings, libraries, security services, fire protection, schools, and health and recreation facilities.

(4) Infrastructure to support utility systems such as water or wastewater facilities; headquarters, maintenance, equipment storage, or microwave facilities; and energy management systems. This does not include proposals that either create a new or relocate an existing discharge to or a withdrawal from surface or ground waters, or cause substantial increase in a withdrawal or discharge at an existing site.

(5) Installation of new, commercial-scale water supply wells and associated pipelines or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection.

(6) Construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of documented scenic value.

(7) Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, purpose, operation, location, or design from the original facility.

(8) Installation or enlargement of irrigation facilities on an applicant's land, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres.

(9) Replacement or restoration of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, with no or minimal change in use, size, capacity, or location from the original facility(s).

(b) *Small-scale corridor development.* These CEs apply to financial assistance for:

(1) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use, size, capacity, purpose, or location from the original infrastructure;

(2) Improvement and expansion of existing water, waste water, and gas utility systems:

(i) Within one mile of currently served areas irrespective of the percent of increase in new capacity, or

(ii) Increasing capacity not more than 30 percent of the existing user population;

(3) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way;

(4) Construction of new distribution lines and associated facilities less than 69 kilovolts (kV); and

(5) Installation of telecommunications lines, cables, and related facilities.

(c) *Small-scale energy proposals.* These CEs apply to financial assistance for:

(1) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations, switchyards, and support facilities;

(2) Construction of electric transmission lines 10 miles in length or less, but not for the integration of major new generation resources into a bulk transmission system;

(3) Reconstruction (upgrading or rebuilding) and/or minor relocation of existing electric transmission lines 20 miles in length or less to enhance environmental and land use values or to improve reliability or access. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas;

(4) Repowering or uprating modifications or expansion of an existing unit(s) up to 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit;

(5) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(6) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(7) Construction of small electric generating facilities (except geothermal and solar electric projects), including those fueled with wind or biomass, capable of producing not more than 10 average MW. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(8) Geothermal electric projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(9) Solar electric projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less;

(10) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(11) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or a pipe into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included; and

(12) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency, promoting pollution prevention, safety, reliability, or security. This includes, but is not limited to, retrofitting existing facilities to produce biofuels and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility.

§ 1970.55 CEs for multi-tier actions.

The CEs in this section apply solely to providing financial assistance to primary multi-tier recipients in multi-tier action programs.

(a) The Agency's approval of financial assistance to a primary recipient in a multi-tier action program is categorically excluded if the primary recipient agrees in writing to:

(1) Conduct a screening of all proposed uses of funds to determine whether each proposal that would be funded or financed falls within § 1970.53 or § 1970.54 as a categorical exclusion;

(2) Obtain sufficient information to make an evaluation of those proposals listed in § 1970.53 or § 1970.54 to determine if extraordinary circumstances (as described in § 1970.52) are present;

(3) Document and report its conclusions regarding the applicability of a CE in its official records for Agency verification; and

(4) Refer any proposals that do not meet the criteria listed in § 1970.53 or § 1970.54, or proposals that may have extraordinary circumstances (as described in § 1970.52) to the Agency.

(b) Compliance with this section will be determined in Agency compliance reviews and other required audits for all primary multi-tier recipients. Failure by a primary recipient to meet the requirements of this section will result in penalties that may include written warnings, withdrawal of Agency assistance, withdrawal of Agency authorizations, or suspension from participation in Agency programs.

(c) Nothing in this section is intended to delegate the Agency's responsibility for compliance with this part. The Agency will continue to maintain ultimate responsibility for and control over the NEPA process.

§§ 1970.56–1970.100 [Reserved]

Subpart C—NEPA Environmental Assessments

§ 1970.101 General.

(a) An EA is a concise public document used by the Agency to determine whether to issue a FONSI or prepare an EIS, as specified in subpart D of this part. If, at any point during the preparation of an EA, it is determined that the proposal will have a potentially significant impact on the quality of the human environment, an EIS will be prepared.

(b) Unless otherwise determined by the Agency, EAs will be prepared for all ''major federal actions'' as described in 7 CFR 1970.8, unless such actions are categorically excluded, as determined under subpart B of this part, or require an EIS, as provided under subpart D of this part;

(c) Preparation of an EA will begin as soon as the Agency has determined the proper classification of the applicant's proposal. Applicants should consult as early as possible with the Agency to determine the environmental review requirements of their proposals. The EA must be prepared concurrently with the early planning and design phase of the proposal. The EA will not be considered complete until it is in compliance with this part.

(d) Failure to achieve compliance with this part will result in postponement of further consideration of the applicant's proposal until such compliance is achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

§ 1970.102 Preparation of EAs.

The EA must focus on resources that might be affected and any environmental issues that are of public concern.

(a) The amount of information and level of analysis provided in the EA should be commensurate with the magnitude of the proposal's activities and its potential to affect the quality of the human environment, but must discuss the following:

(1) The purpose and need for the proposed action;

(2) The affected environment, including baseline conditions that may be impacted by the proposed action and alternatives;

(3) The environmental impacts of the proposed action including the No Action alternative, and, if a specific project element is likely to adversely affect a resource, at least one alternative to the proposed action;

(4) Any applicable environmental laws and Executive orders;

(5) Any required coordination undertaken with any Federal, state, or local agencies or Indian tribes regarding compliance with applicable laws and Executive orders;

(6) Mitigation measures considered, including those measures that must be adopted to ensure the action will not have significant impacts;

(7) Any documents incorporated by reference, if appropriate, including, information provided by the applicant for the proposed action; and

(8) A listing of persons and agencies consulted.

(b) The following describes the normal processing of an EA under this subpart:

(1) The Agency advises the applicant of its responsibilities as described in subpart A of this part. These responsibilities include preparation of the EA as discussed in § 1970.5(b)(3)(iv)(C).

(2) The applicant provides a detailed project description including connected actions.

(3) The Agency verifies that the applicant's proposal should be the subject of an EA under § 1970.101. In addition, the Agency identifies any unique environmental requirements associated with the applicant's proposal.

(4) The Agency or the applicant, as appropriate, coordinates with Federal, State, and local agencies with jurisdiction by law or special expertise; tribes; and interested parties during EA preparation.

(5) Upon receipt of the EA from the applicant, the Agency evaluates the completeness and accuracy of the documentation. If necessary, the Agency will require the applicant to correct any deficiencies and resubmit the EA prior to its review.

(6) The Agency reviews the EA and supporting documentation to determine whether the environmental review is acceptable.

(i) If the Agency finds the EA unacceptable, the Agency will notify the applicant, as necessary, and work to resolve any outstanding issues.

(ii) If the Agency finds the EA acceptable, it will prepare or review a ''Notice of Availability of the EA'' and direct the applicant to publish the notice in local newspapers or through other distribution methods as approved by the Agency. The notice must be published for three consecutive issues in a daily newspaper, or 2 consecutive weeks in a weekly newspaper. If other distribution methods are approved, the Agency will identify equivalent requirements. The public review and comment period will begin on the day of the first publication date or equivalent if other distribution methods are used. A 14- to 30-day public review and comment period, as determined by the Agency, will be provided for all Agency EAs.

(7) After reviewing and evaluating all public comments, the Agency determines whether to modify the EA, prepare a FONSI, or prepare an EIS that conforms with subpart D of this part.

(8) If the Agency determines that a FONSI is appropriate, and after preparation of the FONSI, the Agency will prepare or review a public notice announcing the availability of the FONSI and direct the applicant to publish the public notice in a newspaper(s) of general circulation, as described in § 1970.14(d)(2). In such case, the applicant must obtain an ''affidavit of publication'' or other such proof from all publications (or equivalent verification if other media were used) and must submit the affidavits and verifications to the Agency.

§ 1970.103 Supplementing EAs.

If the applicant makes substantial changes to a proposal or if new relevant environmental information is brought to the attention of the Agency after the issuance of an EA or FONSI, supplementing an EA may be necessary. Depending on the nature of the changes, the EA will be supplemented by revising the applicable section(s) or by appending the information to address potential impacts not previously considered. If an EA is supplemented, public notification will be required in accordance with § 1970.102(b)(7) and (8).

§ 1970.104 Finding of No Significant Impact.

The Agency may issue a FONSI or a revised FONSI only if the EA or supplemental EA supports the finding that the proposed action will not have a significant effect on the human environment. If the EA does not support a FONSI, the Agency will follow the requirements of subpart D of this part before taking action on the proposal.

(a) A FONSI must include:

(1) A summary of the supporting EA consisting of a brief description of the proposed action, the alternatives considered, and the proposal's impacts;

(2) A notation of any other EAs or EISs that are being or will be prepared and that are related to the EA;

(3) A brief discussion of why there would be no significant impacts;

(4) Any mitigation essential to finding that the impacts of the proposed action would not be significant;

(5) The date issued; and

(6) The signature of the appropriate Agency approval official.

(b) The Agency must ensure that the applicant has committed to any mitigation that is necessary to support a FONSI and possesses the authority and ability to fulfill those commitments. The Agency must ensure that mitigation, and, if appropriate, a mitigation plan that is necessary to support a FONSI, is made a condition of financial assistance.

(c) The Agency must make a FONSI available to the public as provided at 40 CFR 1501.4(e) and 1506.6.

(d) The Agency may revise a FONSI at any time provided that the revision is supported by an EA or a supplemental EA. A revised FONSI is subject to all provisions of this section.

§§ 1970.105–1970.150 [Reserved]

Subpart D—NEPA Environmental Impact Statements

§ 1970.151 General.

(a) The purpose of an EIS is to provide a full and fair discussion of significant environmental impacts and to inform the appropriate Agency decision maker and the public of reasonable alternatives to the applicant's proposal, the Agency's proposed action, and any measures that would avoid or minimize adverse impacts.

(b) Agency actions for which an EIS is required include, but are not limited to:

(1) Proposals for which an EA was initially prepared and that may result in significant impacts that cannot be mitigated;

(2) Siting, construction (or expansion), and decommissioning of major treatment, storage, and disposal facilities for hazardous wastes as designated in 40 CFR part 261;

(3) Proposals that change or convert the land use of an area greater than 640 contiguous acres;

(4) New electric generating facilities, other than gas-fired combustion turbines, of more than 50 average MW output, and all new associated electric transmission facilities;

(5) New mining operations when the applicant has effective control (i.e., applicant's dedicated mine or purchase of a substantial portion of the mining equipment); and

(6) Agency proposals for legislation that may have a significant environmental impact.

(c) Failure to achieve compliance with this part will result in the postponement of further consideration of the applicant's proposal until the Agency determines that such compliance has been achieved or the applicant withdraws the application. If compliance is not achieved, the Agency will deny the request for financial assistance.

§ 1970.152 EIS funding and professional services.

(a) *Funding for EISs.* Unless otherwise approved by the Agency, an applicant must fund an EIS and any supplemental documentation prepared in support of an applicant's proposal.

(b) *Acquisition of professional services.* The Agency will determine the appropriate procurement method for acquiring any environmental professional services for EISs. Environmental professional services may be acquired at the discretion of the Agency through the methods specified in 40 CFR 1506.5(c). In accordance with 40 CFR 1506.5(c) and to avoid any conflicts of interest, the Agency is responsible for selecting an EIS contractor and the applicant must not initiate the procurement of an EIS contractor without prior written approval from the Agency.

(b) *EIS scope and content.* The Agency will prepare the scope of work for the preparation of the EIS and will be responsible for the scope, content and development of the EIS prepared by the contractor(s) hired or selected by the Agency.

(c) *Agreement Outlining Party Roles and Responsibilities.* For each EIS, an agreement will be executed by the Agency, the applicant, and each third-party contractor, which describes each party's roles and responsibilities during the EIS process.

(d) *Disclosure statement.* A disclosure statement will be prepared by the Agency and executed by each EIS contractor. The disclosure statement will specify that the contractor has no financial or other interest in the outcome of the proposal.

§ 1970.153 Notice of Intent and scoping.

(a) *Notice of Intent.* The Agency will publish a Notice of Intent (NOI) in the **Federal Register** that an EIS will be prepared and, if public scoping meetings are required, the notice will be published at least 14 days prior to the public scoping meeting(s).

(1) The NOI will include a description of the following: The applicant's proposal and possible alternatives; the Agency's scoping process including plans for possible public scoping meetings with time and locations; background information if available; and contact information for Agency staff who can answer questions regarding the proposal and the EIS.

(2) The applicant must publish a notice similar to the NOI, as directed and approved by the Agency, in one or more newspapers of local circulation, or provide similar information through other distribution methods as approved by the Agency. If public scoping meetings are required, such notices must be published at least 14 days prior to each public scoping meeting. The applicant must obtain an ''affidavit of publication'' or other such proof from all publications (or equivalent verification if other distribution methods were used) and must submit them to the Agency to be made a part of the EIS's Administrative Record.

(b) *Scoping.* In addition to the Agency and applicant responsibilities for public involvement identified in § 1970.14 and as part of early planning for the proposal, the Agency and the applicant must invite affected Federal, State, and local agencies and tribes to inform them of the proposal and identify the permits and approvals that must be obtained and the administrative procedures that must be followed.

(c) *Significant issues.* For each scoping meeting held, the Agency will determine, as soon as practicable after the meeting, the significant issues to be analyzed in depth and identify and eliminate from detailed study the issues that are not significant, have been covered by prior environmental review, or are not determined to be reasonable alternatives.

§ 1970.154 Preparation of the EIS.

(a) The EIS will be prepared in accordance with the format outlined at 40 CFR 1502.10.

(b) The EIS will be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers will be appropriate to address the potential environmental impacts associated with the proposal. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts such as those at universities; local, state, and Federal agencies; and Indian tribes.

(c) The Agency will file the draft and final EIS with the U.S. Environmental Protection Agency's (EPA) Office of Federal Activities.

(d) The Agency will publish in the **Federal Register** a Notice of Availability announcing that either the draft or final EIS is available for review and comment. The applicant must concurrently publish a similar announcement using one or more distribution methods as approved by the Agency in accordance with § 1970.14.

(e) Minimum public comment time periods are calculated from the date on which EPA's Notice of Availability is published in the **Federal Register**. The Agency has the discretion to extend any public review and comment period if warranted. Notification of any extensions will occur through the **Federal Register** and other media outlets.

(f) When comments are received on a draft EIS, the Agency will assess and consider comments both individually and collectively. With support from the third-party contractor and the applicant, the Agency will develop responses to the comments received. Possible responses to public comments include: Modifying the alternatives considered; negotiating with the applicant to modify or mitigate specific project elements of the original proposal; developing and evaluating alternatives not previously given serious consideration; supplementing or modifying the analysis; making factual corrections; or explaining why the comments do not warrant further response.

(g) If the final EIS requires only minor changes from the draft EIS, the Agency may document and incorporate such minor changes through errata sheets, insertion pages, or revised sections to be incorporated into the draft EIS. In such cases, the Agency will circulate such changes together with comments on the draft EIS, responses to comments, and other appropriate information as the final EIS. The Agency will not circulate the draft EIS again; although, if requested, a copy of the draft EIS may

be provided in a timely fashion to any interested party.

§ 1970.155 Supplementing EISs.

(a) A supplement to a draft or final EIS will be announced, prepared, and circulated in the same manner (exclusive of meetings held during the scoping process) as a draft and final EIS (see 7 CFR 1970.154). Supplements to a draft or final EIS will be prepared if:

(1) There are substantial changes in the proposed action that are relevant to environmental concerns; or

(2) Significant new circumstances or information pertaining to the proposal arise which are relevant to environmental concerns and the proposal or its impacts.

(b) The Agency will publish an NOI to prepare a supplement to a draft or final EIS.

(c) The Agency, at its discretion, may issue an information supplement to a final EIS where the Agency determines that the purposes of NEPA are furthered by doing so even though such supplement is not required by 40 CFR 1502.9(c)(1). The Agency and the applicant shall concurrently have separate notices of availability published. The notice requirements shall be the same as for a final EIS and the information supplement shall be circulated in the same manner as a final EIS. The Agency shall take no final action on any proposed modification discussed in the information supplement until 30 days after the Agency's notice of availability or the applicant's notice is published, whichever occurs later.

§ 1970.156 Record of Decision.

(a) The ROD is a concise public record of the Agency's decision. The required information and format of the ROD will be consistent with 40 CFR 1505.2.

(b) Once a ROD has been executed by the Agency, the Agency will issue a **Federal Register** notice indicating its availability to the public.

(c) The ROD may be signed no sooner than 30 days after the publication of EPA's Notice of Availability of the final EIS in the **Federal Register**.

§§ 1970.157—1970.200 [Reserved]

PART 1980—GENERAL

■ 85. The authority citation for part 1980 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart E—[AMENDED]

■ 86. Revise § 1980.432 to read as follows:

§ 1980.432 Environmental requirements.

The environmental requirements of 7 CFR part 1970, ''Environmental Policies and Procedures,'' apply to all financial assistance provided in accordance with this subpart.

■ 87. Amend § 1980.451 by revising paragraph (i)(3) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(i) * * *

(3) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

■ 88. In § 1980.451, amend the table entitled ''Description of Record or Form Number and Title'' by removing the 11th, 12th, and 13th entries and add, in their place, the following entry:

§ 1980.451 Filing and processing applications.

* * * * *

DESCRIPTION OF RECORD OR FORM NUMBER AND TITLE

		Filing position
*	*	*
Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures''.	Environmental documentation for Categorical Exclusion, Environmental Assessment or Environmental Impact Statement.	Environmental File.
*	*	*

Chapter XXXV—Rural Housing Service

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 89. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart I—[AMENDED]

■ 90. Amend § 3560.406 by revising paragraph (d)(4) to read as follows:

§ 3560.406 MFH ownership transfers or sales.

* * * * *

(d) * * *

(4) Prior to Agency approval of an ownership transfer or sale, an environmental review in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures,'' must be conducted on all property related to the ownership transfer or sale. If contamination from hazardous substances or petroleum products is found on the property, the finding must be disclosed to the Agency and the transferee or buyer and must be taken into consideration in the determination of the housing project's value.

* * * * *

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

■ 91. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart G—[AMENDED]

■ 92. Amend § 3565.303 by revising paragraph (b)(1) to read as follows:

§ 3565.303 Issuance of loan guarantee.

* * * * *

(b) * * *

(1) Completion by the Agency of an environmental review in accordance with 7 CFR part 1970 or successor regulation.

* * * * *

PART 3575—GENERAL

■ 93. The authority citation for part 3575 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

Subpart A—[AMENDED]

■ 94. Revise § 3575.9 to read as follows:

§ 3575.9 Environmental requirements.

Requirements for an environmental review or mitigation actions are contained in 7 CFR part 1970, ''Environmental Policies and Procedures.'' The lender must assist the Agency to ensure that the lender's applicant complies with any mitigation measures required by the Agency's environmental review for the purpose of avoiding or reducing adverse

environmental impacts of construction or operation of the facility financed with the guaranteed loan. This assistance includes ensuring that the lender's applicant is to take no actions (for example, initiation of construction) or incur any obligations with respect to their proposed undertaking that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If construction is started prior to completion of the environmental review and the Agency is deprived of its opportunity to fulfill its obligation to comply with applicable environmental requirements, the application for financial assistance will be denied. Satisfactory completion of the environmental review process must occur prior to Agency approval of the applicant's request or any commitment of Agency resources.

Chapter XLII—Rural Business—Cooperative Service, Rural Utilities Service

PART 4274—DIRECT AND INSURED LOANMAKING

■ 95. The authority citation for part 4274 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—[AMENDED]

■ 96. Amend § 4274.337 by revising paragraph (b) to read as follows:

§ 4274.337 Other regulatory requirements.

* * * * *

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of 7 CFR part 1970, ''Environmental Policies and Procedures,'' apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) Environmental documentation will be provided in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

(3) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, the Agency will conclude the environmental review required by 7 CFR part 1970, ''Environmental Policies and Procedures.'' The results of this review will be used by the Agency in making its decision on concurrence in the proposed loan.

* * * * *

■ 97. Amend § 4274.343 to revise paragraph (a)(3) to read as follows:

§ 4274.343 Application.

(a) * * *

(3) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures;''

* * * * *

■ 98. Amend § 4274.361 by revising paragraph (b)(2) to read as follows:

§ 4274.361 Requests to make loans to ultimate recipients.

* * * * *

(b) * * *

(2) Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 4279—GUARANTEED LOANMAKING

■ 99. The authority citation for Part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); and 7 U.S.C. 1989.

Subpart A—[AMENDED]

■ 100. Amend § 4279.30 by revising paragraph (c) to read as follows:

§ 4279.30 Lenders' functions and responsibilities.

* * * * *

(c) *Environmental responsibilities.* Lenders have a responsibility to become familiar with Federal environmental requirements; to consider, in consultation with the prospective borrower, the potential environmental impacts of their proposals at the earliest planning stages; and to develop proposals that minimize the potential to adversely impact the environment. Lenders must alert the Agency to any controversial environmental issues related to a proposed project or items that may require extensive environmental review. Lenders must help the borrower prepare environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 4284—GRANTS

■ 101. The authority citation for part 4284 continues to read in part as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

* * * * *

Subpart A—[AMENDED]

■ 102. Amend § 4284.16 by revising paragraph (a) to read as follows:

§ 4284.16 Other considerations.

(a) *Environmental review.* Provide environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

Subpart G—[AMENDED]

■ 103. Amend § 4284.630 by revising paragraph (b) to read as follows:

§ 4284.630 Other considerations.

* * * * *

(b) *Environmental review.* Provide environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

* * * * *

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (''RBIC'') PROGRAM

■ 104. The authority citation for part 4290 continues to read as follows:

Authority: 7 U.S.C. 1989 and 2009cc *et seq.*

Subpart M—[AMENDED]

■ 105. Amend § 4290.1940 to revise paragraph (h) to read as follows:

§ 4290.1940 Integration of this part with other regulations application to USDA's programs.

* * * * *

(h) *Environmental requirements.* To the extent applicable to this part, the Secretary will comply with 7 CFR part 1970, ''Environmental Policies and Procedures.'' The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45.

* * * * *

§§ 1781.11 and 4279.165 [AMENDED]

■ 106. Remove the words ''subpart G of part 1940 of this title'' and add, in their place, the words '7 CFR part 1970, ''Environmental Policies and Procedures'' ' in the following places:

■ a. 7 CFR 1781.11(g); and

■ b. 7 CFR 4279.165(b).

§§ 1924.6, 1940.968, 1942.2, 1942.126, 1944.66, 1944.523, 1944.526, 1948.62, 1948.84, 1951.210, 1955.10, 1955.66, 1962.30, and Exhibits I and J to Subpart A of Part 1924 [AMENDED]

■ 107. Remove the words ''subpart G of part 1940 of this chapter'' and add, in

their place, the words '7 CFR part 1970, ''Environmental Policies and Procedures,'' ' in the following places:
■ a. 7 CFR 1924.6(a)(9);
■ b. 7 CFR part 1924, subpart A, Exhibit I, Section 300, Site Design, 301–1 General;
■ c. 7 CFR part 1924, subpart A, Exhibit J, Part B, paragraph I.D.;
■ d. 7 CFR part 1924, subpart A, Exhibit J, Part B, paragraph II.A.;
■ e. 7 CFR 1940.968(h)(2);
■ f. 7 CFR 1942.2(b);
■ g. 7 CFR 1942.126(l)(6)(i)(E);
■ h. 7 CFR 1944.66(c);
■ i. 7 CFR 1944.523(b);
■ j. 7 CFR 1944.526(b)(1)(i);
■ k. 7 CFR 1948.62(a);
■ l. 7 CFR 1948.84(e)(2);
■ m. 7 CFR 1951.210;
■ n. 7 CFR 1955.10;
■ o. 7 CFR 1955.66 introductory text; and
■ p. 7 CFR 1962.30(b)(5).

§§ 1924.106, 3550.5, 3550.159, 3560.3, 3560.54, 3560.56, 3560.59, 3560.71, 3560.73, 3560.407, 3560.408, 3560.409, 3560.458, 3565.7, 3565.205, 3565.255, 3570.69, 4280.36, 4280.41, 4280.116, and 4280.131 [AMENDED]

■ 108. Remove the words ''7 CFR part 1940, subpart G'' and add, in their place, the words '7 CFR part 1970, ''Environmental Policies and Procedures.'' ' in the following places:
■ a. 7 CFR 1924.106(a) introductory text;
■ b. 7 CFR 3550.5(b);
■ c. 7 CFR 3550.159(c)(5);
■ d. 7 CFR 3560.3;
■ e. 7 CFR 3560.54(b)(4);
■ f. 7 CFR 3560.56(d)(7);
■ g. 7 CFR 3560.59;
■ h. 7 CFR 3560.71(b)(4);
■ i. 7 CFR 3560.73(e);
■ j. 7 CFR 3560.407(a);
■ k. 7 CFR 3560.408(a);
■ l. 7 CFR 3560.409(a) introductory text;
■ m. 7 CFR 3560.458(d);
■ n. 7 CFR 3565.7;
■ o. 7 CFR 3565.205(b);
■ p. 7 CFR 3565.255;
■ q. 7 CFR 3570.69;
■ r. 7 CFR 4280.36(k);
■ s. 7 CFR 4280.41(b);
■ t. 7 CFR 4280.116(a)(2); and
■ u. 7 CFR 4280.131(c).

Appendix A to Subpart B of Part 480 and Appendix B to Subpart B of Part 480 [AMENDED]

■ 109. Remove the words ''Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G of this title'' and add, in their place, the words ''Provide environmental information in accordance with part 1970 of this title'' in the following places:
■ a. 7 CFR part 4280, App A, Sec 1, paragraph (b)(3);
■ b. 7 CFR part 4280, App A, Sec 2, paragraph (b)(3);
■ c. 7 CFR part 4280, App A, Sec 3, paragraph (b)(3);
■ d. 7 CFR part 4280, App A, Sec 4, paragraph (b)(2);
■ e. 7 CFR part 4280, App A, Sec 5, paragraph (b)(3);
■ f. 7 CFR part 4280, App A, Sec 6, paragraph (b)(3);
■ g. 7 CFR part 4280, App A, Sec 7, paragraph (b)(3);
■ h. 7 CFR part 4280, App A, Sec 8, paragraph (b)(3);
■ i. 7 CFR part 4280, App A, Sec 9, paragraph (b)(3);
■ j. 7 CFR part 4280, App A, Sec 10, paragraph (b)(2);
■ k. 7 CFR part 4280, App B, Sec 1, paragraph (b)(7);
■ l. 7 CFR part 4280, App B, Sec 2, paragraph (b)(7);
■ m. 7 CFR part 4280, App B, Sec 3, paragraph (b)(6);
■ n. 7 CFR part 4280, App B, Sec 4, paragraph (b)(6);
■ o. 7 CFR part 4280, App B, Sec 5, paragraph (b)(7);
■ p. 7 CFR part 4280, App B, Sec 6, paragraph (b)(4);
■ q. 7 CFR part 4280, App B, Sec 7, paragraph (b)(4);
■ r. 7 CFR part 4280, App B, Sec 8, paragraph (b)(4);
■ s. 7 CFR part 4280, App B, Sec 9, paragraph (b)(5); and
■ t. 7 CFR part 4280, App B, Sec 10, paragraph (b)(3).

§§ 1924.106, 1980.316, 1980.318 and Exhibit J to Subpart A of Part 1924 [AMENDED]

■ 110. Remove the words ''subpart G of part 1940'' and add, in their place, the words ''7 CFR part 1970, 'Environmental Policies and Procedures' '' in the following places:
■ a. 7 CFR 1924.106(a)(2);
■ b. 7 CFR part 1924, subpart A, Exhibit J, Part B, paragraph III.A.;
■ c. 7 CFR 1980.316; and
■ d. 7 CFR 1980.318(a)(3).

Dated: December 19, 2013.

Douglas J. O'Brien,

Deputy Under Secretary, Rural Development.

Dated: December 23, 2013.

Darci L. Vetter,

Acting Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2014–00220 Filed 2–3–14; 8:45 am]

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